

Out With the Old [Probate Code] and In With the New [Estates Code]

2013 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

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Prior Experience

- Brown McCarroll, L.L.P. (now Husch Blackwell LLP), 1981 – 2012

Speeches and Publications

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

- State Bar of Texas (TexasBarCLE) – Advanced Estate Planning and Probate Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Practice Skills for New Lawyers, Essentials for the General Practitioner, Miscellaneous Webcasts, and more
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Texas Estate Planning, Guardianship, and Elder Law Conference
- South Texas College of Law Wills and Probate Institute
- Estate Planning & Community Property Law Journal Seminar
- University of Houston Law Foundation General Practice Institute, and 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
- Dallas Bar Association Probate, Trusts & Estate Section
- Houston Bar Association Probate, Trusts & Estate Section
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association Advanced Trust Forum
- Texas Credit Union League Compliance, Audit & Human Resources Conference
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Lubbock, and Tyler
- Austin Association of Life Underwriters

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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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Out With the Old [Probate Code] and In With the New [Estates Code]

2013 Texas Estate and Trust Legislative Update

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

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1. The Preliminaries.

1.1 Introduction and Scope. The 83rd Regular Session of the Texas Legislature spans the 140 days beginning January 8, 2013, and ending May 27, 2013. This paper presents a summary of the bills relating to probate (*i.e.*, decedents' estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. Issues of interest to elder law practitioners are touched upon, but are not a focus of this paper.

1.2 See Attachment 1 for the Rest of the Preliminaries. The version of this paper I have prepared for previous sessions (2009 and 2011) began with lots of preliminary information – acknowledgments, a list of the stakeholders, the process for generating the legislative package of the Real Estate, Probate, and Trust Law Section (“REPTL”), other sources of legislative information and key dates of interest. While I still think all of this is important – and that each of you should read through it at least once every few years – I also realize that most of you are anxious to get to the substantive changes made by the legislature. Therefore, I’ve moved most of the preliminary matters to **Attachment 1**.

1.3 CMA Disclaimer. But there’s still one preliminary item I’m going to keep up front. While I’ve made every reasonable attempt to provide accurate descriptions of the contents of bills, their effects, and in some cases, their background, despite rumors to the contrary, I am human. And have been known to make mistakes. I figuratively juggle many balls during the legislative session, and I often work on this paper late at night, past my 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!). Also, the descriptions of bills contained in this paper, while hopefully accurate at the time they were written, may no longer accurately reflect the contents of a bill at a later stage in the legislative session. Therefore, **Attachment 1** also includes directions for downloading copies of the actual bills themselves so you may review and analyze them yourself before relying on any information in this paper.

2. The New Estates Code.

2.1 January 1, 2014. That’s the date our new Estates Code will go into effect, and our beloved Probate Code that’s been with us for almost six decades, will fade away. These changes were enacted into law in 2009 and 2013. Now, it’s just a matter of waiting until the end of 2013/

2.2 See Attachment 2 for More Background on the Estates Code. Rather than clutter the beginning of this paper with background material relating to the reasons why replacement of the Probate Code was necessary, and how the Estates Code was drafted,¹ you’ll find that material in **Attachment 2**.

3. The REPTL Bills.

3.1 The Original REPTL Legislative Package. Originally, the REPTL 2013 legislative package consisted of three bills: the Decedents’ Estates bill, the Guardianship bill, and the Trusts bill. However, Sec. 35(a), Article III, of the Texas Constitution contains the “one-subject” rule:

No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

Because of this rule, several provisions of the three proposed bills were stripped out of those three main bills by the Texas Legislative Council staff when they drafted the actual bills to be introduced.

3.2 The “Main” REPTL Bills. The “main” REPTL bills in the 2013 legislative session still consist of the following three bills:

(a) The Decedents’ Estates Bill. The 2013 REPTL Decedents’ Estates bill was filed as **HB 2912** (Thompson) and **SB 911** (Rodriguez).

HB 2912 was signed by the Governor on June 14th.

¹ All of which was already included in my 2009 and 2011 legislative updates. You can download copies of those updates at www.snpalaw.com/resources. Scroll down to the section titled “For Professional Advisors.”

The Guardianship Bill. The 2013 REPTL Guardianship bill was filed as **HB 2080** (Thompson | Naishtat | Anchia) and **SB 647** (Rodriguez).

HB 2912 was signed by the Governor on June 14th.

(b) The Trusts Bill. The 2013 REPTL Trusts bill was filed as **HB 2913** (Thompson) and **SB 648** (Rodriguez).

HB 2913 was signed by the Governor on June 14th.

3.3 The “Small” REPTL Bills. The “small” REPTL bills that were carved out of the “main” REPTL bills consist of the following three bills:

(a) The Title Insurance Bill. The 2013 REPTL Title Insurance bill was filed as **HB 2079** (Thompson) and **SB 650** (Rodriguez).

Neither bill passed this session.

(b) The Medical Power of Attorney Bill. The 2013 REPTL Medical Power of Attorney bill was filed as **HB 2124** (Thompson) and **SB 651** (Rodriguez).

SB 651 was signed by the Governor on May 24th.

(c) The Exempt Property Bill. The 2013 REPTL Exempt Property bill was filed as **HB 2081** (Thompson) and **SB 649** (Rodriguez).

SB 649 was signed by the Governor on May 18th.

3.4 Consolidation Into the REPTL Bills. As hearings began, several legislators asked interested parties to try to consolidate as many of the various bills on similar subjects as possible, in order to reduce the number of bills that would need to move through the legislature. Pursuant to this request, REPTL representatives and the statutory probate judges agreed to consolidate all or a portion of a number of other bills into the REPTL Decedents’ Estates, Guardianship, and Medical Power of Attorney bills. Several of these bills include the results of this consolidation effort, “improvements” by REPTL, and negotiations (primarily between REPTL and the statutory probate judges).

4. Decedents’ Estates.

4.1 The REPTL Decedents’ Estates Bill. The REPTL 2013 Decedents’ Estates bill contains a large number of mostly minor changes. References to the changes can be found throughout this paper. Here are some of them.²

² Section references are to the Texas Estates Code unless otherwise noted.

(a) No More References to “Written” Wills.

The 2007 REPTL Decedents’ Estates bill repealed oral, or “nuncupative,” wills. This year’s bill cleans up the Estates Code by eliminating numerous references to “written” wills, since there is now no other kind of will.

(b) No Unsworn Declarations for Self-Proving Affidavits (Sec. 21.005). The broad use of unsworn declarations was enacted in 2011 – to the surprise of REPTL and almost everyone else. A revised Chapter 132 of the Civil Practice and Remedies Code 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 (except for an oath of office or an oath required to be taken before a specified official other than a notary). REPTL studied all of the provisions in the Estates Code in which jurats or verifications are called for and determined that the only situation in which the use of unsworn declarations should be eliminated was a self-proving affidavit for a will or codicil. This change makes the provisions of the aforementioned Chapter 132 inapplicable to the self-proving provisions in the Estates Code.

(c) Heirship Changes. A number of changes are made that relate to heirship proceedings.

(i) Inheritance Rights of “Intended” Parents (Secs. 201.051 and 201.052). These changes incorporate references to maternal and paternal inheritance in situations where a child has “intended” parents under a valid gestational agreement under Family Code Secs. 160.751, *et seq.*

(ii) No Statute of Limitations for Determinations of Heirship (Sec. 202.0025). This reverses a 2010 Supreme Court ruling that applied the residual four-year limitations period to an heirship proceeding.

(iii) Initiation of Heirship Proceedings (Secs. 202.004(2)). Unsecured creditors are added to the list of persons who may initiate heirship proceedings.

(iv) Ad Litem in Heirships (Sec. 202.009). This change requires appointment of an attorney ad litem in an heirship proceeding to represent heirs whose names or locations are unknown, and preserves discretion to appoint an ad litem for an incapacitated heir.

(v) Waiver of Citation for Minor in Heirships (Sec. 202.056). Clarifies that citation may

be waived for a minor distributee in an heirship proceeding (by a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem) only if the minor is under 12, and may not be waived for a minor age 12 or older.

(vi) No Heirship Determination Until Affidavit or Certificate of Notice Filed

(Sec. 202.057). A court may not enter an order determining heirs until the applicant files a copy of the notice sent to interested parties along with an affidavit of the applicant or the applicant's attorney stating that the notice was given, the name of each person who received the notice if not shown on the proof of delivery, and the name of each person executing a waiver of notice.

(vii) Heirship Testimony Reduced to Writing (Sec. 202.151). A court may require that testimony in an heirship be reduced to writing and sworn to by the witness.

(d) Heirship Claims of Biological Children (Secs. 204.151 and 204.152). **HB 2916** (Thompson) was a "probate judges' bill" that contained a number of changes affecting decedents' estate that were included in **H.B. 2899** (Hartnett) from the 2011 session. The first change from the probate judges' bill consolidated into the REPTL Decedents' Estates bill adopts the presumption found in Family Code Sec. 160.505 (regarding establishment of a parent-child relationship from the results of genetic testing) applicable to the results of genetic testing in heirships with respect to anyone claiming as or through a biological child of the decedent.

(e) Void Orders Restricting New Wills (Sec. 253.001). Courts are already prohibited from restricting a person's ability to sign a new will or codicil. This change clarifies that if a court still includes such a prohibition in an order, that portion of the order is void and may be disregarded without penalty.

(f) Addresses in Application for Letters (Sec. 256.052). An application for letters must include the state of residence of the proposed executor and a physical address where the person may be served (in lieu of a residence address). In addition, while the subscribing witnesses must still be named, their residence addresses will no longer be required.

Drafting Tip

Change the identification of the executor's address and state of residence in the application for letters as follows:

"Applicant is a resident of the State of Texas and may be served with citation at _____ [insert physical, not mailing, address]."

And change the identification of the witnesses to the will to delete their addresses as follows:

"The Will was witnessed by [Witness 1] and by [Witness 2]."

(g) Foreign Self-Proving Affidavits

(Sec. 256.152). The 2011 REPTL Decedents Estates bill provided that a foreign self-proving affidavit meets Texas requirements if it includes certain specified information – without the need to prove up foreign law. This change eliminates the possible misinterpretation that the 2011 change supplanted the normal Texas self-proving affidavit requirements.

(h) Proof of Will by Deposition

(Secs. 256.153 and 256.154). When a witness is proving up a will by deposition, the original will is usually in the clerk's office. This change allows the witness to testify by referring to a certified copy of the will.

(i) Proof of Application for Issuance of Letters (Sec. 301.155).

We already have provisions requiring proof of non-self-proved wills by live testimony or, if the witnesses are unavailable, by deposition. There is no current provision for the method of proof required for the issuance of letters. This change adds a new section that provides for proof of those applications by live testimony or, if the witness is unavailable, by deposition on written question.

(j) Time for Taking Oath and Giving Bond

(Secs. 305.002-305.004). This change splits current Sec. 305.003 into two sections – one dealing with the oath; the other dealing with the bond. REPTL's recommendation was to allow some oaths to be taken prior to the hearing, to be effective upon the grant of letters. However, this change was removed due to strong objections from some probate judges.

In cases where a bond is required, the bond may be filed at any time before the 21st day after the grant of letters, or the date of any order modifying the bond requirement. The change is that if a bond is filed within that time period but the court fails to take any action on the bond in a timely manner, the representative may file a motion for a hearing at which the judge is required to specify any objections to the bond on the record.

(k) Time for Submitting Creditor's Claim

(Secs. 308.054(b)(1), 355.060, and 403.055). The

deadline for a creditor to file a claim is changed from four months to 120 days in order to make it consistent with other related time periods in the Code that reference days, rather than months.

(l) Affidavit in Lieu of Inventory
(Secs. 309.051(a), 309.056(b) and (d), 309.103(a) and (b), and 401.004(d)). Several changes are made to clarify the rules applicable to affidavits in lieu of inventory:

(i) Affidavit Available Even if Will “Requires” Inventory. An independent executor may file an affidavit in lieu of inventory even when the will contains the common language that “I direct that no action be had in any court other than the probating of this will and the filing of an inventory.” A testator who wants to require the filing of an inventory must include language specifically prohibiting the filing of an affidavit in lieu of inventory.

(ii) No “Rock-and-a-Hard-Place” Decision. An executor cannot be held liable for either choosing to file the affidavit, or choosing to file the inventory.

(iii) Remedies for Incorrect Affidavit. The same remedies that are available to an interested person who considers an inventory to be erroneous or unjust are made available to an interested person who considers the affidavit filed in lieu of the inventory to be erroneous or unjust (*e.g.*, the inventory provided the beneficiary is incorrect, or there are debts still outstanding).

(iv) Suggested Will Language Authorizing Independent Administration. The statutory language that a person may include in their will to authorize independent administration is changed to refer to “any required inventory.”

Drafting Tip

Change the standard language in your will forms authorizing independent administration using language that can’t be construed as a requirement that an inventory be filed, such as:

“I direct that no other action shall be had in the probate court in relation to the settlement of my estate than the probating and recording of this will and the return of any required inventory, appraisalment, and list of claims of my estate.”

or

“I direct that no other action shall be had in the probate court in relation to the settlement of my estate than the probating and recording of this will and the

return of an inventory, appraisalment, and list of claims of my estate or an affidavit in lieu of the inventory.”

On the other hand, if for some reason your testator really, really, does want to require that an inventory be filed instead of an affidavit in lieu of the inventory (I don’t know why he or she would), use language like the following:

“I direct that no other action shall be had in the probate court in relation to the settlement of my estate than the probating and recording of this will and the return of an inventory, appraisalment, and list of claims of my estate. My executor may not file an affidavit in lieu of the inventory, appraisalment, and list of claims of my estate.”

(m) Fine for Failure to Timely File Inventory (Sec. 309.057). The second change from the probate judges’ bill consolidated into the REPTL Decedents’ Estates bill is new Sec. 309.057 that allows a court to impose a fine of up to \$1,000 for failure to file an inventory (or an affidavit in lieu of inventory) after being cited for failure to do so. (This would apply to independent executors, also.)

(n) Inventory of Successor Representative (Sec. 361.155(a)). If a successor representative is appointed after a previous representative has filed the standard inventory listing assets as of the date of death, the successor’s inventory only needs to list the undistributed assets remaining on the date of the successor’s qualification, and their value as of that date (this is similar to a guardian’s inventory).

(o) Delivery of Copy of Final Account (Sec. 362.005). Another change that came from the probate judges’ bill requires a personal representative to provide a copy of the final account (certified mail or electronic delivery) to the persons entitled to citation on the final account, and then file an affidavit (or attorney’s certificate) showing the names of each of those persons, and including a statement that each was provided a copy of the final account. (The judges’ original proposal was to include the copy of the final account in the citation itself.)

(p) Conversion of Nonmonetary Assets Distributable to an Unknown or Missing Person (Secs. 362.011, 362.013, and 551.001). If a nonmonetary asset remains upon final settlement of an estate, and that asset is distributable to an unknown or missing person, the court shall order the representative to convert the asset to cash so it can be deposited into the court’s registry. Provisions were added from the probate judges’ bill ordering those and other monetary

assets to be deposited, and providing guidance to the courts regarding how to handle those funds.

(q) Consenting Distributees

(Secs. 401.004(d) and 404.005(b) and (c)). If a will gives property to a trustee, the distributees who must provide consent to an independent administration (where independent administration is not otherwise provided for) include beneficiaries of the trust who receive property outright upon the decedent's death. For example, if the will is a pourover to a revocable management trust, and all or a portion of the trust passes outright to one or more beneficiaries at the decedent's death, those beneficiaries must consent to the independent administration. Also, a natural guardian of a minor may consent to the appointment of a successor independent executor on the minor's behalf if there is no conflict of interest. And if a trust is created in a will and a trust beneficiary entitled to notice is incapacitated, the trustee may file the application for the beneficiary for or provide the required consent if the trustee is not the proposed successor executor.

(r) Power of Sale by Order (Sec. 401.006).

The 2011 REPTL Decedents Estates bill included a provision allowing a court, with beneficiary consents, to give an independent representative an express power of sale over real property in the absence of a grant of that power in a will. This change deletes the word "real," so that the court can specifically grant a power of sale over personal property. However, no inference may be drawn from this change as to whether the independent executor had authority to sell personal property prior to the effective date of the change.

(s) Removal of Independent Executor

(Secs. 404.003-404.0037). These changes are derived from a 2011 probate judge proposal that did not pass. They allow removal of an independent executor without citation by personal service in the following circumstances:

- **Without any notice** if the executor's whereabouts are unknown, the executor is eluding notice, or the executor is a nonresident without a designated resident agent, or if there are sufficient grounds to believe that the executor has misapplied or embezzled, or is about to misapply or embezzle, any estate property.
- **With written notice by certified mail**, return receipt requested, to the executor and the executor's attorney, where the executor neglects to qualify in the required time and manner or fails to

timely file either an inventory or an affidavit in lieu of inventory.

- **Citation by personal service** is still required for the remaining removal grounds.

(t) Distribution of Undivided Interests

(Sec. 405.001(b)). This change clarifies that a court may order distribution of undivided interests in property if any portion is incapable of distribution without prior partition or sale

HB 2912 was signed by the Governor on June 14th.

4.2 Disclaimer to Avoid Paying Child Support

(Secs. 122.051 and 122.107). **HB 2621** (Creighton) requires a disclaimer of property by a beneficiary to include a statement whether the beneficiary is a child support obligor. A disclaimer by a beneficiary who is a child support obligor would be ineffective if (1) the property the beneficiary would otherwise receive could be applied to satisfy the beneficiary's support obligations and (2) the beneficiary owes administratively-determined arrearages or those arrearages have been reduced to judgment.

HB 2621 was signed by the Governor on June 14th.

Drafting Tip

Add a statement similar to one of the the following to disclaimers of property receivable from a decedent's estate (assuming that the statement is true):

"Disclaimant is not a child support obligor described by Estates Code Section 122.107.

or

"Disclaimant is a child support obligor described by Estates Code Section 122.107, but owes no child support arrearages described by Estates Code Section 122.107(a)(1) or (2).

Note that the change made to the Estates Code by HB 2621 was not also made to the Trust Code. Therefore, disclaimers of interests in trusts under Trust Code Sec. 112.010 remain unaffected (for now).

4.3 Enforcement of Forfeiture Clauses

(Sec. 254.005). **HB 2380** (Davis, S.) amends the forfeiture clause enforceability provisions that were enacted in 2009 (current Probate Code Sec. 64 and Trust Code Sec. 112.038). Currently, a forfeiture clause is **unenforceable** if (1) just cause existed for bringing the action and (2) the action was brought and maintained in good faith. This bill makes the forfeiture clause **enforceable unless** the person bringing the action contrary to the forfeiture clause establishes the

same two facts **by a preponderance of the evidence**. The supporters of this bill thought it was necessary to clarify who had the burden of proof.

On the same subject, you may find it helpful to know that a 2012 Houston Court of Appeals decision³ listed twelve different types of **lawsuits that do not trigger forfeitures**: (1) to recover an interest in devised property; (2) to compel an executor to perform duties; (3) to ascertain a beneficiary's interest under a will; (4) to compel the probate of a will; (5) to recover damages for conversion of estate assets; (6) to construe a will's provisions; (7) to request an estate accounting or distribution; (8) to contest a deed conveying a beneficiary's interest; (9) to determine the effect of a settlement; (10) to challenge an executor appointment; (11) to seek redress from executors who breach fiduciary duties; and (12) presenting testimony in a will contest brought by other beneficiaries. In connection with this list of non-forfeiture-triggering lawsuits, the following remarks were read into the *Senate Journal*⁴ when the House bill passed (emphasis added):

“House Bill 2380 seeks to clear up the law on forfeiture clauses, which are frequently used provisions in wills and trusts. Legislation that passed in 2009 sought to clear up the inconsistent application of forfeiture clauses by recognizing that a forfeiture clause is invalid if the challenge to a will or trust is brought in good faith and with probable cause. However, questions remain in which party has this burden of proof. House Bill 2380 continues to recognize the good faith and just cause exceptions to the enforcement of forfeiture clauses but clarifies that the burden of proof is on the party seeking to avoid enforcement of the forfeiture clause. *House Bill 2380 is not intended to and does not repeal Texas law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform his duties, to seek redress against a fiduciary for breaches of his duties, or to seek a judicial construction of a will or trust.*”

HB 2380 was signed by the Governor on June 14th.

5. Guardianships.

5.1 The REPTL Guardianship Bill. The REPTL 2013 Guardianship bill also contains a number of mostly minor changes. Here are some of them.

(a) Payment of Filing Fees (Sec. 1052.051).

As originally filed, **HB 2915** (Thompson) contained number of provisions relating to costs in a guardianship proceeding, including the potential ability to pierce the spendthrift protection of a trust for the beneficiary. A conforming change to the Trust Code was made by **HB 2461** (Thompson). However, as consolidated into the REPTL 2013 Guardianship bill, this provision merely makes the original applicant responsible for the filing fee accompanying the application (including any ad litem deposit), unless the applicant (not the ward) can file an affidavit of inability to pay costs, or is a government or nonprofit agency providing guardianship services. The applicant may later seek reimbursement for the filing fees from the guardianship estate, if any.

(b) Permissive Appointment of Attorney Ad Litem (Sec. 1054.007). On March 5th, Rep. Naishtat of Travis County filed a number of bills related to guardianships. Four of them were consolidated in the REPTL 2013 Guardianship bill. The first is **HB 2410** (Naishtat) that adds discretion for a court to appoint an attorney ad litem in a guardianship proceeding to represent the interests of:

- (1) an incapacitated person or another person who has a legal disability;
- (2) a proposed ward;
- (3) a nonresident;
- (4) an unborn or unascertained person; or
- (5) an unknown or missing potential heir.

(c) Protection of Persons from Family and Other Violence (Secs. 1053.104, 1101.002, 1104.353, and 1104.358). A second Naishtat guardianship bill provision that was incorporated into the REPTL 2013 Guardianship bill is **HB 2413** (Naishtat). (**HB 2508** (Anchia) is similar, but not identical.) This change allows a court to exclude from any document filed with the court certain personal information pertaining to a person protected by a protective order under the Family Code. The original application may omit the address of a protected person. Appointment of a person convicted of a terroristic threat or continuous violence against the family of the ward or incapacitated person as guardian is presumed not to be in the best interests of the ward. And a person found to have committed family violence while subject to a protective order under the Family Code **may not** be appointed guardian of a proposed ward or ward who is protected by the protective order.

(d) Mediated Settlement Agreements (Sec. 1055.151). This section adds guidelines for the

³ *Di Portanova v. Monroe*, __ S.W.3d __ (2012 WL 5986448) (Tex. App. – Houston [1st Dist.] 2012, no pet.)

⁴ *Senate Journal*, 83rd Legislature – Regular Session, 61st day (5/17/13), pp. 1962-1963.

irrevocability and enforcement of mediated settlement agreements in contested guardianship cases.

(e) Contents of Information Letter

(Sec. 1102.003). “Inspired” by [HB 2600](#) (Klick) (see discussion of this bill in the attachment listing selected bills that did not pass), Jurisprudence added an amendment shortly before the end of the session requiring an “interested person” who submits an information letter under Sec. 1102(1) to include the items listed in Sec. 1102.003 “to the best of the interested person’s knowledge.” Further, if the interested person is a family member of the subject of the letter, it must be sworn to or include an unsworn declaration as to the truth of its contents (to the best of the family member’s knowledge).

(f) Contents of Order Appointing Guardian

(Secs. 1101.151 and 1101.152). [HB 2463](#) (Thompson) contained a change that was consolidated into the REPTL 2013 Guardianship bill. The provision requires an order appointing a guardian of the person (or both the person and estate) to contain the rights of the guardian with respect to physical possession of the ward and establishment of the ward’s legal domicile. The order must also contain a prominently-displayed statement (boldfaced type, in capital letters, or underlined) that any peace officer may use reasonable efforts to enforce those rights of the guardian, with immunity for good faith acts.

(g) Authority to Sign Employment

Documents (Sec. 1151.051). The third Naishtat guardianship bill provision (from [HB 2411](#) (Naishtat)) gives a guardian of the person authority to sign documents to facilitate employment of the ward if: (A) the guardian was appointed with full authority over the person of the ward or (B) the power is specified in the order appointing the guardian with limited powers.

(h) Attorney Fees and Other Costs

(Secs. 1155.054, 1155.151, and 1251.013). This change, similar to one negotiated between Sen. Chris Harris and Rep. Will Hartnett towards the end of the 2011 session that did not pass, allows a court to assess attorney fees and other costs against a party to a guardianship proceeding, including a temporary guardianship, who has acted in bad faith or without just cause, requiring that party to reimburse the ward’s estate for all or part of the attorney’s fees and costs, and to issue judgment in favor of the guardian against that party. It is based on an amended version of Probate Code Sec. 665B. In addition, attorneys ad litem, mental health professionals, and interpreters are added to the list of professionals a court may set fees for – an amount that court considers equitable and just – to be

paid as ordered by the court at any time during the proceeding.

(i) Additional Account Affidavit

Requirement (Sec. 1163.005). If a guardian is certified by the Guardianship Certification Board under Government Code Chapter 111 (i.e., a guardianship program or private professional guardian), the last Naishtat guardianship bill provision (from [HB 2412](#) (Naishtat)) requires the affidavit attached to the guardian’s account to state whether the guardian is or has been the subject of an investigation conducted by the board during the accounting period.

(j) Reports of Guardian of the Person

(Sec. 1163.1011). This provision authorizes the use of unsworn declarations in reports of guardians of the person that are filed electronically.

(k) Management Trusts for Persons With Only Physical Disabilities. The REPTL 2013 Guardianship bill and Legislative Council’s General Code Update bill ([SB 1093](#) (West)) contain a number of provisions related to management trusts for persons with physical disabilities only.

(i) Applicants (Sec. 1301.051). A person with physical disabilities only is added to the list of those who may apply for the establishment of a management trust.

(ii) Ad Litem (Sec. 1301.054). A court need not appoint an attorney ad litem or guardian ad litem for a person with a physical disability only who is requesting establishment of a management trust for that person.

(iii) Trustee (Sec. 1301.057). The trustee of a management trust for a person with a physical disability only who is not mentally capacitated need not be a financial institution.

(iv) Bond (Sec. 1301.058). No bond is required of a trustee of a management trust for a person with a physical disability only.

(v) Optional and Required Provisions (Secs. 1301.101 – 1301.103). These changes clarify the optional and required terms of a management trust, including bonds and trustee compensation, that apply to trusts for wards or incapacitated persons, and those that do not apply to trusts for persons with physical disabilities only.

(vi) Accounting (Sec. 1301.154). No accounting is required of a trustee of a management trust for a person with a physical disability only.

[HB 2080](#) was signed by the Governor on June 14th.

5.2 Request for Financial Information for Guardianship Purposes; Determination of Mental Retardation (Sec. 1101.104; Finance Code Sec. 59.006). **SB 1235** (West) adds the assessment for or provision of guardianship services under the Human Resources Code to the list of situations where a financial institution is not required or authorized to give a customer notice of a request for financial information from a third . The bill also allows a prior determination of intellectual disability (formerly mental retardation) to be updated within 24 months prior to the guardianship application, rather than requiring a new determination from scratch.

SB 1235 was signed by the Governor on June 14th.

5.3 Removal of Firearm Disability (Sec. 1202.201). **HB 2407** (Naishtat) is another Naishtate guardianship bill, but it was **not** consolidated into the REPTL 2013 Guardianship bill. The bill adds a procedure for a ward whose capacity has been completely restored to file an application to have his or her disability from purchasing a firearm under 18 U.S.C. Sec. 922(g)(4) removed.

HB 2407 was signed by the Governor on June 14th.

5.4 Voluntary Outpatient Mental Health Services (H&S Code Secs. 572.001 and 572.002). **SB 718** (West) allows a person who is at least 16 (or younger, if married!) to request outpatient mental health services, in addition to the existing ability to request admission to an inpatient facility. A minor who is not, and has not been, married may not be involuntarily committed unless the person may not be voluntarily admitted under chapter 572.

SB 718 was signed by the Governor on June 14th.

5.5 Peace Officer's Notice of Detention (H&S Code Secs. 573.002 and 573.021). Currently, when a peace officer transports a person to a facility for detention, he or she is supposed to file an **application** for detention. **HB 1738** (Naishtat) changes this to a **notice** of detention to be included in the detainee's clinical file, and prescribes a form for the notice. The facility cannot require the peace officer to execute any other form prior to accepting the detainee.

HB 1738 was signed by the Governor on June 14th.

5.6 Court-Ordered Out-Patient Mental Health Services (H&S Code Secs. 574.0125, 574.037, 574.061, 574.063, 574.064, 574.065, and 574.102). **SB 646** (Duell) revises various provisions relating to court-ordered out-patient mental health services including the requirements for the service provider's general treatment program; the procedure if a patient is

not complying with the court ordered program; and court-ordered temporary detentions.

SB 646 was signed by the Governor on June 14th.

5.7 Assessment of Psychological State (HR Code⁵ Sec. 48.208). **HB 908** (Nevárez) adds a licensed professional counselor to the list of professionals who may assess an elderly or disabled person's psychological state to determine whether the person is suffering from abuse, neglect, or exploitation and whether the issuance of an emergency order authorizing protective services without the person's consent is necessary.

HB 908 was signed by the Governor on June 14th.

5.8 Limit on Extensions of Emergency Orders (HR Code Sec. 48.208). **SB 1236** (West) prohibits extension of certain emergency orders for protective services for persons who are elderly or disabled after they have expired.

SB 1236 was signed by the Governor on May 18th.

5.9 Authority to Establish Consumer Credit File. **SB 60** (Nelson) allows a parent or legal guardian (of the person or estate) to establish a consumer file for a child or adult ward and act on the child's or ward's behalf with a consumer reporting agency.

SB 60 was signed by the Governor on May 18th.

6. Disability Documents.

6.1 The REPTL Financial Power of Attorney Bill. There is none this session.

6.2 The REPTL Medical Power of Attorney Bill (H&S Code Sec. 166.163 and 166.164). Originally in the REPTL 2013 Guardianship bill, one provision had to be moved to a separate bill because of the "one-subject" rule. While the 2009 legislature authorized the use of a notary on advance directives in lieu of two witnesses, the required disclosure statement for a medical power of attorney, and the statutory form itself, still provides that two witnesses are required – without reference to the notary option. The REPTL 2013 Medical Power of Attorney bill modifies the disclosure statement and the statutory form to reflect that 2009 change.

SB 651 was signed by the Governor on May 24th.

6.3 The Non-REPTL Financial Power of Attorney Bill (Sec. 752.051). As introduced, **HB 2918** (Thompson) rewrote virtually all of the current statutory form for a financial power of attorney. The

⁵ Human Resources Code.

version voted out of the House is a bit more modest. It retains the existing form, but adds a notice to the principal on the first page and detailed instructions for the agent regarding his or her duties and liabilities following the principal's signature. In addition, instead of the principal crossing out powers not granted by the principal, it goes back to the original method we had from 1993 to 1997, requiring the principal to initial the powers granted, with a twist noting that the principal may, but doesn't have to, cross out those not granted. Further, in the existing form, granting all of the listed powers causes the power of attorney to be treated as a broad "general" power. The new form eliminates that provision.

It is the author's opinion that the initialing method could lead to an increased possibility of tampering. It's difficult to later remove a mark made by the principal crossing out a power, but it's rather easy to forge the principal's initials on powers not originally granted. Further, what if the principal neither initials nor crosses out anything? Clearly he or she intended to grant some power, but without any initials, none will be granted.

Drafting Tip

Remember, the statutory form contained in the Durable Power of Attorney Act is completely optional. Many of us (the author included) have already made modifications to the statutory form for the documents we prepare for our clients.

- The new notices to the principal and the agent appear to be prudent additions.
- There is nothing preventing any of you who prefer the cross-out method from continuing to use it in your forms.
- Consider retaining the provision making the power "general" if all of the listed powers are granted (or none are crossed out).
- If you make any changes to the statutory form, include a statement that the power should be interpreted as a statutory power of attorney under the Act.

HB 2918 was signed by the Governor on June 14th.

7. Trusts.

7.1 **The REPTL Trusts bill.** The REPTL 2013 Trusts bill contains a few changes, but several may be considered significant.

(a) Digital Assets (Trust Code Sec. 111.004).

Digital assets are added to the definition of "property."

(b) Creditor Protection for Trusts

Appointed Back to Original Settlor (Trust Code

Sec. 112.035). Say Husband creates a "bypass" trust for Wife during his lifetime, giving her a broad special testamentary power of appointment. Before she predeceases Husband, she revises her will to appoint the trust back to a bypass trust for Husband. Under the common law applicable to trusts, Wife is merely exercising a power originally delegated to her by Husband, as the original settlor. Husband may now be the beneficiary of a trust of which he could be considered the settlor. If he is considered the settlor, Sec. 112.035 provides no spendthrift protection for his interest in the trust. Since husband's creditors could thereby gain access to the trust, the assets become includible in Husband's estate for estate tax purposes. Not good. This change provides that Husband won't be considered a beneficiary of the trust merely because of the exercise of a power of appointment by a third-party (in this case, Wife). Assets contributed to the following trusts aren't deemed to have been contributed by the original settlor, and a person who would otherwise be treated as a settlor won't be treated as a settlor:

(i) Inter Vivos QTIP. An irrevocable inter vivos QTIP trust if the original settlor becomes a beneficiary following the death of that settlor's spouse.

(ii) Inter Vivos GPA Marital Trust. An irrevocable inter vivos general power of appointment trust if the original settlor becomes a beneficiary following the death of that settlor's spouse.

(iii) Inter Vivos Bypass Trust. An irrevocable inter vivos trust for the settlor's spouse if the original settlor becomes a beneficiary following the death of that settlor's spouse.

(iv) "Nonreciprocal" Trust Created by Spouse. An irrevocable trust created by a person's spouse for the benefit of that person, regardless of **whether or when that person created an irrevocable trust for the spouse.**

(v) Trust Following GPA. An irrevocable trust for a person to the extent the assets were subject to a general power of appointment held by another person.

(c) Decanting (Trust Code Secs. 112.071-112.088). This new subchapter adds statutory decanting provisions that supplement any similar provisions in a trust, unless the settlor expressly prohibits decanting. (A standard spendthrift clause is not considered such a prohibition.) **You should really read these provisions closely if you intend to use**

them. The following is an extremely condensed summary of the statutory decanting provisions:

- If a trustee has “full discretion” (*i.e.*, a power that is not limited in any manner), that trustee may distribute principal to another trust for the benefit of one or more of the current beneficiaries of the first trust. If there is more than one trustee and less than all have full discretion, those trustees may exercise this power without the participation of any “limited” trustee.
- If the trustee could have made an outright distribution to the beneficiary, then the trustee may give the beneficiary a power of appointment in the second trust in favor of one or more of the current beneficiaries of the first trust. The permissible appointees may be broader than the beneficiaries of the first trust.
- If a trustee has “limited discretion” (*i.e.*, a power that is limited in some way), that trustee may distribute principal to another trust so long as the current beneficiaries of both trusts are the same, and the successor and remainder beneficiaries of both trusts are the same. The distribution language of the second trust must be the same as the first trust. If a beneficiary of the first trust has a power of appointment, the beneficiary must be given the same power over the second trust. In other words, this provision really is limited to changing administrative provisions.
- In either case, the trustee must act “in good faith, in accordance with the terms and purpose of the trust, and in the interests of the beneficiaries.”
- Notice provisions include the attorney general if a charity is involved, and allow intervention by the attorney general.
- A trustee may not exercise a decanting power if it would (1) reduce a beneficiary’s current right to a mandatory distribution or to withdraw a portion of the trust; (2) materially impair the rights of any beneficiary; (3) materially lessen a trustee’s fiduciary duty; (4) decrease the trustee’s liability or indemnify or exonerate a trustee for failure to exercise reasonable care, diligence, and prudence; (5) eliminate another person’s power to remove or replace the trustee; or (6) modify the perpetuities period (unless the first trust expressly permits this modification).
- The decanting power is reduced to the extent it would cause any intended tax benefits, such as the

annual gift tax exclusion, the marital deduction, or the charitable deduction, to be lost.

- A trustee may not exercise a decanting power without court approval solely to change the trustee compensation provisions. The trustee may, however, modify the compensation provisions in conjunction with other valid reasons for decanting if the change raises the trustee’s compensation to reasonable limits in accord with Texas law.
- In no case is a trustee deemed to have a duty to decant.
- If there are one or more current beneficiaries and one or more presumptive remainder beneficiaries who are not incapacitated, neither consent of the settlor nor court approval is required to exercise the decanting power if the trustee has sent written, descriptive notice to those beneficiaries.
- A trustee may elect to petition a court to order the distribution. If a beneficiary timely objects, either the trustee or the beneficiary may petition to court to approve, modify, or deny the power.

(d) Tax Savings Clause for Beneficiaries

Affiliated With Corporate Trustee (Trust Code

Sec. 113.029). Sec. 113.029 was added in 2009 to add a statutory tax savings provision in the event a beneficiary is also a trustee and has a discretionary power to make distributions to himself or herself that is not otherwise limited by an ascertainable standard in the trust instrument. This change extends that protection to beneficiaries who may be affiliated with their corporate trustee by providing that a person who is a beneficiary and a trustee, **a trustee affiliate, or a discretionary power holder**, is also limited in the same manner. A trustee affiliate is already defined in Trust Code Sec. 111.004(1), and a discretionary power holder is defined in this amendment as a person who has sole or shared power to make discretionary distributions from a trust on behalf of the trustee.

(e) Two Tax Code Changes. Two provisions in the REPTL 2013 Trusts bill make changes to the Tax Code.

(i) Homestead Exemption (Tax Code

Sec. 11.13). This change adds most irrevocable trusts to the list of “qualifying trusts” eligible for the ad valorem tax homestead exemption if the beneficiary has a qualifying occupancy interest under the terms of the trust, **an instrument transferring property to the trust, or any other agreement that is binding on the trustee.** (The bold-faced language was added to allow qualification by trusts that are irrevocable but don’t

have the qualifying occupancy language.) Also, the beneficiary no longer need be the “trustor” or the trustor’s spouse.

(ii) Vehicle Gift Tax (Tax Code Sec. 152.025). Transfers of vehicles to and from revocable trusts are added to the list of transfers eligible for the \$10 “gift tax.”

HB 2913 was signed by the Governor on June 14th.

7.2 The REPTL Title Insurance Bill – Continuation of Title Coverage (Insurance Code Sec. 2703.101). Originally in the REPTL 2013 Trusts bill, the REPTL 2013 Title Insurance bill contains provisions that had to be moved to a separate bill because of the “one-subject” rule. The bill expands continuation of title insurance coverage. Current residential title policies provide continuing coverage to a trust to which the original insured transfers title, and again to beneficiaries of that trust following the death of the original insured. This change (1) eliminates the limitation of beneficiary coverage to periods following the original insured’s death, and (2) extends coverage to a person who receives title by gift from the original insured or to a controlled corporation or partnership that receives title as a contribution from the original insured. **Due to objections from TLTA, this bill was pulled from the 2013 REPTL program this session but may return in a modified form in 2015.**

7.3 Enforcement of Forfeiture Clauses (Trust Code Sec. 112.038). **HB 2380** (Davis, S.) and what appears to be its companion, **SB 1734** (Taylor), amend the forfeiture clause enforceability provisions that were enacted in 2009 (current Probate Code Sec. 64 and Trust Code Sec. 112.038). Currently, a forfeiture clause is **unenforceable if** (1) just cause existed for bringing the action and (2) the action was brought and maintained in good faith. The language voted out by the House makes the forfeiture clause **enforceable unless** the person bringing the action contrary to the forfeiture clause establishes the same two facts **by a preponderance of the evidence**. The supporters of this bill thought it was necessary to clarify who had the burden of proof.

HB 2380 was signed by the Governor on June 14th. See further discussion of this bill in the Decedents’ Estates section of this paper.

7.4 The TBA Trust Bill. **SB 778** (Carona) is a trust bill with measures proposed by the Texas Bankers’ Association. The bill was revised significantly in Jurisprudence following discussions among representatives of REPTL and TBA.

(a) Purchase of Insurance from Affiliate (Trust Code Sec. 113.053). The first change allows corporate trustees to purchase insurance underwritten or distributed by an affiliate, subject to its fiduciary duties, unless the trust agreement expressly prohibits it.

(b) Payment of Trustee’s Compensation Out of Income or Principal (Trust Code Secs. 116.201 and 116.202). The second change amends the Trust Code’s allocation of the trustee’s compensation one-half to income and one-half to principal (the Uniform Principal and Income Act standard). A trustee may, consistent with its fiduciary duties, determine that different portions of the compensation should be allocated to income and principal.

(c) Diversification (Trust Code Sec. 117.005). The final change in the original TBA bill would significantly weaken the diversification requirements under the Uniform Prudent Investor Act portion of the Trust Code. This change was eliminated in the committee substitute, so the current requirements will remain unchanged.

SB 778 was signed by the Governor on June 14th.

7.5 Matters Affecting State Trust Companies. **HB 1664** (Villarreal) makes a number of changes relating to the regulation of banks, trust companies, and bank holding companies. Some of them include:

(a) Disclosures to Advisory Directors or Managers. A state trust company is prohibited from disclosing to an advisory director or manager confidential information pertaining to the state trust company or the company’s clients unless the board adopts a resolution designating the advisory director or manager as a person officially connected to the trust company and describes the reasonable business purpose for disclosure of the information. In addition, the disclosure must be made under a written confidentiality agreement.

(b) Excess Investment in Facilities. A state trust company may not invest an amount in excess of its restricted capital (increased from the current limit of 60% of its restricted capital) in its facilities, furniture, fixtures, and equipment. A state trust company that exceeds this limit must dispose of any real property subject to that limit within five years of the acquisition of the property or when it ceases to be used as company facility.

HB 1664 was signed by the Governor on June 14th.

8. Nontestamentary Transfers.

8.1 Application of Texas Law (Secs. 111.051(7) and 111.054). The REPTL 2013 Decedents’ Estates

bill provides that if more than 50% of a financial account, insurance contract, retirement account, etc. was contributed by a Texas resident, then the effectiveness of any survivorship provisions is determined by Texas law. Any person asserting an interest in the asset will have access to Texas courts to determine its ownership. The intent of this change is to overrule the holding in *McKeehan v. McKeehan*, 355 S.W.3d 282 (Tex. App.—Austin 2011, no pet. h.), which gave effect to a Michigan choice of law provision in an account agreement. In order to bolster any conflict of laws issues, the bill states that this change represents the “fundamental policy” of this state.

HB 2912 was signed by the Governor on June 14th.

9. Exempt Property.

9.1 The REPTL Decedents’ Estates Bill. The REPTL 2013 Decedents’ Estates bill contains several provisions relating to exempt property.

(a) Homestead Protection (Sec. 102.004). A decedent’s homestead’s exemption from most debts will be retained only if the decedent is survived by a spouse or minor child.

(b) No Family Allowance for Unsupported Adult Incapacitated Child (Sec. 353.101(d)(3)). If an adult incapacitated child was not being supported by the decedent at the time of the decedent’s death, the child is not entitled to a family allowance.

HB 2912 was signed by the Governor on June 14th.

9.2 The REPTL Exempt Property Bill. Originally in the REPTL 2013 Decedents’ Estates bill, two changes had to be moved to a separate bill because of the “one-subject” rule. The REPTL 2013 Exempt Property bill provides the following:

(a) Insurance Exemption (Insurance Code Sec. 1108.052). This change clarifies that benefits otherwise exempt from seizure under this chapter of the Insurance Code remain exempt even if paid to the insured or the insured’s estate as a beneficiary.

(b) IRA Exemption (Property Code Sec. 42.0021(a) and (b)). These changes add references to both Roth IRAs and inherited Roth IRAs to the list of exempt savings plans, along with nondeductible (but otherwise permissible) contributions to traditional IRAs.

SB 649 was signed by the Governor on May 18th.

9.3 Increase in Homestead and Exempt Property Allowances (Probate Code Sec. 273; Estates Code Sec. 353.053(b)). HB 789 (King)

increases the allowance in lieu of homestead from \$15,000 to \$45,000, and the allowance in lieu of other exempt property from \$5,000 to \$30,000.

HB 789 was signed by the Governor on June 14th.

10. Jurisdiction and Venue.

10.1 The REPTL Decedents’ Estates Bill.

The REPTL 2013 Decedents’ Estates bill also contains several provisions relating to jurisdiction.

(a) Correction of Inadvertent Omissions.

The Decedents Estates bill corrects a number of inadvertent omissions of Probate Code provisions from the bills enacting the Estates Code:

- Probate Code Sec. 2(e) –an estate proceeding is an in rem proceeding (Sec. 32.001).

And while originally contained in REPTL’s Decedents Estates bill, the following corrections were removed from that bill when they were included in Legislative Council’s General Code Update bill:

- Probate Code Sec. 5B(a) – the statutory probate court’s transfer power over matters related to a probate proceeding (Sec. 34.001).
- Probate Code Sec. 5C – collection of delinquent taxes owed by an estate (Sec. 34.002).

(b) Actions by an Agent Under a Power of Attorney (Sec. 32.006). This change gives a statutory probate court jurisdiction over an action by an agent or former agent under a power of attorney, not just an action against an agent or former agent.

HB 2912 was signed by the Governor on June 14th.

10.2 The REPTL Medical Power of Attorney Bill – Disputes Over Validity of Medical Power (H&S Code Sec. 166.165). The Health and Safety Code currently says that actions to revoke a medical power of attorney because the principal was not competent or was under duress, fraud, or undue influence at the time of execution be brought in the district court. HB 2470 (Rodriguez, E.) would have sent that dispute to the statutory probate court instead, if there is one in the county. As consolidated into the REPTL 2013 Medical Power of Attorney bill, jurisdiction of the district and statutory probate courts is concurrent.

SB 651 was signed by the Governor on May 24th.

10.3 The REPTL Trusts Bill – Venue Clarification (Trust Code Sec. 115.002). The current trust venue statute provides that if there are multiple trustees or a corporate trustee, venue for a trust

proceeding is properly in the county where the trust has been administered at any time during the four-year period preceding the date the action is filed. However, if an action is brought **against** a corporate trustee, it may be brought in the county in which the corporate trustee maintains its principal office in Texas. As introduced, **HB 2917** (Thompson) provided that if there is a corporate trustee and one or more noncorporate trustees, venue is also proper in the county where any noncorporate trustee resides. However, this provision was revised and incorporated into the REPTL 2013 Trusts bill. As revised, Sec. 115.002 provides the following venue rules:

- (b) Single, noncorporate trustee – either a county where the trustee has resided or the trust has been administered at any time during the preceding four-year period. (No change.)
- (b-1) Multiple noncorporate trustees⁶ who maintain a principal office in Texas – either a county where the trust has been administered at any time during the preceding four-year period or the county where the principal office is located.
- (b-2) Multiple noncorporate trustees⁷ who **do not** maintain a principal office in Texas – a county where either the trust has been administered or any trustee has resided at any time during the preceding four-year period.
- (c) One or more corporate trustees – either a county where the trust has been administered at any time during the preceding four-year period or the county where any corporate trustee maintains its principal office.

HB 2913 was signed by the Governor on June 14th.

10.4 Interlocutory Appeals from Statutory Probate Courts (CP&R Code Sec. 51.014). The Civil Practice and Remedies Code already allows

⁶ The language REPTL requested was “multiple trustees, none of whom is a corporate trustee.” This language would have excluded situations covered by subsection (c), where there are one or more corporate trustees. However, the language was changed to “multiple noncorporate trustees” by Legislative Council. This language opens up the possibility of overlap between subsections (b-1) or (b-2) and subsection (c) if there are multiple noncorporate trustees **and** at least one corporate trustee. As the session progressed, REPTL was unable to get the bill “amended back” to its original intent without endangering passage of the entire bill, so correction of this overlap will likely be included in the REPTL 2015 Trusts bill in order to carry out the original intent of the requested language.

⁷ Ditto.

interlocutory appeals from certain specified orders of a district court, county court at law, or constitutional county court. **HB 1874** (Lewis) and **SB 1083** (Rodriguez) add statutory probate courts to the list of courts from which an interlocutory appeal may be taken. (We believe that most statutory probate courts – and courts of appeal – think these appeals can already be taken.)

SB 1083 and HB 1874 were both signed by the Governor on June 14th. Why two identical bills were passed and signed is a question I cannot answer.

11. Court Administration.

11.1 The REPTL Decedents’ Estates Bill.

The REPTL 2013 Decedents’ Estates bill also contains several provisions relating to what we loosely refer to as “court administration.”

(a) Exclusion from Expedited Action Rules (Sec. 53.107). The famed “Loser Pays” bill – **HB 274** (Creighton | Aliseda | Kleinschmidt | Jackson, Jim | Sheets) – from the 2011 session directed the Supreme Court to adopt rules expediting “smaller” litigation actions. While the Court was prohibited from adopting rules that conflicted with the Family or Property Codes, there was no carve-out for conflicts with the Probate Code. (The Property Code exception would apply in trust law cases since the Trust Code is part of the Property Code.) The change incorporated into the REPTL 2013 Decedents’ Estates bill excludes those rules from application to probate proceedings.

(b) No Commission for Deposition by Written Questions (Secs. 51.203(c) and 1051.253(c)). This change deletes the archaic requirement that a commission issue before the taking of a deposition by written questions.

(c) Ad Litem Generally (Sec. 53.104). This change adds unknown and missing persons for whom cash is deposited into the court’s registry to the list of persons for whom a probate court may appoint an attorney ad litem. The definition of “legal disability” is clarified to mean a legal disability determined pursuant to state **or** federal law. The change also clarifies the source and timing of the ad litem’s compensation.

HB 2912 was signed by the Governor on June 14th.

11.2 The REPTL Guardianship Bill. The REPTL 2013 Guardianship bill also contains several court administration provisions.

(a) Exclusion from Expedited Action Rules (Sec. 1053.105). The same change described above in the REPTL 2013 Decedents’ Estates bill, excluding the

Supreme Court's expedited action rules from application to probate proceedings, was included in the REPTL 2013 Guardianship bill, applicable to guardianship proceedings.

(b) Application Fee for Private Professional Guardian (Sec. 1104.003). [HB 3313](#) (Kuempel) and its companion, [SB 1523](#) (Hegar) would have changed the application fee for a private professional guardian from an amount set by the clerk designed to cover its costs to a flat \$40. This provision was consolidated into the REPTL 2013 Guardianship bill.

[HB 2080](#) was signed by the Governor on June 14th.

11.3 Public Probate Administrator (Government Code Sec. 25.00251 & Estates Code Chapter 455). [HB 1755](#) (Patrick) is a “probate judges bill” that allows the judge of a statutory probate court (with commissioner court approval) to appoint a “public probate administrator” for all of the statutory probate courts in the county. If there are multiple probate courts, the judges are to designate one among them to appoint and administer the public probate administrator office. This PPA (who may be a charitable organization or other suitable entity) will have authority to hire employees to carry out Estates Code Chapter 455. The PPA would be responsible for taking control of decedents’ estates when no one has been appointed personal representative, there are no known or suitable relatives, and the estate may be subject to loss or misappropriation. The PPA would also be responsible for determining whether there are heirs or a will and making burial arrangements. The PPA’s office would be funded, in part, by commissions received from the estates. There are also expedited provisions for small estates, and extremely expedited provisions for extremely small estates.

[HB 1755](#) was signed by the Governor on June 14th.

11.4 Judicial Branch Certification Commission. [SB 966](#) (West) establishes the Judicial Branch Certification Commission and consolidates various rules regulating the judicial profession. Among the changes, the Guardianship Certification Board becomes the Guardianship Certification **Advisory** Board to the commission, but it’s the commission, not the board, that adopts minimum standards relating to guardianship programs and private professional guardians.

[SB 966](#) was signed by the Governor on May 14th.

11.5 Vexatious Litigants (CP&R Ch. 11). [SB 1630](#) (West) makes the existing vexatious litigant provisions of the Civil Practice and Remedies Code

applicable to plaintiffs maintaining an action *pro se*, and makes the provisions inapplicable to a licensed attorney (unless the attorney is acting *pro se*) or to a proceeding in municipal court. A court may find a *pro se* plaintiff a vexatious litigant if the defendant can show the plaintiff has filed at least five lawsuits *pro se* (other than in a small claims court) that have been determined adversely to the plaintiff, allowed to remain pending for two years without trial or hearing, or determined to be frivolous or groundless. Upon a finding that the plaintiff is a vexatious litigant, the court may, on its own motion, or the motion of any party, prohibit a person from filing a new lawsuit *pro se* without permission of the local administrative judge. A prefiling order in a justice or constitutional county court applied only to that court. A prefiling order in a district or statutory county court applies to each court in the state. A copy of the request to the local administrative judge must be provided to each proposed defendant, and the judge may make a determination with or without a hearing, in which case the judge may require the vexatious litigant to provide notice to the proposed defendants. If a clerk mistakenly files a lawsuit by a vexatious litigant without the required permission, any party may file a notice that the plaintiff is a vexatious litigant, in which case the clerk must notify the court that the litigation was mistakenly filed within 24 hours. The court must stay the litigation and dismiss the case if the plaintiff fails to obtain permission within 10 days. This dismissal is nonappealable. Finally, the Office of Court Administration may not remove the name of a vexatious litigant from the list on its website without an order of the court that issued the prefiling order in the first place.

[SB 1630](#) was signed by the Governor on June 14th.

11.6 Complimentary Estate Planning Services for First Responders. [SB 148](#) (Williams) amends the Penal Code to allow “first responders” to accept complimentary estate planning advice or services – e.g., a will, power of attorney, advance directive, or other estate planning documents – from a program or clinic operated by a local bar association or the State Bar and approved by the head of the agency that employs the public servant (if employed by an agency).

[SB 148](#) was signed by the Governor on June 14th.

11.7 Electronic Recording of Proceedings in Collin County Only. [SB 677](#) (Paxton) amends the Government Code to allow, in the absence of an objection by a party, the judge of the statutory probate court in Collin County to record a proceeding “by a

good quality electronic recording device instead of by a court reporter.” In that event, the court reporter need not remain present. Instead, the judge may designate one or more “court recorders.”

SB 677 was signed by the Governor on June 14th.

11.8 Additional Filing Fee to Support

Electronic Filing. **HB 2302** (Hunter | Thompson) adds an additional \$20 fee on the filing of any pleading that otherwise requires a filing fee. The fees will go into a fund overseen by the Office of Court Administration to be used to support statewide electronic filing technology and grants to individual counties to implement the project.

HB 2302 was signed by the Governor on June 14th.

12. Selected Business Organization Issues.

12.1 Partnership and LLC Changes. **SB 847**

(Carona) comes from the Texas Business Law Foundation. The bill simplifies requirements for restated certificates of formation (you no longer need to separately identify the added, altered, or deleted provisions), requires limited partnerships to send notices to claimants when winding up (like other entities), and eliminates consideration of a general partner’s non-partnership assets in determining solvency for fraudulent transfer purposes. The changes clarify that the governing documents of partnerships and LLC’s may limit or eliminate the liability of the governing persons (as far as the owners are concerned, not third parties), and extend rights to third-parties.

Series LLC’s are relatively new in Texas. Each series operates as an independent division within a single LLC, shielded from liability by the LLC itself. A number of issues relating to the status of series and the power they possess remain unclear. The bill clarifies that a series (*i.e.*, a division) is **not** an independent entity, but the series has the ability to independently acquire and sell assets and exercise all of the powers and privileges as necessary to conduct its business purpose (*i.e.*, as if it were an independent entity).

SB 847 was signed by the Governor on May 2nd.

13. Charities.

13.1 Partition of Mineral Interest Owned by or for Charity (New Property Code Ch. 124).

SB 1240 (Duncan) prohibits a forcible partition of a mineral interest owned by a charitable trust (which is defined to include any charity, trust for a charity, or lifetime or testamentary gift to a charity) unless the trust has refused to execute a mineral lease to the plaintiff or petitioner that is fair and reasonable.

SB 1240 was signed by the Governor on June 14th.

14. Selected Marital Issues.

14.1 Lawyer’s Recovery of Attorney’s Fees in Divorce Case. The Supreme Court decided *Tedder v. Gardner Aldrich*, No. 11-0767 (Tex. 2013), on May 17, 2013. In that case, Michael Tedder had sued his wife, Stacy, for divorce. Stacy hired Gardner Aldrich, LLP, to represent her. The engagement agreement provided that the law firm would attempt to obtain an order requiring Michael to pay her legal fees, but she would remain directly liable for those fees. Almost two years later, after a jury verdict on custody issues and settlement of other issues, the law firm withdrew and intervened, suing both for its unpaid legal fees as a suit on a sworn account. (The Supreme Court noted in a footnote that the intervention was improper, but neither Michael nor Stacy moved to strike the firm as a party.) After hearing, the trial court indicated it would award the firm a judgment against only Stacy, but would order Michael to pay her \$190,000 for her attorney fees. Michael and Stacy then settled, agreeing that the order would award fees against Stacy but would not order Michael to reimburse her. Stacy soon filed for bankruptcy and was discharged. The firm appealed, and the Court of Appeals held that Michael was liable for Stacy’s legal fees for two reasons: they were a “community debt,” and they were for “necessaries” under Family Code Sec. 2.501. Michael appealed.

The Supreme Court correctly pointed out that the term “community debt” is misleading, citing, among others, our own Prof. Tom Featherston. The questions regarding debts of spouses are whether one or both spouses are liable for the debt, and which assets are available to satisfy the debt. Michael was not liable for contractual debts incurred solely by Stacy, and prior cases had established that legal fees in a divorce are not “necessaries.” The Court of Appeals decision was reversed, and the law firm took nothing.

Four days later, on May 21st, **HB 1366** (Lucio, III), a bill relating to several procedures in family or juvenile law proceeding, was amended on the floor of the Senate to add subsection (c) to Family Code Sec. 6.708. The new subsection allows the court in a divorce case to award attorney’s fees and to order that those fees be paid to the attorney, who could enforce the order in the attorney’s own name by any available means for the enforcement of a judgment debt. So much for *Tedder*.

HB 1366 was signed by the Governor on June 14th.

14.2 Marriage Ceremonies by Retired Judges and Magistrates. **SB 1317** (Whitmire) adds to the list of persons authorized to conduct marriage ceremonies

certain retired municipal court judges and certain retired judges and magistrates of a federal court located in Texas.

SB 1317 was signed by the Governor on June 14th.

15. A Little [Lagniappe](#).

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

15.1 **Where Would They Keep It** [HB 337](#) (Zedler) would require employees and independent contractors of "sexually oriented businesses," i.e., strippers, to not only be licensed by the state, but to "conspicuously display the person's license on his or her person." Images are circulating in my head... This bill never emerged from committee.

15.2 **Where Was He Born Again?** Rep. Zedler wasn't done. [HB 650](#) (Zedler) would require the secretary of state (Texas, not United) to promulgate a uniform application that all presidential and vice-presidential candidates must use if they wish to be placed on the ballot. The application must require that each candidate provide: (1) the candidate's date of birth; (2) the candidate's length of residence in the United States; (3) an affirmation of the candidate's natural-born United States citizen status; (4) authorization for the secretary of state to obtain a certified copy of the candidate's birth certificate from the original issuing authority; and (5) for the applicable candidate for president, the consent of the candidate for vice-president to be his or her running mate. This bill also never emerged from committee.

15.3 **Hook 'Em vs. Gig 'Em.** [HB 778](#) (Guillen) would require UT and A&M to resume their annual football game or face loss of state funding for athletic scholarships. (However, athletic department representatives from each university pointed out that neither actually receives any state funding for athletic scholarships. They're all self-funded out of athletic revenue.) The presidents of both universities indicated their willingness to follow the will of the legislature. An Aggie filed this. Figures.⁸ Apparently unable to perceive humor when he sees it, Michael Quinn Sullivan (also an Aggie) of Empower Texans (a conservative "think tank") attacked the author of the bill for his attempt to "micro-manage college football schedules of Texas A&M and the University of Texas" This bill never received a hearing.



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15.4 **Will the State of Texas Win or Lose?**

Yes. [SCR 30](#) (Uresti) waives sovereign immunity to allow the State of Texas to sue itself. Thanks to Ken Herman of the Austin American-Statement for [the explanation why](#). The dispute revolves around 157 acres of state land in Pecos County ("Survey 5½") owned by the state on behalf of the Permanent University Fund. A fence separates Survey 5½ from adjoining property owned by the state on behalf of the Permanent School Fund. Both are managed by the Land Commissioner. Why does this make a difference if they're both owned by the state? Because revenue from the Permanent University Fund benefits UT and A&M, while revenue from the Permanent School Fund benefits K-12 education. (We're arguing about future revenue; there is none at the moment.) A fence had been built on the boundary between the two tracts based on an 1879 survey. However, in 2008, the UT System removed the existing fence and built a new fence about 1,000 feet away based on a 1936 resurvey (prepared by a surveyor hired by UT). In 1944, a former land commissioner who was now UT's "land officer," wrote the then-current land commissioner questioning the accuracy of the 1936 resurvey, sarcastically referring to the resurvey as "a marvel of mathematical exactitude." This was brought to the attention of current Land Commissioner Jerry Patterson, who felt it a bit awkward settling the dispute on his own because of his fiduciary duties to both funds. In his words, it's "kind of like having two wives." Commissioner Patterson believes a lawsuit would put all parties in position to try to negotiate a settlement without a real trial. This resolution was signed by the Governor on June 14th.

15.5 **Whose Heisman is Better?** [HCR 2](#)

(Hilderbran | Raney | King, Tracy O. | Crownover | Larson), pre-filed three days after the 2012 Heisman Trophy ceremony, congratulates Johnny Manziel of Texas A&M on winning that award. This resolution was signed by the Governor on February 21st. That apparently woke up the Baylor alumni base. [HCR 10](#) (Davis, S. | Phillips | Eiland | Davis, J. | Leach), filed February 11th, congratulates Robert Griffin, III, on winning the 2011 Heisman Trophy (remember, there was no legislative session immediately following his Heisman win). That resolution was signed by the Governor on March 28th.

15.6 **The Bill to End All Wars [Against Christmas].** [HB 308](#) (Bohac | Raymond | Orr | Eiland | Villarreal) and [SB 665](#) (Nichols | Patrick) would amend the Education Code to allow a school district to educate students about the history of traditional winter celebrations and to allow students and staff to offer

traditional greetings such as “Merry Christmas,” “Happy Hanukkah,” and “happy holidays.” Districts may display associated scenes or symbols, such as a menorah, nativity scene, or Christmas tree, if the display includes a scene or symbol of more than one religion, or of one religion and one secular scene or symbol. No display may encourage adherence to any particular religious belief. HB 308 was signed by the Governor on June 13th, is effective immediately, and applies beginning with the 2013-2014 school year.

15.7 Texas Independence Gun-Buying

Day. HB 1533 (Leach | King, Phil | Flynn | Bonnen, Dennis | Stickland) and **SB 1228** (Estes) would exempt firearms and hunting supplies from sales taxes if sold on Texas Independence Day (March 2nd). Rep. Jeff Leach filed the House bill on February 20th, four more representatives signed on as joint authors five days later, and thirty-one more signed on as co-authors three days after that. Neither bill ever received a hearing.

15.8 Fort Knox in Texas? HB 3505

(Capriglione) would establish the Texas Bullion Depository to hold all of the precious metals acquired by Texas, its agencies, political subdivisions, etc., in preparation for the day when our paper money becomes worthless. I’m not kidding. A purpose of the depository is to establish a procedure for making payments with precious metals that “is able to function in the event of a systemic dislocation in a national and international financial system, including systemic problems in liquidity, credit markets, or currency markets.” This bill never emerged from committee.

15.9 Roamin’ Critters. I admit I’m a “city slicker.” I never realized that animals being in the wrong place at the wrong time was such a problem in this state.

(a) [Stay on Your] Home on the Range. Did you know that Sec. 142.001 of the Agriculture Code tells a sheriff how to handle “estrays,” or stray livestock, stray exotic livestock, or stray exotic fowl? Well it does, and **SB 174** (Estes) adds stray bison to the list. Normally, the sheriff is supposed impound the animal and try to contact the owner to remove it. But the bill also adds a definition of “perilous condition,” meaning “a circumstance or condition in which capture and impoundment of an estray presents an immediate threat to law enforcement personnel or to the health of the estray.” In that case, the sheriff doesn’t have to impound the animal. Instead, the sheriff “may immediately dispose of the estray by any means without notifying the owner of the estray.” SB 174 was signed by the Governor on May 10th and is effective immediately.

(b) ~~Don’t~~ Do-Fence Me In. Did you know that Sec. 143.001 of the Agriculture Code requires “each gardener or farmer [to] make a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through?” And under Sec. 143.033, if your fence is doesn’t meet these requirements and someone else’s “head of cattle or a horse, mule, jack, or jennet⁹” trespasses on your property as a result of your inadequate fence, you are liable for damages if you maim, wound, or kill that animal by any means (including by gun or dog), or hire someone else to do so? Both are true. But what about poor sheep or goats? Well, **HB 1819** (Kacal), “an act relating to liability for injuring a trespassing sheep or goat,” fixes this by adding them to the list of protected animals. And I enjoy the effective date language enough to reproduce it in full:

“SECTION 2. The change in law made by this Act to Sec. 143.033, Agriculture Code, applies only to a person who maims, wounds, kills, or procures the maiming, wounding, or killing of a sheep or goat on or after the effective date of this Act. A person who maims, wounds, kills, or procures the maiming, wounding, or killing of a sheep or goat before the effective date of this Act is governed by the law in effect on the date the maiming, wounding, killing, or procurement occurred, and the former law is continued in effect for that purpose.”

This bill was signed by the Governor on June 14th.

15.10 Official Stuff. Here are some of the official designations proposed this session.

(a) Goodnight, Texas? HCR 51 (King) designates March 5th as Charles Goodnight Day (that’s his birthday). Not to be outdone, **SCR 10** (Seliger) designates September 12th as Mary Ann “Molly” Goodnight Day (she’s Chuck’s wife and that’s her birthday). (She died in 1926, and he died three years later.) Both resolutions were signed by the Governor on June 14th.

(b) Animals. HCR 31 (Eiland) designates the Kemp’s ridley sea turtle as the official State Sea Turtle of Texas. It passed and was signed by the Governor on May 10th.

(c) Dates. Some interesting designations:

⁹ A small Spanish horse that serves as an ideal light riding horse. It refers to a type, rather than a breed, of horse. Although some use the term to refer to a female donkey, giving rise to the terms “jenny” and “jenny ass.”

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- April 7–13, 2013 – Barbershop Harmony Week ([HR 1371](#) (Gutierrez)). This resolution was adopted by the House on April 11th.
- April 13, 2013 – Texas Bow Tie Day 2013 ([HR 935](#) (Lucio, III), replaced by [HR 1240](#) (Lucio, III), and [SR 629](#) (Lucio)). Proceeds are being donated to Maggie's Hope, which provides financial assistance to families of children with autism and Down syndrome. The latter two resolutions were adopted by their respective chambers in mid-April.
- First Week of May – Texas Bison Week ([SCR 20](#) (Estes)). This resolution was signed by the Governor on June 14th.
- July 27, 2013 – National Day of the Cowboy in Texas ([HR 1168](#) (Pickett)). This resolution was adopted by the House on May 17th.
- September 1, 2013 – Texas Blood Pressure Day ([HR 1359](#) (Menendez)). This resolution was adopted by the House on May 17th.
- October 2nd – "Come and Take It" Day ([HCR 28](#) (Kleinschmidt)). This resolution had a lack of traction, since no action was taken on it. However, it was refiled February 25th as [HCR 62](#) (Kleinschmidt) to add the claim that the famous flag was fashioned from a silk wedding dress by the women of Gonzales. The latter resolution was passed by the House on May 2nd but never received a hearing in the Senate.
- November 6–12, 2013 – Drowsy Driving Prevention Week ([HR 1389](#) (Rodriguez, Justin)). This resolution was adopted by the House on May 1st.

(d) Festivals. [HCR 83](#) (Springer) designates the Shamrock St. Patrick's Day Celebration as the official St. Patrick's Day Celebration of Texas. It was signed by the Governor on March 28th. [SCR 18](#) (Hegar) recognizes the annual Small Town Christmas celebration in the City of Bellville as the Official Small Town Christmas Event of Texas. It was signed by the Governor on June 14th.

(e) Food. Our special foods:

- Pecan Pie – the Official State Pie of Texas ([HCR 53](#) (Farney) and [SCR 12](#) (Schwertner) begin: "WHEREAS, Of all the Lone Star State's unique culinary dishes, perhaps none says "Texas" more sweetly than pecan pie;" and end by designating it as our official pie. Kinda thought that would already have been done. During floor

"debate" in the House on HCR 53, Rep. Farney was asked if she would accept an amendment to make it illegal to call a pie "pecan" if chocolate is added to it. Or if the use of Texas pecans could be required. (The text of this resolution, a paean to the fruit of the pecan tree and its conversion to pie-form, is well worth reading.) The former passed the House on April 3rd, but never received a hearing in the Senate. Perhaps because the latter was signed by the Governor on June 14th.

- February 16th – Texas Homemade Pie Day (should I have placed this in the Dates category?) ([HCR 36](#) (Smith)). This resolution was signed by the Governor on May 18th.
- Pumpkin – the official State Squash of Texas ([HCR 87](#) (Springer)). This resolution was signed by the Governor on June 14th.
- Peach Cobbler – the official cobbler of Texas ([HCR 102](#) (Miller, D.)). This resolution was signed by the Governor on June 14th.

(f) BBQ Competitions. Since we have at least six official Texas State Barbecue Championship competitions, they deserve special recognition:

- The 2013 Bucks and BBQ Cook-off in San Antonio – [SR 165](#) (Hegar). This resolution was adopted by the Senate the day it was filed – February 11th.
- The Saint Joseph Church Annual Festival and Cook-off Showdown in Edinburg – [SR 178](#) (Hinojosa). This resolution was adopted by the Senate the day it was filed – February 11th.
- The Briscoe Ranch Cook-off in Uvalde – [SR 190](#) (Uresti). This resolution was adopted by the Senate the day it was filed – February 12th.
- The Freeport Host Lions Club Fishing Fiesta Barbecue Cook-off – [SR 411](#) (Huffman). This resolution was adopted by the Senate the day it was filed – March 5th.
- The 2013 Frontier Fiesta BBQ Cook-Off – [SR 418](#) (Ellis). This resolution was adopted by the Senate the day it was filed – March 6th.
- The Best of the Basin BBQ Championship – [SR 481](#) (Seliger). This resolution was adopted by the Senate the day it was filed – March 18th.

I am unaware of any restrictions requiring these resolutions to be filed only in the Senate. However, the House has gotten into the BBQ recognition business:

- Commemorating the second annual Lil Earl's Hometown BBQ Throwdown in Marshall, an International Barbeque Cookers Association championship event – [HR 260](#) (Paddie). This resolution was adopted by the House on February 18th.
- Commemorating the seventh annual Pink Soles in Motion BBQ Cook-off for the Cure in Carrollton – [HR 1294](#) (Ratliff). This resolution was adopted by the House on April 17th.
- Commemorating the 2013 Wild Horse Desert Round-Up BBQ Cook Off in Bishop, an International Barbeque Cookers Association championship event – [HR 911](#) (Herrero). This resolution was adopted by the House on March 27th.

(g) Places. We have some very special places in our state:

- The Balloon Race Capital of Texas – Gregg County ([HCR 23](#) (Simpson | Hughes | Clardy | Paddie | Lavender)). This resolution was signed by the Governor on May 18th.
- The official Garden Capital of Texas – Nacogdoches ([HCR 24](#) (Clardy)). This resolution was signed by the Governor on May 2nd.
- The Sculpture Capital of Texas – Jewett ([HCR 41](#) (Ashby)). This resolution was signed by the Governor on May 25th.
- The Pumpkin Capital of Texas – Floydada ([HCR 84](#) (Springer)). This resolution was signed by the Governor on June 14th.
- The Walking Capital of Texas – Canton ([SCR 13](#) (Duell)). This resolution was signed by the Governor on June 14th.
- The Cowboy Hat Capital of Texas – Garland ([HCR 96](#) (Button)). This resolution was signed by the Governor on June 14th.
- The Pickle Capital of Texas – Mansfield ([HCR 115](#) (Zedler)). This House resolution was signed by the Governor on June 14th.

16. Conclusion (“Words of Wisdom”).

As in any session, there were a few good bills and plenty of bad bills that didn't pass. Very few, if any, of the “bad bills” made their way all the way through to enactment. I'm not a particularly religious person, but as the session has progressed, and I've seen some good provisions go by the wayside, or some less-than-

optimal provisions move successfully through the legislature, I've been reminded of the first sentence of [the Serenity Prayer](#):¹⁰

God, give me grace to accept with serenity
the things that cannot be changed,
Courage to change the things
which should be changed,
and the Wisdom to distinguish
the one from the other.

Without diminishing the significance of some of REPTL's proposals, most of what we saw this session consisted of “tweaks” while waiting for the end of 2013, when I understand the Mayan calendar predicted doom for the Probate Code, and the beginning of 2014, when it will be resurrected as our new Estates Code. At least the Mayans got something right.

So, with apologies to Willie Nelson (and Don Meredith), at midnight on Monday, May 27th, 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.*

Or, if the Governor calls a special session, perhaps it will be time to dig out my vinyl copy of Dan Hicks and His Hot Licks singing “[How Can I Miss You When You Won't Go Away?](#)”

¹⁰ Original language attributed to Reinhold Niebuhr, 1943.

Attachment 1 – The Rest of the Preliminaries

1. “General” Preliminaries.

1.1 Acknowledgments. A lot of the effort in the 2013 session, as in past sessions, comes from REPTL. REPTL, with its 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:

- Craig Adams of Tyler, Immediate Past Section Chair and Chair – Statutory Healthcare Directives and Power of Attorney Committee
- Lisa Jamieson of Fort Worth, Section Chair-Elect
- Bill Pargaman of Austin, Chair, Estate and Trust Legislative Affairs Committee¹
- Glenn Karisch of Austin, Past Section Chair (2007-2008), Past Chair, Estate and Trust Legislative Affairs Committee, and a past author of this article²
- Tina Green of Texarkana, Current Chair – Decedents’ Estates Committee
- Deborah Green of Austin, Current Chair – Guardianship Committee and Co-Chair, Guardianship Recodification Committee
- Linda Goehrs of Houston, Co-Chair, Guardianship Recodification Committee
- Shannon Guthrie of Dallas, Current 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. 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.

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 Probate Judge) and the Wealth Management and Trust Division of the Texas Bankers Association (Pamela Parish of San Antonio, Chair, Michael Milich of Houston, Governmental Relations Chair, and Celeste Embrey, Executive Director).

Last, and of course not least, are the legislators and their capable staffs. With the decision of our longtime friend, Rep. Will Hartnett of Dallas, to forego reelection, REPTL will find a new sponsor in the House. Senator José Rodriguez of El Paso, Vice Chair of the Senate Committee on Jurisprudence, carried our REPTL bills last session in the Senate. The two committees that most of REPTL’s legislation must pass through are the House Committee on Judiciary & Civil Jurisprudence (referred to throughout this paper simply as “Judiciary”), and the Senate Committee on Jurisprudence (referred to throughout this paper simply as “Jurisprudence”). Rep. Tryon Lewis of Odessa was named chair of Judiciary by Speaker Straus at the end of January of 2013, while Senator Royce West of Dallas was named chair of Jurisprudence by Lt. Gov. Dewhurst in October of 2012.

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.

1.2 CMAA Disclaimer. Yes, I already included a disclaimer at the beginning of the paper, but I’m going to do it again (hence the extra “A” in the heading). It is extremely unlikely, yet possible, that I may have made a mistake here or there in this article. Don’t take everything as the gospel truth. Use this article as a guide for where you can look for the statutory changes yourself. Therefore, I encourage you to follow the directions I’ve included in this attachment for obtaining copies of the actual bills that pass (at www.legis.state.tx.us) so you can read and analyze them for yourselves. You’ll see multiple versions of bills. The “engrossed” version is the one that passes

¹ Yes, I’m thanking myself!

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.

the chamber where a bill originated. When an engrossed version of a bill passes the other chamber without amendments, it is returned to the originating chamber where it is “enrolled.” If the other chamber does make changes, then when it is returned, the originating chamber must concur in those amendments before the bill is enrolled. Either way, it’s the “enrolled” version you’d be interested in. (And as mentioned at the beginning of the paper, I’m still accepting donations of any color of Johnnie Walker!)

2. The Stakeholders.

A number of 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 Sec. 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 in Attachment 2).

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. REPTL³ 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

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.

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 2013 legislative package received

approval from the full Board of Directors at its October, 2012, 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 2013 REPTL package included a Decedents’ Estates bill, a Guardianship bill, and a Trusts bill.

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). Additional information on following a bill using this site can be found at:

<http://www.legis.state.tx.us/resources/FollowABill.aspx>

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 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. You can find an “official” description of how a bill becomes a law prepared by the Texas Legislative Council at:

<http://www.tlc.state.tx.us/pubslegref/gtli.pdf#page=7>

4. Key Dates.

Key dates for the enactment of bills in the 2013 legislative session include:

- **Monday, November 12, 2012** – Prefiling of legislation for the 83rd Legislature begins
- **Tuesday, January 8, 2013** (1st day) – 83rd Legislature convenes at noon
- **Friday, March 8, 2013** (60th day) – Deadline for filing most bills and joint resolutions
- **Monday, May 6, 2013** (119th day) – Last day for House committees to report House bills and joint resolutions
- **Thursday, May 9, 2013** (122nd day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading
- **Friday, May 10, 2013** (123rd day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading
- **Saturday, May 18, 2013** (131st day) – Last day for House committees to report Senate bills and joint resolutions
- **Tuesday, May 21, 2013** (134th day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading
- **Wednesday, May 22, 2013** (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
- **Friday, May 24, 2013** (137th day) – Last day for House to consider Senate amendments
Last day for Senate committees to report all bills
- **Sunday, May 26, 2013** (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 27, 2013** (140th day) – Last day of 83rd Regular Session; corrections only in House and Senate
- **Sunday, June 16, 2013** (20th day following final adjournment) – Last day Governor can sign or veto bills passed during the previous legislative session
- **Monday, August 26, 2013** (91st day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law

Attachment 2 – History of the Estates Code: Part I

1. Why a New Code?

1.1 A New Beginning. January 1, 2014. That's the date our new Estates Code goes into effect, replacing our Probate Code that's been around for almost six decades. Here's the background

1.2 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, 1925.¹ 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.

1.3 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 SB 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. Upon completion of the program, all general and permanent statutes would 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. According to the chairs of the Probate Code Codification Committee (discussed below), because of the anticipated disruption to our practice that would be caused by a codification project, many years ago REPTL leadership convinced the

Legislative Council to delay the project as long as possible by placing the Probate Code at the end of the project list. But by 2006, the Legislative Council ran out of other codification projects and turned its attention to the Probate Code.

1.4 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.

1.5 Legislative Council Staff. The two members of the Legislative Council legal staff primarily responsible for the production of the nonsubstantive revision of the Probate Code were Maria Breitschopf and Anne Peters. Ms. Breitschopf was responsible for the decedents' estates revisions passed by the 81st (2009) Legislature, while Ms. Peters was responsible for the guardianship and power of attorney revisions passed by the 82nd (2011) Legislature. 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. Enter REPTL.

2.1 REPTL Gets Involved. 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.

2.2 REPTL's Probate Codification Committee. REPTL established a Probate Code Codification Committee, which was 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

¹ The source of this "timeline" is:
www.lrl.state.tx.us/research/texasLawTimeline.html.

REPTL chairs. Through a series of meetings with Legislative Council staff, it was ultimately decided that:

- REPTL and the Legislative Council would cooperate in determining how the new code would be organized.
- The Legislative Council would take the lead in drafting the new code, although REPTL's committee would work on substantive changes to 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.
- The chapters of the code governing decedents' estates would be drafted first, to be submitted to the Legislature for adoption in 2009.
- 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.
- 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.
- 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.

2.3 Structure of the Estates Code.

Prof. Featherston took a first crack at drafting an outline of the structure for the new code in 2007. When Legislative Council prepared its initial drafts of what it originally called the "Estates and Guardianship Code" the following year, its structure was remarkably similar to the one proposed by Prof. Featherston. As enacted, the Estates Code is organized into the following Titles:

Title 1: General Provisions (Sec. 22.001, *et seq.*)

Title 2: Estates of Decedents (Sec. 31.001, *et seq.*);
Durable Powers of Attorney (Sec. 751.001, *et seq.*)

Title 3: Guardianship and Related Provisions
(Sec. 1001.001, *et seq.*)

2.4 Review of Proposed Chapters. Beginning in the summer of 2008, Prof. Featherston and Ms. Anderson parceled out chapters of the proposed

code as they were produced by Legislative Council to volunteer reviewers from the Texas Academy of Probate and Trust Lawyers. And while this review was going on, Hurricane Ike hit the Gulf Coast and caused significant delays in the reviews from the volunteers from that area of Texas (*e.g.*, Houston). Remember all of the flooded basements of office buildings and courthouses? That hurricane also led to the cancellation of the REPTL Fall Council meeting, at which these proposed chapters were going to be discussed.

2.5 The Nonsubstantive Estates Code Bill

Passed in 2009. But the review was eventually completed, and the proposed nonsubstantive revision of the decedents' estates portion of the Probate Code was filed in the 2009 legislative session as **HB 2502** by Rep. Hartnett and **SB 2071** by Senator Duncan. The House version passed both chambers and will go into effect on January 1, 2014.

2.6 The Name. Prior to passage of the bill in the House, Rep. Hartnett raised concerns about the title "Estates and Guardianship Code" being a mouthful. He shortened the name of the new Code to just the "Estates Code" when HB 2502 passed on the floor of the House.²

2.7 The Nonsubstantive Estates Code Bill

Passed Again in 2011. 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, and it underwent a similar review (no hurricane this time!). This portion of the nonsubstantive recodification was introduced as **HB 2759** (Hartnett) and **SB 1299** (Duncan). Again, the House version of this bill passed and will also go into effect on January 1, 2014.

3. What Next?

3.1 Continuing Codification. While both nonsubstantive codification bills have passed and will go into effect on January 1st without further action, that doesn't mean the codification process is finished. Substantive amendments to the Probate Code were

² This author's preference expressed to Rep. Hartnett at the time was the "New Probate Code," since that's what many people are going to call it. Apple apparently agrees, given its name for the most recent full-size iPad.

made in both the 2009 and 2011 sessions that were not included in the nonsubstantive portions of the Estates Code that were enacted those years. Since the Estates Code 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 mentioned above was 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. Legislative Council regularly prepares what it refers to as a “general code update bill.” In 2011, that bill was [SB 1303](#) (West), a **very** lengthy bill that made “nonsubstantive” revisions to a number of codes, including the Estate Code and the Trust Code (see Article 8 and Secs. 21.002 and 21.003 of the bill).

3.2 Purpose of Code Update. The stated purposes of the general code update bill are:

- codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;
- 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;
- making necessary corrections to enacted codifications; and
- renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

3.3 The 2011 and 2013 Code Update Bills. The 2011 general code update bill passed, and the portions relating to the Estates Code are effective January 1, 2014. In 2013, the general code update bills are [HB 3862](#) (Harper-Brown) and [SB 1093](#) (West).

[SB 1093](#) was signed by the Governor on May 24th.

3.4 No More REPTL “Probate” Code Proposals. Any revisions to the Probate Code in the 2013 session would go into effect on September 1st, only to be superseded by the Estates Code four months later. REPTL did not think any of its decedents’ estates or guardianship proposals were important enough to warrant that extra four months of effect. Therefore, REPTL opted to keep its 2013 proposals simpler by only proposing changes to the Estates Code that will go

into effect January 1, 2014. (The Trusts bill will still have a September 1 effective date since it is in the Property Code and is unaffected by the transition from the Probate Code to the Estates Code.)

3.5 A 2015 Code Update Bill? Of course, the fact that REPTL is making no Probate Code changes doesn’t prevent anyone else from attempting to pass them. Therefore, if any changes to the Probate Code do pass this session, those changes would remain in effect when the rest of the Probate Code disappears in January, and a code update bill will be required in two years to move those orphaned Probate Code sections over to the Estates Code. However, Legislative Council appears to have caught this possibility in other Probate Code bills and “double-billed” them, reducing the possibility of a 2015 code update bill. “Double-billing” is the process of making a change to the Probate Code, effective September 1st of the year of enactment, and making the same change, in the same bill, to the corresponding provision of the Estates Code (and repealing the revised portion of the Probate Code, effective January 1, 2014. REPTL “double-billed” its Probate Code bills in prior sessions, but as noted above, chose to make its 2013 proposals simpler by just amending the Estates Code provisions effective January 1st.

4. What About Issues “Overlapping” January 1st?

4.1 The Probate Code is Repealed. Let’s say you’ve got an estate administration pending at the end of 2013. Does that mean that on January 1st, the Probate Code no longer applies? As a general rule, the answer is “yes.” To the author’s knowledge, all of the bills relating to the Probate Code in the last three sessions, taken together, repeal every section of the Probate Code effective January 1, 2014. And all of the bills relating to the Estates Code in the last three sessions go into effect on January 1, 2014. Even the only two bills passed in 2013 that made revisions to the Probate Code effective September 1, 2013 ([HB 2380](#) relating to forfeiture clauses in wills and [HB 789](#) increasing allowances in lieu of homestead and exempt property) provide that those revised sections of the Probate Code are repealed effective January 1st. (Both bills make identical changes to the corresponding Estates Code provisions that go into effect on January 1st.)

4.2 The Estates Code Will Apply to Pending Estates. There is nothing in the **nonsubstantive** Estates Code bills that makes them inapplicable to estates pending on January 1st, so they’ll apply to pending estates at that time. But there really was no need to deal with pending estates separately in the

nonsubstantive bills – while the code name and section numbers may have changed, the rules didn’t – that’s why they’re called “nonsubstantive” revisions.

4.3 But the Probate Code Will [Sort of] Remain Relevant. Even though the Probate Code is repealed in its entirety on January 1st, that doesn’t mean that it will be completely irrelevant after 2013. For example, this year’s REPTL Decedents’ Estates bill (**HB 2912**) makes a number of **substantive** changes that go into effect January 1st. There are **some** changes that apply to estate administrations pending or commenced on or after January 1st. But you have to check. Section 62 of the bill contains special transitional rules applicable to some of the changes made by the bill:

- A change prohibiting the use of unsworn declarations in self-proving affidavits applies only to wills executed **on or after** January 1st.
 - A will executed **before** January 1st “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.”
- Changes relating to genetic testing and gestational agreements apply only to heirships commenced **on or after** January 1st.
 - But an heirship commenced **before** January 1st “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.”
- A change relating to competing applications for letters filed by persons equally entitled to them applies only to applications filed **on or after** January 1st.
 - A competing application filed **before** January 1st “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.”
- A number of changes apply only to actions filed or proceedings commenced **on or after** January 1st.
 - But an action filed or proceeding commenced **before** January 1st “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.”
- And a number of other changes apply only to the estates of decedents dying **on or after** January 1st.

- But for purposes of those specific changes, the estate of a decedent dying **before** January 1st “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.”

For these listed categories, the law “in effect” before January 1st and “continued in effect for that purpose” is the corresponding Probate Code provision that had been repealed, since the corresponding unamended Estates Code provision hadn’t gone into effect yet.

4.4 Should Live Pleadings Be “Replead” With Updated References to the Estates Code after January 1st? Hopefully not, but then as a practical matter, that depends on the judge you’re before.

Drafting Tip

Even if there is no requirement to “replead” with references to the Estates Code after January 1st, it would be good practice to revise those references in any amended or new pleadings that are filed.

5. Construction Issues.

5.1 Statutory References to the “Probate Code.”

One of the purposes of Legislative Council’s general code update bills is to revise other statutes that refer to repealed sections of the Probate Code so that they now refer to the corresponding Estates Code provision. But just in case they miss anything, Estates Code Section 21.003(a) provides a catch-all solution:

(a) A reference in a law other than in this code to a statute or a part of a statute revised by, or redesignated as part of, this code is considered to be a reference to the part of this code that revises that statute or part of that statute or contains the redesignated statute or part of the statute, as applicable.

And in addition to this specific provision in the Estates Code, the Code Construction Act (Chapter 311 of the Government Code), which applies to all of the codifications made pursuant to 1963’s SB 367, covers this same situation:

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

5.2 Nonstatutory References to the “Probate Code.” It is not clear whether Sec. 311.027 applies only to references in other statutes, or to any reference, whether in a statute, agreement, or other instrument (it

probably doesn't). It would have been nice had the Estates Code included a provision similar to Trust Code Sec. 111.002:

Sec. 111.002. **CONSTRUCTION OF SUBTITLE.** This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and **for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act**, this subtitle shall be considered an amendment to the Texas Trust Act.

But the Estates Code doesn't include this provision. Part of the reason may be that for the most part, the Estates Code truly is a nonsubstantive codification of the Probate Code. The Trust Code, on the other hand, while enacted as part of the nonsubstantive codification of the Property Code, was drafted as part of a 10-year REPTL project that began in 1973. While much of the Texas Trust Code is a nonsubstantive codification of the Texas Trust Act, REPTL intentionally also included new provisions relating to contemporary trust practice that were left unaddressed by the Trust Act and provisions relating to trusts that were not a part of the Trust Act but could be logically integrated into the Trust Code.

Drafting Tip

We've all read many times that "the cardinal rule is that the intent of the testator/settlor governs." Hopefully, any leftover references to the Probate Code in wills and trusts will be interpreted as references to the corresponding Estates Code provisions. **However, your best practice is to revise your forms to change any Probate Code references to the corresponding Estates Code provisions for documents executed beginning January 1st.** And remember that financial

powers of attorney are also governed by provisions moved to the Estates Code, so check those forms also.

Perhaps in 2015 REPTL will propose adding language to the Estates Code similar to that found in Trust Code Sec. 111.002.

6. Other [Free!] Resources.

6.1 Revisor's Reports. Legislative Council has prepared and posted online two Revisor's Reports – the first an 882-page report indicating the derivation of each section of the nonsubstantive Estates Code passed in 2009, and a second a 715-page report indicating the derivation of each section of the nonsubstantive Estates Code passed in 2011. You can find a link to the both Revisor's Reports on the Legislative Council website at:

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

6.2 Professor Beyer's Estates Code.

Prof. Gerry Beyer of the Texas Tech University School of Law has prepared and posted online a very helpful compilation of the entire Estates Code through the 2011 session, including substantive revisions, and both derivation and disposition tables. It should be revised for the 2013 changes in the near future, if it hasn't been revised by the time you read this. Prof. Beyer already has posted as a separate document his derivation and disposition tables, updated for changes through the 2013 session. This documents can be found at:

professorbeyer.com/Estates_Code/Texas_Estates_Code.html

6.3 Texas' Online Estates Code. The versions of the Texas Constitution and statutes available online from the state now include the Estates Code. You can find those items, and specifically the Estates Code, at:

www.statutes.legis.state.tx.us/?link=ES.

Attachment 2A – It’s Going to Be Okay: Transition to the New *Estates Code*

[The following is a minimally edited version of a paper authored by T. Aaron Dobbs and first presented at the South Texas College of Law 28th Annual Wills and Probate Institute. It has been reproduced here with his permission.]

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1. Hello!

1.1 Introduction. I am not afraid to say it – I just love the Texas Probate Code. I say that mostly because it is familiar – at 57 years old, it is the only probate code that most of us Texas probate and estate planning practitioners have ever known. Sure, it is illogical and disorganized, but we can look past those faults if it means avoiding change for the sake of comfort, right?

Well, you may want to sit down for this: the Probate Code is soon going to be going to the big Probate Court in the sky. You heard me right – the Texas Probate Code is a goner and will be replaced in a few short months with a newer model that promises to be more accessible, more understandable, and more usable.

But fear not brethren! We are not the first section of the State Bar to get a replacement code, and in this case, the discomfort might not be as bad as you think. Here’s why:

2. It’s a Long Story, But ...

2.1 Back in the Day. For a while, our state laws were simply enacted. The Texas Legislature would meet and vote on the passage of important legislation, but the new statutes were left to fall where they may. The Legislature – realizing the need for some order – made a few early attempts to provide for the organization of existing laws, but those efforts provided some illogical, although alphabetical, results. For example, the statutes began with “accountants” and ended with “wrecks,” and in between the laws of descent and distributions were found adjacent to the laws governing detectives and regulating drainage systems. But those were simpler times when it was a misdemeanor for having a potty mouth “over or through any telephone in this state.” Art. 472, Revised Civil and Criminal Statutes of Texas, 1911.

2.2 Vernon’s Texas Civil Statutes. Before the initiation of the current “code” organization system, Texas statutes were last revised in 1925, and no expansion room was built in to the 1925 revision for future laws. Most of the laws enacted after that time had no place to go, so a private publisher unofficially arranged and organized the new statutes in what is now called “Vernon’s Texas Civil Statutes.” However, without uniform drafting guidelines, these efforts resulted in grammatical inconsistencies, bizarre numbering schemes, and surplus substance. *See Texas Legislative Council Drafting Manual, Page 137 (2006).*

2.3 The Texas Probate “Code.” In 1955 during the 54th Legislative Session, the Legislature adopted an act that is known and cited as the “Texas Probate Code.” *Tex. Prob. Code §1.* That’s right – the Probate Code that we have come to know is not *really* a Code, but rather a series of statutes that pretends to be a *code* hanging out in the middle of Vernon’s. Though it has been subject to many amendments throughout its 57 years of existence, the Probate Code looks and feels the same, at least as to style and organization. In fact, the Legislature had an opportunity to scratch the Probate Code by adopting the Uniform Probate Code, but determined that “for the most part, the Texas Probate Code is superior.” 43 *TEX. B.J.* 892 (1980).

2.4 Continuing Statutory Revision Program. In 1963, the Legislature recognized that the current state of our statutes was in disarray and that modern law dictated a “sensible statutory arrangement.” *See Texas Legislative Council Drafting Manual.* And so, a statute was enacted to create the Continuing Statutory Revisions Program. *Tex. Gov’t Code §323.007.* The Program mandates that the Texas Legislative Council, a nonpartisan professional support agency of the legislative branch (unofficially referred to by some as the Legislature’s law firm), “plan and execute a permanent statutory revision program for the systematic and continuous study of the statutes of this

state and for the formal revision of the statutes on a topical or code basis...to clarify and simplify the statutes and to make [them] more accessible, understandable, and useable.” *Id.* According to the *Texas Legislative Council Drafting Manual*, the 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.” The statute creating the revision program concludes with perhaps the most important mandate – ensure that the revision program is implemented in a manner that makes subsequent revisions to the collection of laws unnecessary, for goodness sake.

(a) Example 1: Breaking apart current sections and moving to different parts of the Code.

The Estates Code is full of remodeled provisions. Take, for example, Section 156 of the Probate Code. That section deals with two different concepts that both just happen to involve the same topic, a deceased spouse’s community property, even though the concepts do not necessarily work together. The first concept discussed in Section 156 relates to the liability of community property for debts of the decedent. The second concept relates to the administration of community property. The Estates Code splits up Section 156 and neatly places the two topics among more relevant provisions. The aspect relating to liability for debts is placed in Section 101.052 of the Estates Code, which happens to be in a chapter that contains provisions relating to the passage of title and distribution of decedents’ property. The aspect relating to the administration of community property is placed in Section 453.006(b) of the Estates Code among other provisions relating to a surviving spouse’s rights, duties, and limitations over community property in the context of a probate estate.

(b) Example 2: Collapsing multiple sections into one section of the Code. Another example would be the collapse of four sections of the Probate Code relating to the bonding requirements of certain executors into one section of the Estates Code. Sections 214 through 217 of the Probate Code are now located together in Section 305.102.

(c) Example 3: Clarifying intent through the use of more logical punctuation and format. A final example from the Estates Code project is seemingly mundane, but nonetheless important. Section 100 of the Probate Code provides three grounds for contesting a foreign will. Each ground listed is concluded with a period. The reader is left to interpret

the statute as to whether a contestant must plead and prove each of the three grounds or just one of the grounds to contest a foreign will. Section 100 is revised as Section 504.001(b) of the Estates Code, which clarifies that a contestant must prove only one of the three grounds by replacing the period after each ground with a semicolon or the “or.”

2.5 The Original Blueprint. The original blueprint for the revision program envisioned breaking the law into 26 different codes, but a 27th code was later added to the plan. See *Bill Analysis for the engrossed version of HB 2505 (81st Legislative Session, Regular Session)*. Since the beginning of the revision program, most of the permanent statutes have been codified into various codes. The Legislative Council decided to save the best of the uncoded statutes for the last of the initial revision program – the Texas Probate Code.

With the adoption of the actual code to house our probate laws, one of the last codes will be enacted. However, the law requires that all of the codes be continuously updated in an effort to preserve the Legislative Council’s massive overhaul that began five decades ago. Although we will probably not see another systematic reorganization of our laws, each code will receive routine maintenance to ensure maximum accessibility and usability.

3. It’s Like Plastic Surgery, Except for Laws.

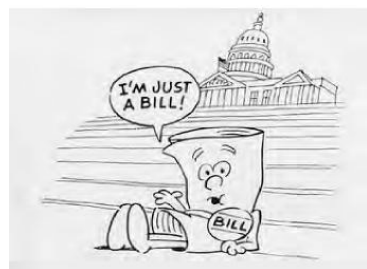
3.1 You Can Call It an Improvement. The revision process involves redrafting and reorganizing current statutes involving a particular area of law. Some statutes, such as those creating municipal utility districts, have never been compiled before the adoption of the Special District Local Laws Code. Other statutes, such as probate statutes, have at least been compiled together although not officially as a “code.”

In between each legislative session, the legal staff of the Texas Legislative Council works on revising at least one proposed code. This involves a thorough review of the current law, analyzing such law against case law interpreting the law, identifying statutes that are invalid, duplicative, or ineffective, and redrafting the statutes into “a single, well-organized, well-written statutes that conforms to the format and consistent manner of expression in the codes that have already been revised.” See *Texas Legislative Council Drafting Manual*. For example, if the Estates Code is being revised to use the term “Person,” the goal is that the meaning of that terms is the same across all of the codes instead of having varying meanings of the same term.

As you can imagine, it is no small task to be as consistent as possible over 27 codes that have been enacted over a 50 year period. To ensure consistency, the Legislative Council has adopted drafting conventions and guidelines that are published in a drafting manual for its staff but is also available to the public at www.tlc.state.tx.us/lege_ref.htm. Although not intended for drafting outside of the legislative process, I find the manual helpful in my legal practice when attempting to draft motions, briefs and other pleadings in plain English. After all, your pleading stands to be more persuasive if the judge actually understands it.

You may have heard the Otto von Bismarck quote, “Laws are like sausages, it is better not to see them being made.” While this is no doubt a fair assessment of most law making which can be subject to last minute amendments, the statutory revision program is a thorough process that involves several levels of internal review and the opportunity for external comment. Typically, an attorney is assigned a particular chapter of the old law to revise into a logical, clear and concise product. The drafter’s task is to use simple language, not fancy legalese. After that attorney completes the initial draft, it is then reviewed by at least two other experienced attorneys and edited by at least one professional legal editor for form, style, internal consistency, and grammar.

After a preliminary draft is prepared, the Legislative Council solicits comments from the public and from certain stakeholders.



For instance, the Real Estate, Probate & Trust Law section of the State Bar of Texas provided significant support, guidance and review of the proposed Estates Code. Once a final version of the proposed Code is ready, it is presented to the Legislature as a bill. For reasons discussed below, it is unlikely that the bill will be amended throughout the legislative process. How do you like them apples, Otto von Bismarck?!

A document called a “revisor’s report” is prepared to go along with the bill for the new code. This report is helpful to understand the proposed new law, the old law (referred to as the “source law”), and a “Revisor’s Note” that explains the revision. By way of example,

the following appeared in one of the two Revisor’s Reports for the Estates Code:

Revised Law

Sec.22.001. APPLICABILITY OF DEFINITIONS. (a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.

(b) If Chapter XIII provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Chapter XIII applies in that chapter.

Source Law

Sec.3. Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context: ...

Revisor’s Note

Section 3, Texas Probate Code, refers to "Chapter XIII of this Code," meaning Chapter XIII, Texas Probate Code. That chapter has been redesignated in the Estates Code as Chapter XIII, Title 25, and the revised law therefore retains the reference to Chapter XIII. However, the revised law omits the reference to "of this Code" as unnecessary because the revised law is also part of the Estates Code, and Section 311.006(1), Government Code (Code Construction Act), applicable to the revised law, provides in part that a reference to a chapter in a code without further identification is a reference to a chapter of that code.

As you get familiar with the Estates Code, it may be helpful to refer to the Revisor’s Reports if you do not understand why a certain revision was made.

Practice Tip: After the Estates Code becomes operative law, the Revisor’s Report may be helpful in arguing statutory construction or legislative intent.

3.2 But Don’t You Dare Call It Substantive!

You see, there is this one, small thing: when a code is put together under the Revision Program, no part of the revision process may alter the sense, meaning, or effect of the statute. That means that the Legislative Council must take painstaking measures to organize and refine the statutes in a logical order and in modernized language without making any substantive changes. §323.007(b), *Tex. Gov’t Code*. This means that if a particular statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved. *See Bill Analysis to the engrossed version of HB 2505 (81st Legislative Session, Regular Session).*

This is an exacting task. But what happens if the Legislative Council makes an unintended departure from the prior law? Several cases have examined this question with mixed and controversial results.

The Supreme Court of Texas has held that when a nonsubstantive bill makes a substantive change, the new law controls if the new law is clear, direct, unambiguous, and irreconcilable with the prior law. *Fleming Foods of Texas, Inc. v. Rylander*, 6 SW3d 278, 285 (Tex. 1999). The Court reasons that prior law and legislative history cannot be used to alter or disregard the express terms of a code provision when its meaning is clear from the code when considered in its entirety, unless there is an obvious error such as a typographical one that resulted in the omission of a word, or application of the literal language of a legislative enactment would produce an absurd result. *Id.* at 284.

In *American Indemnity Co. v. City of Austin*, the Supreme Court upheld the recodification of previously unconstitutional law and found the recodification to be constitutional. 246 SW 1019, 1024 (Tex. 1922). The Court reasoned that “the general rule...is that such [revised] Codes are not mere compilations of laws previously existing, but bodies of law so enacted that laws previously existing ... cease to exist.” *Id.*

The holding in a more recent case, *Entergy Gulf States, Inc. v. Summers*, is based on the same premise as *Fleming Foods* and *American Indemnity*, although the Legislative Council contends the holding is flawed because the alleged substantive change was enacted four years prior to and outside of the Council’s recodification of the same statute. 282 SW3d 433 (Tex. 2009).

Several intermediate courts have held that when a substantive change is made to a statute through legislation intending to make nonsubstantive revisions, the former law should be considered, or even govern, if the codification is ambiguous. *See Minton v. Perez*, 783 SW2d 803, 805 (Tex.App.– San Antonio 1990, orig. proceeding); *Bryant v. Metropolitan Transit Authority*, 722 SW2d 738 (Tex.App.–Hou. [14th Dist.] 1986, no writ).

Although the Legislative Council is prohibited by law from making substantive revisions as a part of its revision program, substantive changes may be made concurrently through separate legislation. For instance particular substantive changes to the Estates Code were amended in the same legislative session that the nonsubstantive Estates Code bill was adopted. When this happens, the Legislative Council is tasked with

conforming the newly enacted code to the substantive changes made to it by the same legislature.

4. Enter the Estates Code.

The Legislative Council started working on the Estates Code in the summer of 2007. The Council anticipated it would take two interim legislative sessions to complete the review of the Probate Code and proposed enacting the Estates Code in two installments.

4.1 81st Regular Session. The first installment of the Estates Code was carried in [HB 2502](#) and enacted by the 81st Legislature. Although the 81st Legislature adjourned in 2009, the changes adopted by HB 2502 become effective January 1, 2014. The initial installment includes revisions to general provisions of the Probate Code, most sections relating to decedent’s estates, and nontestamentary transfers.

The sections of the Probate Code relating to the scope of a “probate proceeding” and jurisdiction were not included in either of the Legislative Council’s nonsubstantive revisions bills. However, during the 81st Legislative Session, these sections underwent substantive revisions and were added to the Estates Code as Chapters 31 and 32 through the enactment of [SB 408](#). Even though the Estates Code is not even effective until 2014, certain sections of Chapters 31 and 32 were also amended during the 82nd Legislature by [SB 1198](#).

4.2 82nd Regular Session. The second installment of the Estates Code was carried in [HB 2759](#) and enacted by the 82nd Legislature. Although the 82nd Legislature adjourned in 2011, the changes adopted by HB 2759 become effective January 1, 2014. The second installment includes revisions to guardianships (except for provisions relating to the scope, jurisdiction, and venue of guardianship proceedings), and the Durable Power of Attorney Act.

The sections of the Probate Code relating to venue (except for Section 5B and 5C), the creation, administration, and closing of an independent administration, and the exemption, allowances and claims in an independent administration were not included in either of the Legislative Council’s nonsubstantive revisions bills. However, during the 82nd Legislative Session, these sections underwent substantive revisions and were added to the Estates Code through the enactment of SB 1198.

4.3 82nd First Called Session/83rd Regular Session. Sections 5B and 5C of the Texas Probate Code relating to the transfer of a probate proceeding and actions to collect delinquent property taxes, and the

sections of the Probate Code relating to the scope, jurisdiction, and venue of guardianship proceedings were not included in either of the prior nonsubstantive revision bills.

Through a series of legislation in the 81st and 83rd Legislative Sessions, Sections 5B and 5C were transferred from the Probate Code and redesignated as Sections 34.001 and 34.002 of the Estates Code. Through a series of legislation in the 82nd Regular Session, 82nd First Called Session, and 83rd Regular Session, the sections relating to the scope, jurisdiction, and venue of guardianship proceedings were added to the Estates Code or transferred from the Probate Code and redesignated as Chapters 1021, 1022, and 1023 of the Estates Code.

4.4 Organization. The Probate Code has a knack for jumping around from topic to topic. For instance, smack dab in the middle of Sections 221 and 222 regarding the resignation and removal of a personal representative are two sections relating to Resident Agents. Wouldn't the sections relating to Resident Agents be more appropriately located with more procedural sections?

The Estates Code reorganized the Probate Code in an attempt to group together provisions that logically work or go together. Sure, we may have memorized the numbering of all of the sections of the Probate Code, but the Estates Code attempts at being a more logical and intuitive collection of laws. My humble guess is that it will not take you very long to adjust.

The Estates Code is now broken into three titles: Title 1 has general provisions, including definitions; Title 2 contains statutes relating to Decedent's Estates and Durable Powers of Attorney; and Title 3 houses statutes relating to Guardianships. While this seems to follow the Probate Code's approach, most reorganization occurs within each Title.

Title 2

Title 2 is broken into Subtitles A through L, and Subtitle P. Subtitles A and B contain provisions mostly found in the front of the Probate Code – jurisdiction/venue and procedural matters. Those provisions relating to Resident Agents? They are now found in Subtitle B.

Subtitle C regards the passage of title and distribution of decedents' property. Sections from all over the Probate Code are grouped together here, including the sections relating to nonprobate assets (former Section 450) multiple-party accounts (former Sections 436-439), homestead (former Sections 270, 284, 285), and

valuation/taxation of estate property (former Sections 322 and 378A).

Subtitle D groups together proceedings that occur prior to administration of an estate, such as entry into safe deposit boxes (former Sections 36B-36F) and emergency intervention (former Sections 108-115).

Subtitle E regards intestate succession, including small estate affidavits which were formerly sandwiched in between temporary administrations and independent administrations.

Subtitle F contains provisions relating to the making, safekeeping, and probate of wills. The notices to beneficiaries after probate of will (former Section 128A) or on application to probate will after four years (former Section 128B) are now found at the end of this subtitle. Those same notice provisions were located between emergency intervention sections and temporary administration sections in the Probate Code.

Subtitle G groups together provision relating to the initial appoint of personal representative and opening of administration – from the application through the inventory, appraisal and list of claims.

Subtitle H relates to most issues that come up during the continuation of administration after the inventory, appraisal and list of claims has been filed.

Subtitle I relates to the creation, administration and closing of an independent administration, and Subtitle J relates to additional matters relating to the administration of certain estates – including temporary administrations, the administration of community property, and orders of no administration.

Subtitle K relates to ancillary probates and the probate of a foreign will. Subtitle L relates to the payment of estates into the State Treasury.

Subtitles M-O do not contain any current statutes and are reserved for expansion (future probate laws).

Subtitle P contains statutes relating to the durable powers of attorney.

Title 3

Perhaps due to extensive changes to the guardianship statutes in 1993, the transformation and reorganization of the guardianship provisions is not as dramatic as the reorganization of the probate provisions. *See Acts 1993, 73rd Leg., ch. 957.*¹ Title 3 is broken into Subtitles A through I. Subtitles A, B and C contain general jurisdiction/venue, and procedural statutes. Subtitle D

¹ Session laws can be searched at www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm.

contains provisions relating to the creation of a guardianship. Subtitle E relates to the administration of a guardianship, and Subtitle F relates to the evaluation, modification, or termination of a guardianship.

Subtitle G contains statutes relating to special types of guardianships, including temporary guardianships, guardianships for nonresident wards, and interstate guardianships. Subtitle H relates to management trusts (sadly, the new section designation is 1301, not 867) and pooled trust subaccounts.

Finally, Subtitle I relates to a potpourri of provisions, including special proceedings and alternatives to guardianship

4.5 T Minus 104 Days. Our fair legislature knew just how hard it would be to pry our Probate Codes from us probate attorneys. In order to give practitioners (and the public) time to come to grips with the transition from the old law to the new law, the Legislature has delayed the effective date of the Estates Code until January 1, 2014. While January 1, 2014 seemed a world away when the Legislature first contemplated the Estates Code in June 2007, all of the planning, revisions, comments, review, and legislative wrangling is now complete. Here's a dose of reality – January 1, 2014 is exactly 104 days away.²

4.6 50 Shades of Probate. A little known (a somewhat dull) fact is that the original title proposed for the new Probate Code was “Estates and Guardianship Code” because the Probate Code was a collection of laws covering not only probate, but also guardianships, durable powers of attorney, and non-testamentary transfers. This is sound logic, but the Legislature decided to revert back to a less inclusive (though less cumbersome) title by changing the “Estates and Guardianship Code” to simply the “Estates Code.” In fact, the sole amendment to the bill adopting the first installment of the Estates Code was to strike “and Guardianships” from the title.

5. Tips, Takeaways, and Smart Remarks.

The following are a few suggestions to help your transition into the new Estates Code:

5.1 Tips.

- The full text of the Estates Code is available at www.statutes.legis.state.tx.us/.
- If you are having trouble locating provisions in the Estates Code, there are several sources of derivation tables (Estates Code » Probate Code)

and disposition tables (Probate Code » Estates Code) at your disposal. Tables are found at the front of Johanson's Texas Probate Code Annotated. Tables are found at the end of both Revisor's Reports, which can be found at www.tlc.state.tx.us/code_current_estates.htm.

Professor Gerry Beyer has also published his Conversion Table on his website at www.professorbeyer.Estates_Code.html.

- After January 1st, use the Revisor's Report to argue legislative history. Before January 1st, use the Estates Code to argue a more favorable interpretation of the Probate Code (after all, most of the Estates Code is nonsubstantive).

5.2 Takeaways.

- The Code Construction Act applies to the Estates Code (it did not apply to the Probate Code). The Code Construction Act is found in Chapter 311 of the Texas Government Code, and it contains general statutory construction rules (and aids) for each code enacted as a part of the statutory revision program.
- The Probate Code is repealed as of January 1, 2014, but some of its provisions may still apply to some estates and guardianships pending on that date. Accordingly, during this time of transition, do not throw away your Probate Code just yet.

5.3 Smart Remarks.

- So that you are not so overwhelmed on January 1st, begin updating references in your pleadings and estate planning forms now.
- To help you become fluent in the Estates Code by January 1st, start citing to both the Probate Code and the Estates Code. Your advocacy skills may be more sharp if you are not fumbling around for the new code provision.

6. Conclusion.

Granted, the Estates Code is the biggest thing to happen to the Probate Section of the State Bar since 1956. But remember, although the Estates Code will look and feel different, it is not intended to be a change of the meaning, intent, or substance of the law. Accordingly, not much will change at 11:59 p.m., December 31, 2013. Use the next 104 days by getting familiar with the Estates Code, but keep your cool and don't stress out!

² This paper was originally prepared for presentation on September 19, 2013.

Attachment 3 – 2013 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.)

83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
H.B. 0033	Relating to alternative methods of dispute resolution in certain disputes between the Department of Aging and Disability Services and an assisted living facility licensed by the department.	Signed 6/14/13	9/1/13
H.B.0052	Relating to the sale of a cemetery plot; providing penalties; authorizing a fee.	Signed 6/14/13	9/1/13
H.B. 0097	Relating to the exemption from ad valorem taxation of part of the appraised value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization.	Signed 5/27/13	1/1/14 (Only if HJR 24 approved 11/5/13.)
H.B. 0144	Relating to a mental examination of a child subject to the juvenile justice system.	Signed 6/14/13	9/1/13
H.B. 0220	Relating to consecutive sentences for certain offenses involving injury to a child, an elderly individual, or a disabled individual and arising out of the same criminal episode.	Signed 6/14/13	9/1/13
H.B. 0294	Relating to the exemption from ad valorem taxation of certain property owned by a charitable organization and used in providing housing and related services to certain homeless individuals.	Signed 6/14/13	1/1/14
H.B. 0389	Relating to the enforcement of spousal maintenance agreements and property distribution agreements incident to divorce or annulment.	Signed 6/14/13	9/1/13
H.B. 0410	Relating to the administration and operation of the appellate judicial system for the Second Court of Appeals District; changing an appellate judicial system court costs fee in certain counties.	Signed 6/14/13	9/1/13
H.B. 0424	Relating to the sex offender status of a person who becomes a resident of certain group home facilities.	Signed 6/14/13	9/1/13
H.B. 0489	Relating to rights and responsibilities of persons with disabilities, including with respect to the use of service animals that provide assistance to those persons; providing penalties.	Signed 6/14/13	1/1/14
H.B. 0500	Relating to the computation of the franchise tax, including certain exclusions from the tax.	Signed 6/14/13	1/1/14
H.B. 0590	Relating to determining a child's eligibility for a school district's special education program on the basis of a visual impairment.	Signed 6/14/13	9/1/13
H.B. 0616	Relating to the jurisdiction of the County Court in Glasscock County.	Signed 6/14/13	9/1/13
H.B. 0617	Relating to transition and employment services for public school students enrolled in special education programs.	Signed 6/14/13	9/1/13
H.B. 0789	Relating to the allowance in lieu of exempt property in the administration of a decedent's estate.	Signed 6/14/13	9/1/13
H.B. 0908	Relating to the assessment of an elderly or disabled person's psychological status for purposes of an emergency order authorizing protective services.	Signed 6/14/13	6/14/13
H.B. 0915	Relating to the administration and monitoring of health care provided to foster children.	Signed 5/29/13	9/1/13
H.B. 0978	Relating to the transportation of certain patients to a mental health facility.	Signed 6/14/13	9/1/13

¹ We believe, but do not guarantee that, this list of effective dates is accurate. If the effective date matters to you, check the bill.

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83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
H.B. 1114	Relating to restoring the jurisdiction of the constitutional county court in Brazos County.	Signed 6/14/13	6/14/13
H.B. 1191	Relating to certain information about housing for persons with mental illness provided through the Texas Information and Referral Network Internet site.	Signed 6/14/13	6/14/13
H.B. 1227	Relating to the use of an Internet application to allow access by court-appointed volunteer advocates to child protective services case information.	Signed 5/29/13	9/1/13
H.B. 1263	Relating to the delay in the implementation of the abolishment of small claims courts.	Signed 4/10/13	4/10/13
H.B. 1264	Relating to information regarding the number of public school students with dyslexia.	Signed 6/14/13	6/14/13
H.B. 1271	Relating to providing links in the online text of proposed legislation to other state laws referenced in that legislation.	Signed 5/24/13	11/1/14
H.B. 1435	Relating to certain notices, reports, and descriptions provided by or filed with court and county clerks.	Signed 6/14/13	9/1/13
H.B. 1513	Relating to temporary increases in the records archive fees and the records management and preservation fees charged by district and county clerks.	Signed 6/14/13	Art. 1: 9/1/13 Art. 2: 9/1/19
H.B. 1545	Relating to a study regarding the use of certain public transportation services by persons with disabilities.	Signed 6/14/13	9/1/13
H.B. 1664	Relating to the regulation of banks, trust companies, and bank holding companies.	Signed 6/14/13	6/14/13
H.B. 1711	Relating to barratry.	Signed 6/14/13	9/1/13
H.B. 1728	Relating to the use of an unsworn declaration, the disposition of certain court exhibits, and the seal of a constitutional county court or county clerk.	Signed 6/14/13	6/14/13
H.B. 1738	Relating to the emergency detention by a peace officer of a person who may have mental illness, including information provided to the person subject to detention and a standard form of notification of detention to be provided to a facility by a peace officer.	Signed 6/14/13	9/1/13
H.B. 1755	Relating to authorizing the appointment of a public probate administrator; authorizing fees.	Signed 6/14/13	1/1/14
H.B. 1760	Relating to the provision of services to certain individuals with developmental disabilities by a state supported living center.	Signed 6/14/13	6/14/13
H.B. 1847	Relating to continuing legal education in ethics or professional responsibility for prosecutors.	Signed 6/14/13	1/1/14
H.B. 1874	Relating to an appeal from an interlocutory order of certain courts.	Signed 6/14/13	9/1/13
H.B. 1875	Relating to a case transferred from one district court to another district court.	Signed 6/14/13	9/1/13
H.B. 1971	Relating to a pilot program conducted by the Department of Aging and Disability Services to authorize certain accreditation surveys of assisted living facilities.	Signed 6/14/13	9/1/13
H.B. 2080	Relating to guardianships, including the assessment and payment of attorney's fees and other court costs in guardianships, and to court-created management trusts for persons who have physical disabilities or who are incapacitated; changing the amount of a fee and requiring the collection of a fee.	Signed 6/14/13	1/1/14
H.B. 2252	Relating to eligibility of charitable organizations to participate in a state employee charitable campaign.	Signed 6/14/13	9/1/13

Probate, Guardianships, Trusts, Powers of Attorney, Etc.

83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
H.B. 2276	Relating to notice of services and programs, including residential services, available for persons with intellectual disabilities.	Signed 6/14/13	9/1/13
H.B. 2302	Relating to signing electronic or digital court documents, to the electronic filing system established by the Texas Supreme Court, to the statewide electronic filing system fund, to certain court fees and court costs, and to recovery of electronic filing fees by taxing units; imposing and authorizing certain fees.	Signed 6/14/13	9/1/13
H.B. 2380	Relating to a provision in a will or trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting the will or trust.	Signed 6/14/13	9/1/13 (Art. 2: 1/1/14)
H.B. 2383	Relating to life settlement contracts for the payment of long-term care services and support and the consideration of a life insurance policy in determining eligibility for medical assistance.	Signed 6/14/13	6/14/13
H.B. 2392	Relating to the mental health program for veterans.	Signed 6/14/13	9/1/13
H.B. 2407	Relating to restoration of a person's right to purchase a firearm on termination of a guardianship.	Signed 6/14/13	1/1/14
H.B. 2619	Relating to the educational needs of children in the conservatorship of the Department of Family and Protective Services.	Signed 6/14/13	9/1/13
H.B. 2621	Relating to disclaimers of estate property by certain beneficiaries.	Signed 6/14/13	1/1/14
H.B. 2673	Relating to the protection and care of individuals with intellectual and developmental disabilities.	Signed 6/14/13	6/14/13
H.B. 2772	Relating to an interim study regarding the method by which certain judicial officers are selected.	Signed 6/14/13	6/14/13
H.B. 2912	Relating to decedents' estates.	Signed 6/14/13	1/1/14
H.B. 2913	Relating to trusts.	Signed 6/14/13	9/1/13
H.B. 2918	Relating to statutory durable powers of attorney.	Signed 6/14/13	1/1/14
H.B. 2935	Relating to a legal action involving the exercise of certain constitutional rights.	Signed 6/14/13	6/14/13
H.B. 3064	Relating to the disposition of unclaimed cremated remains of certain veterans.	Signed 6/14/13	9/1/13
H.B. 3153	Relating to the operation and administration of, and practice in courts in, the judicial branch of state government and the composition of certain juvenile boards; imposing a fee.	Signed 6/14/13	9/1/13 §1.02(a): 1/1/14 §1.05(a): 9/1/14 §1.04(a): 1/1/15 §2.02 (a): 1/1/15 §2.03(a): 1/1/15 §1.06(a): 9/1/15 §2.06(a) & (b): 9/1/15
H.B. 3276	Relating to the coverage by certain health benefit plans for the screening and treatment of autism spectrum disorder.	Signed 6/14/13	9/1/13
H.B. 3378	Relating to an annual term for the 47th District Court.	Signed 6/14/13	9/1/13
H.J.R. 24	Proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization.	Filed with the Secretary of State 5/28/13	If approved by voters 11/5/13
H.J.R. 62	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 member of the armed services of the United States who is killed in action.	Filed with the Secretary of State 5/28/13	If approved by voters 11/5/13

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83 rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date ¹
S.B. 0033	Relating to the electronic monitoring of residents at state supported living centers; providing criminal penalties.	Signed 5/25/13	5/25/13
S.B. 0034	Relating to the administration of psychoactive medications to persons receiving services in certain facilities.	Signed 6/14/13	9/1/13
S.B. 0039	Relating to the evaluation and instruction of public school students with visual impairments.	Signed 6/14/13	6/14/13
S.B. 0045	Relating to the provision of employment assistance and supported employment to certain Medicaid waiver program participants.	Signed 6/14/13	6/14/13
S.B. 0049	Relating to transitional living assistance and appropriate care settings for children with disabilities who reside in general residential operations.	Signed 6/14/13	6/14/13
S.B. 0050	Relating to the Children's Policy Council, including the composition of the council.	Signed 6/14/13	9/1/13
S.B. 0058	Relating to delivery of and reporting on mental health, behavioral health, substance abuse, and certain other services.	Signed 6/14/13	9/1/13
S.B. 0060	Relating to authorizing the placement of a security freeze on the consumer file or other record created or maintained by a consumer reporting agency regarding a person under 16 years of age.	Signed 5/18/13	1/1/14
S.B. 0126	Relating to the creation of a mental health and substance abuse public reporting system.	Signed 6/14/13	9/1/13
S.B. 0148	Relating to certain legal advice or legal services rendered to certain public servants.	Signed 6/14/13	9/1/13
S.B. 0152	Relating to the protection and care of persons who are elderly or disabled or who are children.	Signed 6/14/13	6/14/13
S.B. 0163	Relating to an exemption from ad valorem taxation of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action.	Signed 5/27/13	1/1/14 (Only if HJR 62 approved 11/5/13.)
S.B. 0217	Relating to the continuation and functions of the state employee charitable campaign.	Signed 6/14/13	9/1/13 §16: 1/1/14 Gov't Code §659.146(g): 1/1/14
S.B. 0244	Relating to the administration, operation, supervision, and regulation of credit unions.	Signed 5/10/13	9/1/13
S.B. 0246	Relating to the electronic submission of a request for an attorney general opinion.	Signed 6/14/13	9/1/13
S.B. 0294	Relating to extending a local behavioral health intervention pilot project.	Signed 5/14/13	5/14/13
S.B. 0297	Relating to prepaid funeral benefits contracts.	Signed 5/14/13	9/1/13
S.B. 0352	Relating to visitation for certain children in the temporary managing conservatorship of the Department of Family and Protective Services.	Signed 5/25/13	9/1/13
S.B. 0356	Relating to the audit of court registry funds in certain counties.	Signed 6/14/13	6/14/13
S.B. 0392	Relating to notice to the attorney general of challenges to the constitutionality of Texas statutes.	Signed 6/14/13	9/1/13
S.B. 0421	Relating to the Texas System of Care and the development of local mental health systems of care for certain children.	Signed 6/14/13	9/1/13
S.B. 0422	Relating to service of citation on a financial institution.	Signed 5/2/13	5/2/13
S.B. 0425	Relating to foster care placement decisions made by the Department of Family and Protective Services.	Signed 5/25/13	9/1/13

83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
S.B. 0460	Relating to training for public school teachers in the detection and education of students at risk for suicide or with other mental or emotional disorders and the inclusion of mental health concerns in coordinated school health efforts.	Signed 6/14/13	9/1/13
S.B. 0462	Relating to specialty court programs in this state.	Signed 6/14/13	9/1/13
S.B. 0502	Relating to placement of children with certain relatives or other designated caregivers.	Signed 6/14/13	9/1/13
S.B. 0519	Relating to the definition of autism and other pervasive developmental disorders.	Signed 6/14/13	9/1/13
S.B. 0534	Relating to providing stable placement for certain children in the conservatorship of the Department of Family and Protective Services.	Signed 6/14/13	9/1/13
S.B. 0542	Relating to alternative dispute resolution methods regarding educational services for students with disabilities, including individualized education program facilitation.	Signed 6/14/13	6/14/13
S.B. 0560	Relating to authorization for biweekly installment payments for the compensation of certain justices, judges, and district attorneys.	Signed 5/25/13	9/1/13
S.B. 0646	Relating to court-ordered outpatient mental health services.	Signed 6/14/13	9/1/13
S.B. 0649	Relating to the exemption of certain property from seizure by creditors.	Signed 5/18/13	9/1/13
S.B. 0651	Relating to a medical power of attorney.	Signed 5/24/13	9/1/13 (§§1 & 4 effective 1/1/14)
S.B. 0661	Relating to cemeteries and perpetual care cemetery corporations; creating an offense.	Signed 5/24/13	9/1/13
S.B. 0677	Relating to the electronic recording of proceedings in a statutory probate court in Collin County.	Signed 6/14/13	9/1/13
S.B. 0709	Relating to representation of a person in a special education impartial due process hearing.	Signed 6/14/13	6/14/13
S.B. 0717	Relating to consent by a minor to housing or care provided through a transitional living program.	Signed 6/14/13	6/14/13
S.B. 0718	Relating to voluntary and involuntary mental health services.	Signed 6/14/13	6/14/13
S.B. 0747	Relating to the term for the independent ombudsman for state supported living centers.	Signed 6/14/13	6/14/13
S.B. 0769	Relating to the establishment of a pilot program to provide specialized training to foster parents of certain children.	Signed 6/14/13	9/1/13
S.B. 0778	Relating to trusts.	Signed 6/14/13	9/1/13
S.B. 0804	Relating to revising provisions in certain laws governing certain banks and trust companies in this state to conform to changes in terminology made by the Business Organizations Code.	Signed 6/14/13	6/14/13
S.B. 0816	Relating to the date by which a school district must complete a report of an initial evaluation of a student for special education services.	Signed 6/14/13	9/1/13
S.B. 0831	Relating to a list of mental health, substance abuse, and suicide prevention programs that may be selected for implementation by public schools.	Signed 6/14/13	9/1/13
S.B. 0847	Relating to business entities and associations.	Signed 5/2	9/1/13
S.B. 0886	Relating to extended foster care for certain young adults and the extended jurisdiction of a court in a suit affecting the parent-child relationship involving those young adults.	Signed 6/14/13	9/1/13
S.B. 0906	Relating to developmentally appropriate assessment of special education students.	Signed 6/14/13	6/14/13

2013 Texas Estate and Trust Legislative Update

83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
S.B. 0944	Relating to criminal history record checks for certain employees of facilities licensed by the Department of State Health Services.	Signed 6/14/13	6/14/13
S.B. 0966	Relating to creation of the Judicial Branch Certification Commission and the consolidation of judicial profession regulation; imposing penalties; authorizing fees.	Signed 5/14/13	9/1/14 §3.02(a) & (b): 9/1/13
S.B. 1057	Relating to information about private health care insurance coverage and the health insurance exchange for individuals applying for certain Department of State Health Services health or mental health benefits, services, and assistance.	Signed 6/14/13	6/14/13
S.B. 1061	Relating to parking privileges of disabled veterans on the property of institutions of higher education.	Signed 6/14/13	6/14/13
S.B. 1074	Relating to electronic transmission of documentation involved in certain insurance transactions.	Signed 6/14/13	9/1/13
S.B. 1080	Relating to a study on the adequacy and appropriateness of additional compensation paid to certain county judges.	Signed 6/14/13	9/1/13
S.B. 1083	Relating to an appeal from an interlocutory order of certain courts.	Signed 6/14/13	9/1/13
S.B. 1093	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 82nd Legislature to other Acts of that legislature.	Signed 5/24/13	9/1/13 Art. 6: 1/1/14
S.B. 1175	Relating to the establishment of a reuse program for durable medical equipment provided to recipients under the Medicaid program.	Signed 6/14/13	6/14/13
S.B. 1185	Relating to the creation of a mental health jail diversion pilot program.	Signed 6/14/13	6/14/13
S.B. 1226	Relating to the establishment of an employment-first policy and task force to promote competitive employment opportunities that provide a living wage for individuals with disabilities.	Signed 6/14/13	6/14/13
S.B. 1235	Relating to guardianships, including assessments for and provision of guardianship services by the Department of Aging and Disability Services.	Signed 6/14/13	1/1/14 §1: 9/1/13
S.B. 1236	Relating to the extension of an emergency order for protective services for certain persons who are elderly or have disabilities.	Signed 5/18/13	5/18/13
S.B. 1240	Relating to the partition of mineral interests of a charitable trust.	Signed 6/14/13	6/14/13
S.B. 1317	Relating to persons authorized to perform a marriage ceremony.	Signed 6/14/13	9/1/13
S.B. 1422	Relating to the use of digitized signatures for pleadings and orders in suits affecting the parent-child relationship.	Signed 6/14/13	9/1/13
S.B. 1484	Relating to health benefit plan coverage for enrollees diagnosed with autism spectrum disorder.	Signed 6/14/13	9/1/13
S.B. 1536	Relating to the Texas military; imposing criminal penalties; authorizing fees.	Signed 6/14/13	9/1/13
S.B. 1630	Relating to the protection of defendants against vexatious litigants.	Signed 6/14/13	9/1/13
S.B. 1759	Relating to the procedures for the appointment of and the duties of attorneys ad litem in certain suits affecting the parent-child relationship.	Signed 6/14/13	9/1/13
S.B. 1806	Relating to the Harrison County Court at Law.	Signed 6/14/13	1/1/15
S.B. 1815	Relating to voluntary donations to the Glenda Dawson Donate Life-Texas Registry.	Signed 5/18/13	5/18/13
S.B. 1827	Relating to an additional fee for filing civil cases in certain Rockwall County courts.	Signed 6/14/13	6/14/13
S.B. 1842	Relating to restraint and seclusion procedures and reporting at certain facilities.	Signed 6/14/13	6/14/13

Probate, Guardianships, Trusts, Powers of Attorney, Etc.

83rd Legislature, Regular Session – Bills That Passed and Earliest Effective Dates			
Bill No.	Caption	Status	Effective Date¹
S.B. 1889	Relating to the transport of a mental health patient who is not a resident of this state.	Signed 5/24/13	9/1/13
S.B. 1891	Relating to the imposition of an additional fee for filing civil cases in certain Travis County courts.	Signed 6/14/13	6/14/13
S.B. 1896	Relating to the confidentiality of information in ad valorem tax appraisal records that identifies the home address of certain judges.	Signed 5/25/13	5/25/13
S.B. 1908	Relating to a study conducted by the Office of Court Administration of the Texas Judicial System and the repeal of certain court fees and costs.	Signed 6/14/13	9/1/13
S.J.R. 018	Proposing a constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend certain requirements in connection with a reverse mortgage loan.	Filed with the Secretary of State 5/30/13	If approved by voters 11/5/13
S.C.R. 028	Designating the first Tuesday in March as Texas Assisted Living Awareness Day for a 10-year period beginning in 2013.	Signed 5/25/13	5/25/13

Attachment 4 – Selected Bills that **DID NOT** Pass in 2013

4. Decedents' Estates.¹

4.1 The REPTL Decedents' Estates Bill. One provision in the REPTL 2013 Decedents' Estates bill was pulled from the bill due to a fear that there may have been some opposition that could endanger the entire bill.

(a) Limitation of Intestate Heirs (Secs. 201.001(f), (g)(3), and (i)-(j)). This change would have adopted the Uniform Probate Code position eliminating the intestate heirship rights of relatives more remote than the decedent's grandparents and their descendants.² The change also would have incorporated current case law that in the case of a decedent without a spouse or descendants, if there are no heirs on the maternal side, the entire estate passes to the paternal heirs, and vice versa.

4.2 Revised Witness Requirements for Wills (Sec. 251.051). SB 1421 (West) would have replaced the (very) longstanding requirement that the witnesses to the testator's will sign the will in the testator's presence with the requirement that each of them witness one of the following:

- the execution of the will by the testator or someone in the testator's presence at the testator's direction;
- the testator's acknowledgment of that signature; or
- the testator's acknowledgment of the will itself.

It is not clear if the witnesses would need to sign in each other's presence, or even in the testator's presence if the testator had made the acknowledgement previously. If the latter is possible, there's no time limit on when the witness has to sign. And if this had been enacted, the self-proving affidavit form would need to be revised to both accommodate this new method and provide for the possibility that the affidavits of the testator and the witnesses may be made at different times.

4.3 Expedited Foreclosures (New Ch. 125). HB 2795 (Raymond) and **SB 1770** (Carona) constitute an initiative of the Texas Land Title Association. The

version voted out Jurisprudence would have added new Chapter 125 to the Estates Code. New Sec. 125.051 would allow foreclosure on a decedent's interest in real property if the debt is in default and no probate proceeding has begun by the 180th day following the decedent's death. The creditor would need to obtain both a determination of heirship and a court order under TRCP Rule 736 allowing the creditor to proceed with foreclosure. Notice must be sent to a number of listed persons. The debt is treated as a preferred debt and lien, precluding any deficiency judgment against the decedent's estate. In the unlikely event there are excess sale proceeds after satisfaction of the debt, they are to be paid into the registry of the court. If an executor or administrator is appointed, that representative can withdraw the funds. The heirs can withdraw the funds if they obtain an order of no administration. Otherwise, they have to wait four years after the decedent's death to protect the interests of other creditors.

4.4 Adverse Possession by Co-Tenant Heirs (CP&R Code³ Sec. 16.0265). 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. **SB 108** (West)⁴ would have changed this rule for co-tenancies created by intestacies.

(a) Required Conditions. New Civil Practice and Remedies Code Sec. 16.0265 would provide that a

³ Civil Practice & Remedies Code.

⁴ This bill appears virtually identical to a similar proposal by Sen. West in 2011 – **SB 473** -- that passed the Senate and emerged from Judiciary in the House but was not sent to the House floor by the Calendars Committee. SB 473, in turn was accompanied by **SB 1368** (West), that was enacted and added a new Chapter 64 to the Property Code allowing a co-owner of residential property claimed as the co-owner's homestead to place a lien on the property under conditions similar to those in SB 108. This gives me an opportunity to mention the one legislative proposal of the Real Estate Division in the current and previous legislative session. In 2011, **SB 889** (Carona), relating to assignment of rents, added another new Chapter 64 of the Property Code (that made two Chapter 64's, if you're keeping count). This session, **SB 848** (Carona) is a REPTL bill that makes "technical corrections" to the assignment of rents provisions. It was signed by the Governor on June 14th. And SB 1093, this session's general code update bill, redesignates the Chapter 64 added by Sen. West's SB 1368 in 2011 as new Chapter 65. SB 1093 was signed by the Governor on May 24th. Got that?

¹ Section numbers correspond to section numbers for same topics in the body of the paper.

² A Texas Tech law student, Cale Cormier, researching a note on these statutes in early 2013, provided me a list of **26** states that cut off inheritance rights at grandparents and their descendants, **5** that cut off those rights at **great**-grandparents and their descendants, and **2** more that cut off inheritance rights based on degrees of relationship, counting each generation in the ascending or descending line as one degree.

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;
- that cotenant:
 - cultivates, uses, or enjoys the property; and
 - pays all property taxes within two years of their due date;
- no other cotenant has:
 - contributed to the property's taxes or maintenance;
 - challenged the possessing cotenant's exclusive possession of the property;
 - asserted any other claim in connection with the property;
 - acted to preserve the cotenant's interest by filing notice of the cotenant's claimed interest in the deed records; or
 - entered into a written agreement with the possessing cotenant regarding use of the property; and
- these conditions have existed for at least 10 years.

(b) Who May Claim. 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).

(c) How to Claim. After the 10-year period described above, the possessing cotenant must:

- file an affidavit of heirship (in the form prescribed by Probate Code Sec. 52A – yes, the bill refers to a Probate Code section that has been repealed effective December 31, 2012) **and** an affidavit of adverse possession that meets the requirements of the statute in the deed records (the two affidavits may be combined into a single affidavit);
- publish notice of the claim in county-wide newspaper (in the county where the property is located) for four consecutive weeks immediately following the filing of the affidavits; and
- provide written notice of the claim to the last known addresses of all other cotenant heirs by certified mail, return receipt requested.

(d) How to Object. 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.

(e) When Title Vests. If no controverting affidavit is filed by that 5-year deadline, then title vests in the possessing cotenant.

(f) Lender Protection. Once that 5-year period has passed without the filing of a controverting affidavit, a “bona fide lender for value without notice” receiving a voluntary lien on the property to secure indebtedness of either the possessing cotenant or a bona fide purchaser for value without notice may conclusively rely on the possessing cotenant's affidavits.

(g) Acreage Limits. Without an instrument of title, peaceable and adverse possession under this section is limited 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.

4.5 Access to Decedent's Mental Health Information (H&S Code Sec. 611.004). Health & Safety Code Chapter 611 provides confidentiality of a patient's mental health records, but authorizes a professional to disclose confidential information to certain listed persons or entities. **HB 1561** (Klick) would add to this list a deceased patient's executor or administrator, or, if none has been appointed, to the patient's spouse or, if not married, to another adult related to the patient within the first degree of consanguinity.

4.6 Waiting Period for Cremation (H&S Code⁵ Sec. 716.004). Health & Safety Code Sec. 716.004 provides establishes a 48-hour waiting period between the time of death stated on a death certificate and the time of cremation, unless waived in writing by a JP or medical examiner in the county of death or by a court order. **SB 68** (Nelson) would have directed the county medical examiner (or JP, if there's no medical examiner in the county) to develop and maintain a written policy for requesting a written waiver of the waiting period.

4.7 Disclosures Regarding Death Benefits. **HB 3619** (Burnam) adds provisions to the Insurance Code that require the issuer, sponsor, trustee, or administrator of any insurance policy, annuity or other contract, or group benefit plan that provides a death benefit to disclose to a person holding a power of attorney from a person claiming to be a beneficiary

⁵ Health & Safety Code.

whether the person granting the power is actually a beneficiary, the relation of the beneficiary to the insured, the birth date or age of the insured, whether sufficient death benefits are available to pay funeral costs or other costs proposed to be advanced to the agent, the total death benefits, and whether and on what basis those benefits are contestable. (This appears to be a funeral home bill.)

4.8 Repeal of Inheritance Tax – and More.

Texas' current inheritance tax statutes produce no tax as long as the federal estate tax only provides a deduction, rather than a credit, for state inheritance taxes. Following the 2012 federal tax bill, that's the permanent state of affairs (unless Congress changes it). Nonetheless, **HB 3742** (Lavender) would repeal the Texas inheritance tax, along with a bunch of other taxes, such as state sales, use, excise, franchise, severance, production, occupations, and gross receipts taxes, and certain local sales, use, excise and ad valorem property taxes. Don't celebrate yet, though. The bill would replace these taxes with a statewide and local value added tax and reform school finance and administration.

5. Guardianships.

5.1 Request for Financial Information for Guardianship Purposes; Determination of Mental Retardation (Finance Code Sec. 59.006). **HB 2303** (Rodriguez, E.) would have added investigations by the court investigator in response to a guardianship application or the court investigator or a guardian ad litem in response to a court-initiated investigation to the list of requests for information from financial institutions that are governed exclusively by the procedures set forth in Finance Code Sec. 59.006.

5.2 Examination by Psychologists (Secs. 1101.103 and 1202.152). **HB 1418** (Thompson) and its companion, **SB 528** (Rodriguez) would have allowed psychologists, not just physicians, to provide the "doctor's letter" regarding incapacity, or restoration of capacity.

5.3 Increased Burden for Court-Initiated Guardianship (Secs. 1102.002 and 1102.003). Estates Code Sec. 1102.001 allows a court to appoint a guardian ad litem or court investigator to investigate a person's conditions and circumstances if the court has probable cause to believe that person is an incapacitated person without a guardian. The appointee is to determine whether the person is incapacitated and a guardianship is necessary. To establish probable cause, the following section allows the court to consider either an information letter about the person

submitted by an interested person or a letter from a physician who has examined the person. Sec. 1102.003 sets forth the requirements of an information letter. **HB 2600** (Klick), as introduced, would eliminate the use of an information letter, and **require** the court to obtain **both** an affidavit from an interested person that alleges facts demonstrating the incapacity (not an information letter) and the physician's letter. The court must then hold a **hearing** at least **thirty days before an ad litem is appointed**. In the interim, any interested person may submit evidence regarding the condition of the allegedly incapacitated person. The bill did not address what can be done prior to the appointment of the ad litem at least thirty days later to protect the allegedly incapacitated person, or even how the need for protection can be assessed during that period. **This bill died in the House in early May, but language "inspired" by this bill was added to the 2013 REPTL Guardianship bill by Jurisprudence in mid-May.**

5.4 Nature of Delivery of Services (H&S Code Sec. 571.002). **SB 1595** (Zaffirini) would have added to the list of purposes of the subtitle to provide humane treatment and care for persons with a severe mental illness by providing the treatment in the least restrictive fashion, treating the person as a voluntary patient when possible, and using involuntary interventions as a last resort only if necessary to protect the health and safety of that person, or the safety of others.

5.5 Temporary Commitment of Gravely Disabled Person (H&S Code Secs. 571.003, 574.034, and 574.035). **HB 1947** (Burkett) and **SB 1594** (Zaffirini) would have allowed a court to order a "gravely disabled" person to receive court-ordered temporary inpatient mental health services. A person is gravely disabled if, as a result of mental illness, the person is (A) suffering severe and ongoing mental, emotional, or physical distress; (B) in danger of serious physical harm or illness due to an inability to function independently (*i.e.*, provide for basic needs, such as food, clothing, shelter, medical care, health, or safety); and (C) unable to make a rational and informed decision as to whether to submit to treatment. (This isn't really that much of a change. It slightly tinkers with the currently-listed conditions and then defines them as "gravely disabled.")

5.6 Emergency and Temporary Detentions (H&S Code Ch. 573). Several bills would have modified the rules relating to emergency or temporary detentions.

(a) Arranging for Emergency Detention (H&S Code Secs. 571.018, 572.004, 573.001, 573.023, and 573.024). In addition to existing authorities,

HB 2618 (Naishtat) and **SB 1591** (Zaffirini) are similar bills that would have authorized a physician who has examined a patient about to be discharged and determines the patient meets the criteria for emergency detention to arrange for the patient to be apprehended by a peace officer or transported for emergency detention.

(b) Rights of Person Subject to Emergency Detention (H&S Code Secs. 573.001 and 573.025).

HB 447 (Dukes) would have required a peace officer taking a person into custody without warrant for emergency detention to inform the person “in simple, nontechnical terms” of the reason for the detention and the fact that the person will be informed of their rights within three hours. Added to the list of existing rights is a reasonable opportunity to communicate with a relative or other responsible person. The Health and Human Services Commission is to adopt rules prescribing the manner of informing the person in writing (in their primary language) and through oral communication or other means for a hearing- or visually-impaired person.

(c) Temporary Detention Authority of Medical Facilities (H&S Code Sec. 573.005).

HB 2186 (Workman) and **SB 937** (West) are similar, but not identical, bills that allow a mental health facility, hospital, or separate emergency care facility to detain a patient who is being examined or treated for up to four hours if the patient tries to leave before the examination or treatment is completed and the facility has reason to, and does, believe that the patient has a mental illness that creates a substantial risk of serious harm to the patient or others if the patient isn’t immediately restrained, and there is insufficient time to file an application for emergency detention.

(d) Extension of Period for Preliminary Examination (H&S Code Secs. 573.021 and 573.0211). Under **HB 3149** (Collier) would have allowed a county to adopt a procedure to extend the 48-hour period for a preliminary examination if a majority of the judges of courts with probate jurisdiction in that county approve the adoption. The physician and subject of the examination must agree to the extension, and the subject must be represented by an attorney, including one appointed by a court. The length of the extension period may not exceed 96 hours.

5.7 Court-Ordered Out-Patient Mental Health Services (H&S Code Ch. 574). **HB 2212** (Naishtat) would have required a judge to identify the person the judge intends to designate to be responsible for those services within three days before the hearing. That person must submit a program of the treatment to be

provide that must include services to provide care coordination and any other clinically necessary treatment or services. A physician must evaluate a patient within 24 hours after a temporary detention begins.

5.8 Court-Authorized Elective Surgery for Persons With Disabilities (H&S Code Ch. 618).

HB 3656 (Hughes) would have prohibited an elective medical procedure on an incapacitated person with a disability without court authorization, establishes a rebuttable presumption that the elective procedure is **not** in the person’s best interest, lists findings the court must make, and requires the appointment of both an attorney ad litem and guardian ad litem (allowing an attorney to serve in a dual role).

5.9 Peace Officer Interaction. Two bills dealt with peace officers and emergency calls.

(a) Mental Illness. **HB 1109** (Burkett) would have added procedures for a peace officer answering an emergency call when the officer reasonably believes that an involved person has a mental illness (*e.g.*, notifying local mental health authorities, providing assistance, and taking the person into custody, if appropriate).

(b) Intoxication, Chest Pain, Loss of Consciousness, Etc. **HB 1856** (Burkett) and **SB 1592** (Zaffirini) are similar and would have required a peace officer to transport a person to an appropriate medical facility if the officer believes the person requires emergency medical services or the person is (1) experiencing acute intoxication or overdose; (2) experiencing chest pain; (3) losing consciousness; (4) bleeding or has sustained a serious injury; (5) the victim of an assault or sexual assault; or (6) a resident of a nursing home or assisted living facility.

5.10 Privilege of Child, Parent, or Guardian. **HB 3402** (Raymond) would have granted a child a privilege to refuse to testify against his or her parent or guardian in a criminal proceeding. The privilege belongs solely to the child, may be waived voluntarily, and does not apply in a proceeding in which the parent or guardian is charged with an offense against the child or a member of their household. Conversely, **HB 3728** (Raymond) would have granted a parent or guardian a privilege to refuse to testify against his or her child in a criminal proceeding. The privilege belongs solely to the parent or guardian, may be waived voluntarily, and does not apply in a proceeding in which the child is charged with an offense against the parent or a member of their household.

6. Disability Documents.

6.1 Advance Directives and Treatment

Decisions (H&S Code Chapter 166). As is the case in many session, there was a dispute over treatment and end-of-life decisions, and the right of physicians and health care facilities to comply, or not comply, with them.

(a) Advance Directives and Treatment Decisions (H&S Code Chapter 166). HB 1444 (King, S.) and its companion, **SB 303** (Deuell | Estes | Lucio), would have made several changes to advance directives.⁶ First, references to “artificial nutrition and hydration” in directives to physicians are changed to “artificially administered nutrition and hydration.” A definition of the term “surrogate” is added (a legal guardian, agent under a medical power, or the person authorized by Sec. 166.039(b)). “DNAR order” and “do-not-attempt-resuscitation order” are defined, and a medical facility must provide a patient or surrogate notice of the facility’s policies regarding these orders at admission. (Remember, existing Subchapter C deals only with **out-of-hospital** DNR orders.) A physician or facility must inform a patient (or make a reasonably diligent effort to contact the surrogate) before placing a DNAR order in the patient’s medical record. An attending physician may consult with a patient’s previous physician. Currently, the fact that a patient has not executed a directive does not create a presumption that the patient does not want life-

sustaining treatment to be withheld or withdrawn. As modified by this bill, this same fact does not create a presumption regarding the **provision** of life-sustaining treatment, either. Also, the bill makes changes to the procedures regarding ethics or medical review committees if the attending physician disagrees with and refuses to comply with a patient’s directive or treatment decision. Currently, if the committee agrees that continued treatment would inhumanely extend suffering, they can halt treatment in 10 days. These bills extended both the family’s time to prepare for this committee hearing from two to seven days, and extend the 10-day period to final alternative treatment to 21 days.

(b) Extending Treatment Despite Physician’s Determination. Current law provided that if a physician refuses to comply with a directive or treatment decision that life-sustaining treatment be provided to a patient and does not wish to follow the procedures for referral to an ethics or medical committee, then life-sustaining treatment shall be provided until a reasonable opportunity has been afforded for the transfer of the patient to another physician or facility willing to comply with the decision. **HB 1464** (Hughes) would have changed this to require that treatment to be continued until the patient is transferred (whether or not a reasonable opportunity for transfer has been afforded). Current law also provides that if the decision has been referred to an ethics or medical committee, and that committee agrees that treatment is inappropriate, life-sustaining treatment shall be provided for up to 10 days until the patient is transferred. **HB 1464** eliminates the 10-day limit on the requirement that treatment be continued until transfer. Finally, current law allows a court the ability to extend the 10-day period if it finds that there is a reasonable expectation that a willing physician or facility can be found. **HB 1464** repeals this provision and removes statutory probate court jurisdiction to hear these cases.

(c) Prohibited Reasons. HB 1539 (Perry) and **SB 675** (Hancock) would have prohibited a physician or facility from refusing to honor a directive or treatment decision that directs the provision of life-sustaining treatment based on (1) the lesser value the physician or facility places on extending the life of an elderly, disabled, or terminally ill patient compared to the value of extending the life of a patient who is younger, not disabled, or not terminally ill; or (2) a disagreement between the physician or facility and the patient or authorized person over the greater weight the patient or authorized person places on extending the patient’s life above the risk of disability. If the decision

⁶ A May 17th article in the *Austin American-Statesman* explained that the demise of this bill was due to a conflict among leading anti-abortion organizations. Texas Alliance for Life helped draft the compromise legislation before the session with doctors, hospitals, and religious leaders. All 13 Catholic bishops supported the bill. However, Texas Right to Life, Eagle Forum, National Right to Life and almost 20 affiliated groups opposed the bill and its 21-day period to find alternative treatment. They insisted on a “treat to transfer” rule, requiring physicians and hospitals to continue life-sustaining treatment until alternative arrangements are made by the family, no matter how long that might take. As a result of this opposition and the decision of Rep. Lois Kolkhorst, R-Brenham, the chair of the House Public Health Committee to not hold a vote on the bill, it died, leaving the current procedures in place for at least two more years. Sen. Bob Deuell, R-Greenville, the sponsor of the Senate bill (which passed the Senate by a vote of 24-6), predicted that defeat would doom future attempts to reach a compromise, since “treat to transfer” bills have never gotten out of committee in either chamber during the past four legislative sessions. For those viewing an electronic copy of this paper with subscriber access to the *Austin American-Statesman*, you should be able to read the full story about the demise of this bill [here](#).

is sent to an ethics or medical committee and the committee finds that the physician refused to honor a patient's treatment decision for one of the prohibited reasons, the committee may not approve withdrawal of the life-sustaining treatment based on the physician's evaluation.

6.2 In-Hospital DNR Orders (H&S Code Secs. 166.002 and 166.081, et seq.). Existing Subchapter C deals only with **out-of-hospital** DNR orders. **HB 1455** (Klick) would have added provisions for **in-hospital** DNR orders and increases patients' rights.

6.3 Additional Form Required to Withdraw Nutrition and Hydration (H&S Code Secs. 166.0335, et seq.). Rep. Klick also introduced a bill requiring an additional form for anyone desiring to forego life-sustaining treatment. **HB 1889** (Klick) would have required a person who desires that artificial nutrition and hydration be withheld "execute a written, signed statement on a form prescribed by the department that the patient does not wish to receive artificial nutrition, artificial hydration, or both." This form would be in addition to the normal directive to physicians. The form must then be delivered in person by the patient or responsible party to the physician and the facility administrator, who then provides a signed receipt, and places the form in a separate and "conspicuously colored section at or near the top of the patient's medical chart or record." Artificial nutrition and hydration may not be withheld without following this procedure. Further, in the event of a dispute as to whether or not treatment should be provided or withheld, an ethics or medical committee is prohibited from finding that artificial nutrition and hydration is an inappropriate treatment if this form hasn't been provided.

6.4 Advance Directive for Person With Mental Illness (H&S Code Sec. 166.201-166.203). **SB 1752** (Uresti) adds a new type of advance directive a competent adult may execute in the event the person later becomes unable to make competent decisions due to mental illness. It allows the person to direct his or her physician, assisted outpatient treatment team, usual hospital, or designated spokesperson to transport the person (forcibly, if necessary) to a safe place (excluding a jail or inpatient hospital) if the person becomes severely impaired from mental illness.

6.5 Advance Directive Registry (H&S Code Sec. 166.201-166.209). Last session, **HB 2904** (Zerwas) required the Department of State Health Services to enter into a contract with a nonprofit organization to administer the Glenda Dawson Donate

Life-Texas Registry. This session, **HB 631** (Davis, S.) would have required the department to establish and maintain a registry of advance directives that is immediately accessible through the internet by authorized health care providers. The department may contract with a public or private entity to develop and maintain the registry, but may not charge any fee to either register an advance directive or access an advance directive.

7. Trusts.

7.1 RAP Modification (Trust Code Sec. 112.036). **HB 2189** (Elkins) would have modified the Rule Against Perpetuities found in Trust Code Sec. 112.036 to provide a flat 500-year perpetuities period, rather than the traditional "lives-in-being plus 21 years" test. This is probably proposed by TBA, since it is identical to a 2011 TBA proposal in every respect except for two changes: the effective date is moved from September 1st of 2011 to September 1st of 2013, and the flat perpetuities period is increased from 200 to 500 years. Back in 2011, TBA's position was 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 back in 2011*) 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 has always taken the position that there is no consensus either way among REPTL members, so REPTL has never taken a position on this proposal.

9. Exempt Property.

9.1 Over-65 Homestead Property Tax Limitation Following Divorce (Tax Code Secs. 11.26 and 11.261). If a couple that qualifies for the additional homestead property tax limitation for persons 65 or over gets divorced, and the residence was and continues to serve as the homestead of a former spouse who is at least 55, **HB 2675** (Laubenberg) would have maintained that limitation for the former spouse.

10. Jurisdiction and Venue.

10.1 Expanded Jurisdiction of Collin County Statutory Probate Judges. **SB 1328** (Paxton) would

have allowed an active or retired statutory probate judge sitting in Collin County to hear any matter pending in any district court or county court at law in Collin County.

10.2 Cameron County Statutory Probate

Court. HB 3153 (Lewis), which also covers a number of other counties, would have created Probate Court No. 1 of Cameron County. The House version created that court in 2015; the Senate version two years later. However, while the bill passed, the conference committee report adopted by both chambers dropped this statutory probate court completely.

11. Court Administration.

11.1 Pro Se Access to Justice (CP&R

Secs. 30.019 and 30.020; Family Code Sec. 7.003).

The Texas Supreme Court has initiated a project designed to increase access to justice by pro se litigants and others. This project has not been without controversy, the extent of which is far beyond the scope of this paper. However, **HB 2878** (Raymond) and **SB 1261** (Rodriguez) would have prohibited a court from using any standardized form that does not comply with substantive or procedural law, that is not prepared in accordance with its promulgated instructions, or that is used for a purpose other than that for which it was approved. Court clerks are prohibited from being involved in the completion of a standardized form. However, a standardized form to seek or enforce a protective order under the Family Code is exempt from these prohibitions. The Supreme Court is prohibited from modifying this statute by rule.

The bill goes on to provide that, except as otherwise provided by law or court order, no civil litigant is required to be represented by an attorney, but a pro se litigant is still subject to the same substantive and procedural laws as anyone else.

Finally, if either party to a divorce is pro se and files a standardized form, the court may not enter a final decree until each spouse discloses the existence, nature, and value of a retirement plan or account, or swears that the spouse has no interest in a retirement plan or account.

11.2 Affidavit of Adverse Possession.

HB 3027 (Zedler) and **SB 947** (Nelson) would have added Sec. 16.0235 to the Civil Practice and Remedies Code, providing for an “affidavit of adverse possession.” The affidavit is not a document of title. At least 30 days before it is filed, the affiant must send written notice of the intent to file to each person who holds an interest in the allegedly adversely-possessioned property under a deed or other recorded instrument.

The affidavit must then be filed in the county in which the property is located, a legal description of the property, a copy of each notice sent, and the date the affiant took actual and visible possession. An affidavit that does not comply with these requirements may not be recorded, is void, and is inadmissible as evidence to support an adverse possession claim.

11.3 Recusal or Disqualification of Statutory Probate Judge. **HB 3669** (Naishtat) and its

companion, **SB 1471** (West) would have revised the procedures for seeking recusal or disqualification of a statutory probate judge and the assignment of another judge. The motion must assert one or more grounds listed in TRCP Rule 18b and may not be based solely on a judge’s ruling in the case. The motion may not be filed within 10 days before a trial or hearing unless the movant did not and reasonably could not know of the grounds (or identity of the judge) before then. Any other party (but not the judge) may file a response. If a judge in a multi-statutory probate court county is disqualified or recuses himself or herself, another statutory probate judge in that county shall be assigned to the case. If a motion does not comply with the statutory requirements, it may be denied without hearing.

11.4 Court Administrator. **HB 2409**

(Naishtat) would have changed the name of the “administrative assistant” that a statutory probate judge may hire to “court administrator.”

11.5 Retired Judges Eligible to Sit as Visiting Judges. HB 469 (Hernandez Luna) would have cut in half the length of active service a district, statutory probate, statutory county, or appellate court judge must have to be eligible for assignment as a visiting judge (from 96 months to 48 months).

14. Selected Marital Issues.

14.1 Forum Selection for Marital Issues.

SB 1639 (Carona) would have added new Chapters 1A and 112 to the Family Code. A Texas ruling under the Family Code may not be based on a foreign law if application of that law would violate a right guaranteed by the U.S. Constitution, the Texas Constitution, or a Texas statute. For purposes of this chapter, “foreign” means outside the United States and its territories. Further, a choice of law or forum provision in a contract involving the marital relationship (e.g., a marital property agreement?) is void to the extent that application of the foreign law would violate those rights, or the foreign forum would apply foreign law that would violate these rights. The chapters do not

apply to a corporation or other legal entity that contracts to subject the entity to foreign law.

14.2 Persons Conducting Marriage

Ceremonies. Everyone wants to be able to conduct marriage ceremonies!

(a) **Legislators.** **SB 370** (Lucio) would have authorized current and former members of the Texas legislature who have served at least 20 years to conduct up to 12 marriage ceremonies each year. (Currently, they are not authorized to conduct any marriage ceremonies.)

(b) **County Clerks.** **HB 460** (Cortez) and **SB 1600** (Zaffirini), while not identical, would have authorized the county clerk of any county with a population of at least 1.7 million that contains a municipality in which at least 75 percent of the county's population resides, and any deputy clerk appointed by the county clerk, to conduct marriage ceremonies. The county could collect a \$25 fee that could only be used to fund services for victims of child abuse, neglect, or family violence.

14.3 **Legal Separation.** **HB 190** and its enabling constitutional amendment, **HJR 53** (Dutton),⁷ add 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.

14.4 **Credit Reports Pending Divorce.** Family Code Sec. 6.707 provides that a community debt incurred by one spouse while a divorce is pending is void as to the other spouse if incurred with intent to injure the other spouse's rights. However, under current law, a consumer credit reporting agency may still include the debt on the other spouse's consumer credit report. **HB 1575** (Zedler) amends the Business and Commerce Code to prevent the agency from including a transaction made by a consumer's spouse while a divorce is pending on the consumer's credit report.

14.5 **Liability for Costs.** **HB 3490** (Hughes) and **HB 3786** (Perry) are identical bills that provide that if a divorce is granted based on adultery or family

violence, the spouse who has not committed adultery or family violence is not liable to the other spouse for costs, attorney's fees or expenses.

14.6 **Same Sex Marriage.** **HJR 77** (Anchia), **HJR 78** (Coleman), and **SJR 29** (Rodriguez) are identical resolutions that would have proposed a constitutional amendment to repeal Sec. 32, Article I, of the Texas Constitution. Sec. 32 currently defines marriage as the union of one man and one woman, and prohibits the state or any of its political subdivisions from creating or recognizing any legal status identical or similar to marriage. **HB 1300** (Burnam) would have amended the Family Code to expand marriage (currently only between a man and a woman) to include a man and a man, or a woman and a woman.

14.7 **Civil Unions.** **SB 480** (Hinojosa) would have added "civil unions" to the Family Code. Civil unions would provide "the parties to the union the same rights, benefits, protections, and responsibilities under the law as are granted to spouses in a marriage." This new legal relationship would be available only to two persons of the same sex and therefore excluded from the marriage laws.

14.8 **Covenant Marriage.** **HB 1673** (Perry) would have provided couples about to marry (at least a couple consisting of a man and a woman) the option to enter into a "covenant" marriage. The grounds for dissolution of a covenant marriage are limited. For example, there would be no "no-fault" divorce. Similar bills have been introduced since at least the late 1990's. None have been enacted in Texas, although some have in other states.⁸

14.9 **Required Crisis Marriage Education Courses.** If a spouse files for divorce on grounds of insupportability and the home of one of the spouses serves as the primary residence of a child under 18, **HB 2985** (Sanford) would have required the petition to include a completion certificate for a marriage education course completed not less than one year nor more than two years prior to filing the petition and a statement that after completion, but not less than one year prior to filing, the petitioner gave the respondent written notice of intent to file and the availability of the course, if the respondent hasn't taken one. The other spouse may file a completion certificate within 14 days

⁷ These measures appear virtually identical to similar proposals by Rep. Dutton in 2011 that failed to receive a hearing.

⁸ For those who are curious, Louisiana appears to be the first state to have enacted a covenant marriage law – in 1997. It does not appear to have been a popular option (1% to 2% of marriages), and it does not appear to have diminished the divorce rate. Arizona and Arkansas are the only other states that have adopted covenant marriage, although it had been introduced in over 20 other state legislatures.

after receiving notice of the suit showing completion not more than two years before the petition was filed. There are similar exceptions in the event of family violence, or mental, emotional, verbal, or psychological abuse. Whether or not a party has filed a completion certificate is to be a factor in determining the division of the estate, eligibility for maintenance, whether a party should be named a sole or joint managing conservator, and child support.

14.10 Required Premarital Education Courses.

HB 3024 (Zedler) would have required both applicants for a marriage license to attend a minimum 10-hour premarital education course during the year preceding the date of the application if either applicant has been divorced and either is the parent of a minor child who has never been married nor had the disabilities of minority removed.

Attachment 5 – 2013 Amendments to the Texas Estates Code (General Provisions)

[The following excerpts reflect amendments made by H.B. 2912 and S.B. 1093.]

Sec. 21.001. PURPOSE OF CODE

(a) [No change.]

(b) Consistent with the objectives of the statutory revision program, the purpose of this code, except Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3, is to make the law encompassed by this code, except Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3, more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

(c) The provisions of Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3, are transferred from the Texas Probate Code and redesignated as part of this code, but are not revised as part of the state's continuing statutory revision program.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093¹), effective January 1, 2014. Sec. 6.001 of SB 1093 provides: "Sections 21.001(b) and (c), Estates Code, as effective January 1, 2014, are amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 21.002. CONSTRUCTION

(a) [No change.]

(b) Chapter 311, Government Code (Code Construction Act), does not apply to the construction of a provision of Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3.

¹ Section 1.002(b) of Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014, provides: "If any provision of this Act conflicts with a statute enacted by the 83rd Legislature, Regular Session, 2013, the statute controls."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.002 of SB 1093 provides: "Section 21.002(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 21.003. STATUTORY REFERENCES

(a) – (c) [No change.]

(b) A reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to a chapter, a part, a subpart, a section, or any portion of a section "of this code" is a reference to the chapter, part, subpart, section, or portion of a section as redesignated in the Estates Code, except that:

(1) a reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to Chapter I is a reference to Chapter I, Estates Code, and to the revision of sections derived from Chapter I, Texas Probate Code, and any reenactments and amendments to those sections; and

(2) a reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to a chapter, part, subpart, section, or portion of a section that does not exist in the Estates Code is a reference to the revision or redesignation of the corresponding chapter, part, subpart, section, or portion of a section of the Texas Probate Code and any reenactments or amendments.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.003 of SB 1093 provides: "Section 21.003(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS.

(a) Notwithstanding Section 21.002(b) of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3.

(b) Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912²), effective January 1, 2014. Sec. 1 of HB 2912 provides: “Section 21.005, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended to read as [above].” Sec. 62(a) of HB 2912 provides: “Section 21.005(b), Estates Code, as added by this Act, applies 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.”

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.004 of SB 1093 provides: “Section 21.005, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 22.001. APPLICABILITY OF DEFINITIONS

(a) [No change.]

(b) If Title 3 [~~Chapter XIII~~] provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Title 3 [~~Chapter XIII~~] applies in that title [~~chapter~~].

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.005 of SB 1093 provides: “Section 22.001(b), Estates Code, as effective January 1, 2014, is amended to conform to Sections 1.02 and 3.02(c), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 22.017. INDEPENDENT EXECUTOR.

“Independent executor” means the personal representative of an estate under independent administration as provided by Chapter 401 and Section 402.001 [~~Section 145~~]. The term includes an independent administrator.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.006 of SB 1093 provides: “Section 22.017, Estates Code, as

effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

² Section 63 of Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014, provides: “To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.”

Attachment 6 – 2013 Amendments to the Texas Estates Code (Decedents' Estates)

[The following excerpts reflect amendments made by H.B. 1755, H.B. 2621, H.B. 2912, and S.B. 1093.]

Sec. 32.001. GENERAL PROBATE COURT JURISDICTION.

(a) – (c) [No change.]

~~(d) [(e) Nature of Proceeding.]~~ The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. Sec. 2 of HB 2912 provides: "Notwithstanding the transfer of Section 2, Texas Probate Code, to the Estates Code and redesignation as Section 2 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Subsection (e), Section 2, Texas Probate Code, is transferred to Chapter 32, Estates Code, redesignated as Subsection (d), Section 32.001, Estates Code, and amended to read as [above]."

Sec. 32.005. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT

(a) [No change.]

(b) This section shall be construed in conjunction and in harmony with Chapter 401 and Section 402.001 ~~[Section 145]~~ and all other sections of this title relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.007 of SB 1093 provides: "Section 32.005(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY.

In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

(1) an action by or against a trustee;

(2) an action involving an inter vivos trust, testamentary trust, or charitable trust;

(3) an action by or against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. Sec. 62(d) of HB 2912 provides: "The changes in law made by Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, and Section 53.107, Estates Code, as added by this Act, 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."

CHAPTER 34. MATTERS RELATING TO CERTAIN OTHER TYPES OF PROCEEDINGS

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.008 of SB 1093 provides: "Subtitle A, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapter 34, and a heading is added to that chapter to read as [above]."

Sec. 34.001 ~~[5B]~~. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING.

(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this subtitle, Title 1, Subtitle X, Title 2, Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355 [~~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 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.009 of SB 1093 provides: "Notwithstanding the transfer of Sections 5B and 5C, Texas Probate Code, to the Estates Code and redesignation as Sections 5B and 5C of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Sections 5B and 5C, Texas Probate Code, are transferred to Chapter 34, Estates Code, as added by this Act, redesignated as Sections 34.001 and 34.002, Estates Code, and amended to read as [above]."

Sec. 34.002 [5C]. ACTIONS TO COLLECT DELINQUENT PROPERTY TAXES.

(a) This section applies only to a decedent's estate that:

(1) is being administered in a pending probate proceeding;

(2) owns or claims an interest in property against which a taxing unit has imposed ad valorem taxes that are delinquent; and

(3) is not being administered as an independent administration under Chapter 401 and Section 402.001 [~~Section 145 of this code~~].

(b) Notwithstanding any provision of this code to the contrary, if the probate proceedings are pending in a foreign jurisdiction or in a county other than the county in which the taxes were imposed, a suit to foreclose the lien securing payment of the taxes or to enforce personal liability for the taxes must be brought under Section 33.41, Tax Code, in a court of competent jurisdiction in the county in which the taxes were imposed.

(c) If the probate proceedings have been pending for four years or less in the county in which the taxes were imposed, the taxing unit may present a claim for the delinquent taxes against the estate to the personal representative of the estate in the probate proceedings.

(d) If the taxing unit presents a claim against the estate under Subsection (c) [~~of this section~~]:

(1) the claim of the taxing unit is subject to each applicable provision in Subchapter A, Chapter 124, Subchapter B, Chapter 308, Subchapter F, Chapter 351, and Chapters 355 and 356 [~~Parts 4 and 5, Chapter VIII, of this code~~] that relates to a claim or the enforcement of a claim in a probate proceeding; and

(2) the taxing unit may not bring a suit in any other court to foreclose the lien securing payment of the taxes or to enforce personal liability for the delinquent taxes before the first day after the fourth anniversary of the date the application for the probate proceeding was filed.

(e) To foreclose the lien securing payment of the delinquent taxes, the taxing unit must bring a suit under Section 33.41, Tax Code, in a court of competent jurisdiction for the county in which the taxes were imposed if:

(1) the probate proceedings have been pending in that county for more than four years; and

(2) the taxing unit did not present a delinquent tax claim under Subsection (c) [~~of this section~~] against the estate in the probate proceeding.

(f) In a suit brought under Subsection (e) [~~of this section~~], the taxing unit:

(1) shall make the personal representative of the decedent's estate a party to the suit; and

(2) may not seek to enforce personal liability for the taxes against the estate of the decedent.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. See transitional note following Sec. 34.001.

Sec. 51.203. SERVICE OF NOTICE OF INTENTION TO TAKE DEPOSITIONS IN CERTAIN MATTERS.

(a) – (b) [No change.]

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

(1) [~~commission may issue for taking~~] the depositions for which the notice was posted may be taken; and

(2) the judge may file cross-interrogatories if no person appears.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. Sec. 62(e) of HB 2912 provides: "The changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013,

404.001(a), 404.003, 404.005(b) and (c), and 551.001(a), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.”

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM.

(a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of any person, including:

(1) a person who has a legal disability under state or federal law;

(2) a nonresident;

(3) an unborn or unascertained person; [øø]

(4) an unknown heir;

(5) a missing heir; or

(6) an unknown or missing person for whom cash is deposited into the court's registry under Section 362.011.

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

(1) tax the compensation as costs in the probate proceeding and order the compensation to be paid out of the estate or by any party at any time during [; to be taxed as costs in] the proceeding; or

(2) for an attorney ad litem appointed under Subsection (a)(6), order that the compensation be paid from the cash on deposit in the court's registry as provided by Section 362.011.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 53.107. INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE.

The following do not apply to probate proceedings:

(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE.

Except as provided by Section 51.203, the Texas Rules of Evidence [~~rules relating to witnesses and evidence that apply in the district court~~] apply in a proceeding arising under this title to the extent practicable.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014.

Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS.

If the decedent was survived by a spouse or minor child, the [~~The~~] homestead is not liable for the payment of any of the debts of the estate, other than:

(1) purchase money for the homestead;

(2) taxes due on the homestead;

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

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

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

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

(7) a reverse mortgage.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 62(f) of HB 2912 provides: “The changes in law made by Sections 102.004, 201.001(f) and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by this Act, and Sections 201.001(i) and (j), 201.052(a-1), 202.0025, and 202.057, Estates Code, as added by this Act, 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. 111.051. DEFINITIONS.

In this subchapter:

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

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

(B) a possible recipient of the property subject to a possible nontestamentary transfer.

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

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

(B) a pension trust under Chapter 111, Property Code; and

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

(2) – (6) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 61 of HB 2912 provides: “(a) The changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, represent the fundamental policy of this state for the protection of its residents and are intended to prevail over the laws of another state or jurisdiction, to the extent those laws are in conflict with Texas law.

(b) The changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, apply to

an account at a financial institution, an insurance contract, an annuity contract, a retirement account, a beneficiary designation, or another similar arrangement of a person who dies on or after the effective date of this Act.”

Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN NONTTESTAMENTARY TRANSFERS.

(a) This section applies if more than 50 percent of the:

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

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

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

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

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

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

(1) whether a nontestamentary transfer of the assets or interests has occurred; or

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

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

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 111.051.

Sec. 122.051. FORM AND CONTENTS.

(a) A disclaimer of property receivable by a beneficiary must be evidenced by written memorandum acknowledged before:

(1) a notary public; or

(2) another person authorized to take acknowledgments of conveyances of real estate.

(b) A disclaimer of property receivable by a beneficiary must include a statement regarding whether the beneficiary is a child support obligor described by Section 122.107.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2621), effective January 1, 2014. See transitional note following Sec. 3 of HB 2621 provides: "The change in law made by this Act applies only to a disclaimer filed on or after the effective date of this Act. A disclaimer filed before the effective date of this Act is governed by the law in effect on the date the disclaimer was filed, and the former law is continued in effect for that purpose."

Sec. 122.057. EXTENSION OF TIME FOR CERTAIN DISCLAIMERS.

[Repealed]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014 (See transitional note following Sec. 60).

Sec. 122.107. ATTEMPTED DISCLAIMERS BY CERTAIN CHILD SUPPORT OBLIGORS INEFFECTIVE.

(a) A disclaimer made by a beneficiary who is a child support obligor of estate property that could be applied to satisfy the beneficiary's child support obligation is not effective if the beneficiary owes child support arrearages that have been:

(1) administratively determined by the Title IV-D agency as defined by Section 101.033, Family Code, in a Title IV-D case as defined by Section 101.034, Family Code; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(b) After distribution of estate property to a beneficiary described by Subsection (a), the child support obligee to whom the child support arrearages are owed may enforce the child support obligation by a lien or by any other remedy provided by law.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2621), effective January 1, 2014. See transitional note following Sec. 122.051.

Sec. 152.001. APPLICATION AUTHORIZED

(a) [No change.]

(b) An applicant may file an application under this section only if:

(1) an application or affidavit has not been filed and is not pending under Section [145,] 256.052, 256.054, or 301.052 or Chapter 205 or 401; and

(2) the applicant needs to:

(A) obtain funds for the payment of the decedent's funeral and burial expenses; or

(B) gain access to accommodations rented by the decedent that contain the decedent's personal property and the applicant has been denied access to those accommodations.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. See transitional note following Sec. 6.010 of SB 1093 provides: "Section 152.001(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 152.102. HEARING; ISSUANCE OF ORDER

(a) [No change.]

(b) Subsection (a) applies:

(1) without regard to whether the decedent died intestate or testate; ~~and~~

(2) regardless of whether the surviving spouse is designated by the decedent's will as the executor of the decedent's estate; and

(3) subject to the prohibition described by Section 711.002(l), Health and Safety Code.

(c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. See transitional note following Sec. 6.011 of SB 1093 provides: "Section 152.102(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 2, Chapter

707 (H.B. 549), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 201.051. MATERNAL INHERITANCE.

For purposes of inheritance, a child is the child of the child's biological or adopted mother, and the child and the child's issue shall inherit from the child's mother and the child's maternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue. However, if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 201.052. PATERNAL INHERITANCE

(a) [No change.]

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

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

(c) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH.

Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP.

A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent's estate;

(2) a person claiming to be a [secured] creditor or the owner of all or part of the decedent's estate;

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 202.009. ATTORNEY AD LITEM [REPRESENTATION OF INTERESTS OF CERTAIN PERSONS].

~~(a) The [If it appears to the court in a proceeding to declare heirship that there is or may be a living heir whose name or whereabouts is unknown, or that a defendant is an incapacitated person, the] court shall [may] appoint an attorney ad litem in a proceeding to declare heirship [or guardian ad litem] to represent the interests of heirs whose names or locations are unknown [that person. The court may not appoint an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person].~~

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

**Sec. 202.056. WAIVER OF SERVICE OF CITATION
[ON CERTAIN PERSONS NOT PERMITTED].**

A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who:

(1) is younger than 12 years of age [~~or older, but younger than 19 years of age,~~] may [~~not~~] waive citation required by this subchapter to be served on the distributee; and

(2) is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION.

(a) A person who files an application under Section 202.005 shall file with the court:

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

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

(A) that the citation was served as required by this subchapter;

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

(C) the name of each person who waived citation under Section 202.056.

(b) The court may not enter an order in the proceeding to declare heirship under Subchapter E until the affidavit or certificate required by Subsection (a) is filed.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 202.151. ~~[WRITTEN]~~ EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP.

(a) The court may require that [~~all—of~~] any testimony [~~part of the evidence~~] admitted as evidence in a proceeding to declare heirship be [÷

~~{(1)}~~ reduced to writing and subscribed and sworn to by the witnesses, respectively [÷ and

~~{(2)}~~ filed in the proceeding and recorded in the judge's probate docket].

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 204.151. APPLICABILITY OF SUBCHAPTER.

This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who[÷

~~[(1)] petitions the court for a determination of right of inheritance as authorized by Section 201.052(c); and~~

~~{(2)}~~ claims[÷

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 62(b) of HB 2912 provides: "The changes in law made by this Act to Sections 204.151 and 204.152, Estates Code, apply only to a proceeding to declare heirship commenced on or after January 1, 2014. A proceeding to declare heirship commenced before that date 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."

Sec. 204.152. PRESUMPTION; [REQUIRED FINDINGS IN ABSENCE OF] REBUTTAL [EVIDENCE].

The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. [Unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal

~~evidence, the court shall find that the individual described by Section 204.151:~~

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 204.151.

Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING A WILL.

(a) – (b) [No change.]

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 254.005. FORFEITURE CLAUSE.

A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that [unenforceable if]:

(1) just cause existed for bringing the action; and

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2380), effective January 1, 2014.

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF [WRITTEN] WILL [GENERALLY].

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

(1) each applicant's name and domicile;

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

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

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

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

(6) the date of the will;

(7) the name, state of residence, and physical address where service can be had [residence] of the [:

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

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

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

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

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

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

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 256.053. FILING OF [WRITTEN] WILL WITH APPLICATION FOR PROBATE GENERALLY REQUIRED.

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

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO [WRITTEN] WILL IS PRODUCED.

In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a [written] will cannot produce the will in court, the application must state:

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF WILL.

(a) – (b) [No change.]

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

(1) 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

(2) 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 256.153. PROOF OF EXECUTION OF [AUTHORIZED METHODS OF PROVING] ATTESTED [WRITTEN] WILL.

(a) An attested [written] will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.

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

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

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

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

(A) one or more of the attesting witnesses;
or

(B) the testator, if the testator signed the will; or

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

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a

member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

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

(A) sworn testimony or affidavit taken in open court; or

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

**Sec. 256.154. PROOF OF EXECUTION
[AUTHORIZED METHODS] OF [PROVING]
HOLOGRAPHIC WILL.**

(a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator's handwriting. The evidence may be by:

(1) sworn testimony or affidavit taken in open court; or

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

(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will,

without the judge requiring the original will to be removed from the court's file and shown to the witness.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

**Sec. 256.155. PROCEDURES FOR DEPOSITIONS
WHEN NO CONTEST IS FILED.**

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

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

**Sec. 256.156. PROOF OF [WRITTEN] WILL NOT
PRODUCED IN COURT.**

(a) A ~~[written]~~ will that cannot be produced in court must be proved in the same manner as provided in Section 256.153 for an attested ~~[written]~~ will or Section 256.154 for a holographic will, as applicable. The same amount and character of testimony is required to prove the ~~[written]~~ will not produced in court as is required to prove a ~~[written]~~ will produced in court.

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

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

(2) the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

**Sec. 256.203. ESTABLISHING CONTENTS OF WILL
NOT IN COURT'S CUSTODY.**

If for any reason a ~~[written]~~ will is not in the court's custody, the court shall find the contents of the will by written order. Certified copies of the contents as established by the order may be:

(1) recorded in other counties; and

(2) used in evidence, as certified copies of ~~[written]~~ wills in the custody of the court may be used.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 257.052. FILING OF ~~[WRITTEN]~~ WILL WITH APPLICATION GENERALLY REQUIRED.

(a) An applicant for the probate of a ~~[written]~~ will as a muniment of title shall file the will with the application if the will is in the applicant's control.

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO ~~[WRITTEN]~~ WILL IS PRODUCED.

In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a ~~[written]~~ will as a muniment of title cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, to the extent known; and

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

(A) each devisee;

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

(C) in the case of partial intestacy, each heir of the testator.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 301.155. AUTHORIZED METHODS OF PROOF.

A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

(1) taken in open court; or

(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 304.001. ORDER OF PERSONS QUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE.

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

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

(2) the decedent's surviving spouse;

(3) the principal devisee of the decedent;

(4) any devisee of the decedent;

(5) the next of kin of the decedent;

(6) a creditor of the decedent;

(7) any person of good character residing in the county who applies for the letters; ~~[and]~~

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

(9) any appointed public probate administrator.

(b) [No change.]

(c) If persons [applicants for letters testamentary or of administration] are equally entitled to letters testamentary or of administration [the letters], the court:

(1) shall grant the letters to the person [applicant] who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons [applicants].

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 62(c) of HB 2912 provides: "The changes in law made by this Act to Section 304.001(c), Estates Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after January 1, 2014. An application for the grant of letters testamentary or of administration of a decedent's estate filed before that date 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."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL REPRESENTATIVE.

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

(1) taken and filed the oath prescribed by Subchapter B;

(2) filed [given] the required bond with the clerk; and

(3) obtained the judge's approval of the bond [; and

~~[(4) filed the bond with the clerk].~~

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 305.003. PERIOD FOR TAKING OATH [AND GIVING BOND].

An oath may be taken and subscribed [~~and a bond may be given and approved~~] at any time before:

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 305.004. PERIOD FOR GIVING BOND.

(a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

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

(B) the date of any order modifying the bond requirement; or

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 308.054. PERMISSIVE NOTICE TO UNSECURED CREDITOR.

(a) [No change.]

(b) Notice given under Subsection (a) must:

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

(2) include:

(A) the date the letters testamentary or of administration held by the personal representative were issued to the representative;

(B) the address to which the claim may be presented; and

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

(i) the representative;

(ii) the representative's attorney; or

(iii) "Representative, Estate of _____" (naming the estate).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 309.051. INVENTORY AND APPRAISEMENT.

(a) Except as provided by Subsection (c) or Section 309.056 or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the

representative's possession or of which the representative has knowledge. The inventory must:

(1) include:

(A) all estate real property located in this state; and

(B) all estate personal property regardless of where the property is located; and

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

(b) – (d) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

(a) [No change.]

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, 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, appraisal, 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 and appraisal. The affidavit in lieu of the inventory, appraisal, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(c) [No change.]

(d) An independent executor is not liable for choosing to file:

(1) an affidavit under this section in lieu of filing an inventory, appraisal, and list of claims, if permitted by law; or

(2) an inventory, appraisal, and list of claims in lieu of filing an affidavit under this section.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF.

(a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 309.103. CORRECTION OF INVENTORY, APPRAISEMENT, OR LIST OF CLAIMS FOR ERRONEOUS OR UNJUST ITEM.

(a) Any interested person who considers an inventory, appraisal, or list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims [filed for the estate] to be erroneous or unjust in any particular may:

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

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

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisal, or list of claims or an affidavit in lieu of

the inventory, appraisal, and list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and

(2) if the complaint relates to an inventory, appraisal, or list of claims, appointing appraisers to make a new appraisal correcting the erroneous or unjust item and requiring the filing of the new appraisal before the 21st day after the date of the order.

(c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 351.351. APPLICABILITY.

This subchapter does not apply to:

(1) the appointment of an independent executor or administrator under Section 401.002 or 401.003(a) [~~145(c), (d), or (e)~~]; or

(2) the appointment of a successor independent executor under Section 404.005 [~~154A~~].

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.012 of SB 1093 provides: "Section 351.351, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 352.004. DENIAL OF COMPENSATION.

The court may, on application of an interested person or on the court's own motion, wholly or partly deny a commission allowed by this subchapter if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 404.003 [~~149C~~] or Subchapter B, Chapter 361.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.013 of SB 1093 provides: "Section 352.004, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 353.053. ALLOWANCE IN LIEU OF EXEMPT PROPERTY.

(a) [No change.]

(b) The allowance in lieu of a homestead may not exceed \$45,000 [~~\$15,000~~], and the allowance in lieu of other exempt property may not exceed \$30,000 [~~\$5,000~~], excluding the family allowance for the support of the surviving spouse, minor children, and adult incapacitated children provided by Subchapter C.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 789), effective January 1, 2014. Sec. 1.02 of HB 789 provides "The changes in law made by this article to Section 273, Texas Probate Code, 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. 353.101. FAMILY ALLOWANCE.

(a) – (c) [No change.]

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

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

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

(3) any of the decedent's adult incapacitated children, if:

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN CIRCUMSTANCES.

If a personal representative gives a notice permitted by Section 308.054 to an unsecured creditor for money and the creditor's claim is not presented before the 121st day [within four months] after the date of receipt of the notice, the claim is barred.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 361.151. PAYMENT TO ESTATE WHILE OFFICE OF PERSONAL REPRESENTATIVE IS VACANT.

(a) [No change.]

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT.

(a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b) [Subsections (c) and (d)].

(b) Citation issued under Subsection (a) must:

(1) contain:

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

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

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

(2) be given[-

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

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

(1) certified mail, return receipt requested; or

(2) electronic delivery, including facsimile or e-mail.

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

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

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

(1) that the citation was given as required by this section;

(2) the name of each person to whom the citation was given, if the person's name is not shown on the proof of delivery;

(3) the name of each person executing a waiver of citation; and

(4) that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY.

(a) If, on final settlement of an estate, any of the estate remains in the personal representative's possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

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

(c) The court shall order the personal representative to deposit in an account in the court's registry all money, including the proceeds of any conversion under Subsection (b), to which a person who is unknown or missing is entitled. The court shall

hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN ESTATE FULLY ADMINISTERED.

The court shall enter an order discharging a personal representative from the representative's trust and declaring the estate closed when:

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

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

(3) the representative has:

(A) delivered all of the estate remaining in the representative's possession to the person or persons entitled to receive that part of the estate; and

(B) with respect to the portion of the estate distributable to an unknown or missing person, complied with an order of the court under Section 362.011.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL

(a) Any person capable of making a will may provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of any required [an] inventory, appraisal, and list of claims of the person's estate.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTE CONSENT.

(a) – (c) [No change.]

(d) If a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those 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 Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the 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 on the termination of the 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.

(e) – (h) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006.

Sec. 401.006. 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 401.002 or 401.003 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 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 32.006. In addition, Sec. 62(h)

provides: "An inference may not be made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act."

Sec. 403.055. 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 308.054 shall give to the independent executor notice of the nature and amount of the claim before the 121st ~~[not later than the 120th]~~ day after the date the notice is received or the claim is barred.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 403.056. NOTICES REQUIRED BY CREDITORS.

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

(1) a written instrument that complies with Section 355.004 and 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 that complies with Section 355.004 or a pleading filed in the court in which the administration of the estate is pending.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 102.004.

Sec. 404.001. ACCOUNTING.

(a) At any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate ~~[an independent administration was created and the order appointing an independent executor was entered by the probate court]~~, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

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

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

(3) the debts that have been paid;

(4) the debts and expenses, if any, still owing by the estate;

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

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR WITHOUT NOTICE

The probate court, on the court's own motion or on the motion of any interested person, and without notice, may remove an independent executor appointed under this subtitle when:

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

(A) the independent executor's whereabouts are unknown;

(B) the independent executor is eluding service; or

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

(a) The probate court, on the court's own motion, may remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intent to remove the independent executor,

by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

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

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a 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, unless that deadline is extended by court order.

(b) The probate court, 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 90 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;

(2) ~~[(4)]~~ the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(3) ~~[(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;

(4) ~~[(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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 404.0036. REMOVAL ORDER.

(a) ~~[(b)]~~ The order of removal of an independent executor shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed independent executor. The order of removal shall require that letters issued to the removed independent executor shall be surrendered and that all letters shall be canceled of record.

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF INDEPENDENT EXECUTOR.

(a) ~~[(c)]~~ An independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR.

(a) [No change.]

(b) Except as otherwise provided by this subsection, if ~~[(f)]~~ a distributee described in 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 probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may not enter an order continuing

independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee. If a distributee described in this section is a minor and has no guardian of the person, a natural guardian of the minor may sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Except as otherwise provided by this subsection, if [H] a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust 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 on the termination of the trust. If a person considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor.

(d) – (i) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Sec. 405.001. ACCOUNTING AND DISTRIBUTION.

(a) [No change.]

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that

the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court may:

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

Sec. 455.001. DEFINITION.

In this chapter, "public probate administrator" means the public probate administrator appointed under Section 25.00251, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.002. BOND OF PUBLIC PROBATE ADMINISTRATOR.

(a) The public probate administrator must execute an official bond of at least \$100,000 conditioned as required by law and payable to the statutory probate court judge who appointed the public probate administrator.

(b) In addition to the official bond of office, at any time, for good cause, the statutory probate court judge who appointed the public probate administrator may require the administrator to post an additional corporate surety bond for individual estates. The additional bonds shall bear the written approval of the judge requesting the additional bond.

(c) The county may choose to self-insure the public probate administrator for the minimum bond amount required by this section.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.003. FUNDING OF PUBLIC PROBATE ADMINISTRATOR'S OFFICE.

A public probate administrator is entitled to commissions under Subchapter A, Chapter 352, to be paid into the county treasury. The public probate

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administrator's office, including salaries, is funded, in part, by the commissions.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.004. POWERS AND DUTIES.

(a) On receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, the public probate administrator shall take prompt possession or control of the decedent's property located in the county that:

(1) is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation; or

(2) the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

(b) The public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, shall make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

(c) If the public probate administrator determines the decedent executed a will, the administrator shall file the will with the county clerk.

(d) The public probate administrator has all of the powers and duties of an administrator under this title.

(e) The public probate administrator may dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

(f) The statutory probate court judge or commissioners court may request accountings in addition to accountings otherwise required by this title.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.005. INFORMING PUBLIC PROBATE ADMINISTRATOR.

(a) If a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, the officer or employee may inform the public probate administrator of that fact.

(b) If a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, the person in charge of the hospital or facility may give immediate notice of that fact to the

public probate administrator of the county in which the hospital or facility is located.

(c) A funeral director in control of a decedent's remains may notify the public probate administrator if:

(1) none of the persons listed in Section 711.002, Health and Safety Code, can be found after a reasonable inquiry or contacted by reasonable means; or

(2) any of the persons listed in Section 711.002, Health and Safety Code, refuses to act.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.006. PUBLIC PROBATE ADMINISTRATOR'S INITIATION OF ADMINISTRATION.

(a) The public probate administrator shall investigate a decedent's estate and circumstances to determine if the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent found in the county or believed to be domiciled in the county in which the administrator is appointed does not have a personal representative appointed for the decedent's estate.

(b) The public probate administrator shall secure a decedent's estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that:

(1) the decedent has an estate that may be subject to loss, injury, waste, or misappropriation; or

(2) there are other circumstances relating to the decedent that require action by the public probate administrator.

(c) To establish reasonable cause under Subsection (a), the public probate administrator may require an information letter about the decedent that contains the following:

(1) the name, address, date of birth, and county of residence of the decedent;

(2) a description of the relationship between the interested person and the decedent;

(3) a statement of the suspected cause of death of the decedent;

(4) the names and telephone numbers of any known friends or relatives of the decedent;

(5) a description of any known property of the decedent, including the estimated value of the property; and

(6) a statement of whether the property is subject to loss, injury, waste, or misappropriation.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.007. ACCESS TO INFORMATION.

(a) A public probate administrator who has made an investigation under Section 455.006 may present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter.

(b) On presentation of a statement under Subsection (a), a statutory probate court judge may issue an order authorizing the public probate administrator to take possession or control of property under this chapter. A public probate administrator may record the order in any county in which property subject to the order is located.

(c) On presentation of an order issued under this section, a financial institution, governmental or private agency, retirement fund administrator, insurance company, licensed securities dealer, or any other person shall perform the following without requiring a death certificate or letters of administration and without inquiring into the truth of the order:

(1) provide the public probate administrator complete information concerning property held in the name of the decedent referenced in the order, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation; and

(2) grant the public probate administrator access to a safe deposit box rented in the name of the decedent referenced in the order, without charge, for the purpose of inspection and removal of its contents.

(d) Costs and expenses incurred in drilling or forcing a safe deposit box open under Subsection (c) shall be paid by the decedent's estate.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.008. SMALL ESTATES.

(a) If gross assets of an estate do not exceed 10 percent of the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate administrator may act without issuance of

letters testamentary or of administration if the court approves a statement of administration stating:

(1) the name and domicile of the decedent;

(2) the date and place of death of the decedent; and

(3) the name, address, and relationship of each known heir or devisee of the decedent.

(b) On approval of the statement of administration, the public probate administrator may:

(1) take possession of, collect, manage, and secure the personal property of the decedent;

(2) sell the decedent's personal property at private or public sale or auction, without a court order;

(3) distribute personal property to the estate's personal representative if one is appointed after the statement of administration is filed;

(4) distribute personal property to a distributee of the decedent who presents an affidavit complying with Chapter 205;

(5) sell or abandon perishable property of the decedent if necessary to preserve the estate;

(6) make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets;

(7) distribute to a minor heir or devisee for whom a guardian has not been appointed the share of an intestate estate or a devise to which the heir or devisee is entitled; and

(8) distribute allowances and exempt property as provided by this title.

(c) On the distribution of property and internment of the decedent under this section, the public probate administrator shall file with the clerk an affidavit, to be approved by the court, detailing:

(1) the property collected;

(2) the property's distribution;

(3) the cost of internment; and

(4) the place of internment.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.009. SMALL ESTATE AFFIDAVIT.

(a) If gross assets of an estate do not exceed the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate

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administrator may file an affidavit that complies with Chapter 205 for approval by the statutory probate court judge.

(b) If the statutory probate court judge approves the affidavit, the affidavit:

(1) must be maintained or recorded as provided by Section 205.005; and

(2) has the effect described by Section 205.007.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.010. GRANT OF ADMINISTRATION.

(a) A public probate administrator shall file an application for letters of administration or administration with will annexed as provided by this title:

(1) if gross assets of an estate exceed the maximum amount authorized for a small estate affidavit under Section 205.001;

(2) if the property of the decedent cannot be disposed of using other methods detailed in this chapter; or

(3) at the discretion of the public probate administrator or on order of the statutory probate court judge.

(b) After issuance of letters of administration, the public probate administrator is considered a personal representative under this title and has all of the powers and duties of a personal representative under this title.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.011. WITHDRAWAL OF PUBLIC PROBATE ADMINISTRATOR AND APPOINTMENT OF SUCCESSOR.

(a) If a public probate administrator has taken any action under Section 455.008, 455.009, or 455.010 and a qualified person more entitled to serve as a personal representative under Section 304.001 comes forward or a will of a decedent is found naming an executor, the public probate administrator may surrender the administration of the estate and the assets of the estate to the person once the person has qualified under this title.

(b) Before surrendering the administration of the estate, the public probate administrator must file a verified affidavit that shows fully and in detail:

(1) the condition of the estate;

(2) the charges and claims that have been approved or established by suit or that have been rejected and may be established later;

(3) the amount of each claim that has been rejected and may be established later;

(4) the property of the estate in the administrator's possession; and

(5) any other facts that are necessary in determining the condition of the estate.

(c) The court may require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate under this section.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 455.012. DEPOSIT OF FUNDS INTO THE COUNTY TREASURY.

The public probate administrator shall deposit all funds coming into the custody of the administrator in the county treasury. Funds deposited must be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 551.001. PAYMENT OF CERTAIN SHARES OF ESTATE TO STATE.

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

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

(2) the settlement of the final account of the executor or administrator.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2912), effective January 1, 2014. See transitional note following Sec. 51.203.

Attachment 7 – 2013 Amendments to the Texas Estates Code (Guardianship)

[The following excerpts reflect amendments made by H.B. 2080, H.B. 2407, S.B. 1093, and S.B. 1235.]

Sec. 1002.002. ATTORNEY AD LITEM.

"Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, ~~or~~ an unborn person, or another person described by Section 1054.007 in a guardianship proceeding.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080¹), effective January 1, 2014. Sec. 36(a) of HB 2080 provides: "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. 1002.015. [GUARDIANSHIP MATTER;] GUARDIANSHIP PROCEEDING; PROCEEDINGS IN GUARDIANSHIP; PROCEEDINGS FOR GUARDIANSHIP].

The term [terms "guardianship matter," "guardianship proceeding" means [proceeding," "proceedings in guardianship," 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 title, including:

(1) 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;

(2) an application, petition, or motion regarding guardianship or an alternative to guardianship under this title;

(3) a mental health action; and

(4) an application, petition, or motion regarding a trust created under Chapter 1301.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.014 of SB 1093 provides: "Section 1002.015, Estates Code, as effective January 1, 2014, is amended to conform to Section 1, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

CHAPTER 1021. GENERAL PROVISIONS

Sec. 1021.001. 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 1204.001:

(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 Chapter 1155 and Subpart H, Part 2, Subtitle Z; and

¹ Section 38 of Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014, provides: "To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes."

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, 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);

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; 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 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014. Sec. 6.015(a) of SB 1093 provides: "Subtitle B, Title 3, Estates Code, as effective January 1, 2014, is amended to conform to Sections 2-7, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and Sections 66.01-66.04, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, by adding Chapters 1021, 1022, and 1023 to read as [above]."

CHAPTER 1022. JURISDICTION

Sec. 1022.001. GENERAL PROBATE 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 1021.001 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.002. 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.

(d) [Sec. 604. PROCEEDING IN REM.] From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. Sec. 2(a) of HB 2080 provides: "Notwithstanding the transfer of Section 604, Texas Probate Code, to the Estates Code and redesignation as Section 604 of that code effective January 1, 2014, by Section 3.01(a), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section 604, Texas Probate Code, is transferred to Chapter 1022, Estates Code, as added by H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, and redesignated as Subsection (d), Section 1022.002, Estates Code, to read as [above]." Sec. 2(b) of HB 2080 provides: "This section takes effect only if H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, is enacted and becomes law and adds Section 1022.002, Estates Code. If that legislation does not become law, or becomes law but does not add that section, this section has no effect."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1093²), effective January 1, 2014. Sec. 6.015(a) of

² Section 1.002(b) of Acts 2013, 83rd Legislature, Ch. ____ (SB 1093), effective January 1, 2014, provides: "If any provision of this Act conflicts with a statute enacted by the 83rd Legislature, Regular Session, 2013, the statute controls."

SB 1093 provides: "Subtitle B, Title 3, Estates Code, as effective January 1, 2014, is amended to conform to Sections 2-7, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and Sections 66.01-66.04, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, by adding Chapters 1021, 1022, and 1023 to read as [above]."

Sec. 1022.003. 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) 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) 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.004. 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.005. 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) 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 1022.006 or with the jurisdiction of any other court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.006. 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.007. TRANSFER OF 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 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 to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and

(2) 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 to the guardianship proceeding.

(b) Notwithstanding any other provision of this title, 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1022.008. 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 to the guardianship proceeding 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001. Sec. 6.015(b) of SB 1093 provides: “Subsections (b) and (c), Section 609, Texas Probate Code, are transferred to Chapter 1022, Estates Code, as added by Subsection (a) of this section, and redesignated as Subsections (b) and (c), Section 1022.008, Estates Code.”

CHAPTER 1023. VENUE

Sec. [610] 1023.001. VENUE FOR APPOINTMENT OF GUARDIAN.

(a) – (c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001. Sec. 6.015(c) of SB 1093 provides: “Section 610, Texas Probate Code, is transferred to Chapter 1023, Estates Code, as added by Subsection (a) of this section, and redesignated as Section 1023.001, Estates Code.”

Sec. 1023.002. CONCURRENT VENUE AND TRANSFER FOR WANT OF VENUE.

(a) If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001. Sec. 6.015(d) of SB 1093 provides: “Subsections (b), (c), and (d), Section 611,

Texas Probate Code, are transferred to Chapter 1023, Estates Code, as added by Subsection (a) of this section, and redesignated as Subsections (b), (c), and (d), Section 1023.002, Estates Code.”

Sec. 1023.003. APPLICATION FOR TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY.

When a guardian or any other person desires to transfer 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.004. NOTICE.

(a) On filing an application to transfer 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001. Sec. 6.015(e) of SB 1093 provides: “Subsection (b), Section 613, Texas Probate Code, is transferred to Chapter 1023, Estates Code, as added by Subsection (a) of this section, and redesignated as Subsection (b), Section 1023.004, Estates Code.”

Sec. 1023.005. COURT ACTION.

(a) On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order authorizing the transfer on payment on behalf of the estate of all accrued costs.

(b) In an order entered under Subsection (a), 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.006. TRANSFER OF RECORD.

When an order of transfer is made under Section 1023.005, 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:

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

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.007. TRANSFER EFFECTIVE.

The order transferring a guardianship does not take effect until:

(1) the case file and a certified copy of the index required by Section 1023.006 are filed in the office of the county clerk of the county to which the guardianship was ordered transferred; 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 by the county clerk of the county to which the guardianship was ordered transferred.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.008. CONTINUATION OF GUARDIANSHIP.

When a guardianship is transferred from one county to another in accordance with this chapter, the guardianship proceeds in the court to which it was transferred 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.009. NEW GUARDIAN APPOINTED ON TRANSFER.

If it appears to the court that transfer of the guardianship is in the best interests of the ward, but that because of the transfer it is not in the best interests of the ward for the guardian of the estate to continue to serve in that capacity, the court may in its order of

transfer 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 title in a case in which a guardian resigns.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP.

Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. See transitional note following Sec. 1021.001.

Sec. 1051.001. ISSUANCE OF NOTICE OR PROCESS IN GENERAL.

(a) Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice in a guardianship proceeding ~~[matter]~~ except in a situation in which this title expressly provides for citation or the giving of notice.

(b) If this title 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. A court that requires that notice be given shall prescribe the form and manner of service of the notice and the return of service.

(c) Unless a court order is required by this title, the county clerk without a court order shall issue:

(1) necessary citations, writs, and other process in a guardianship proceeding ~~[matter]~~; and

(2) all notices not required to be issued by a guardian.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.016 of SB 1093 provides: "Section 1051.001, Estates Code, as effective January 1, 2014, is amended to conform to Section 13, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as[above]."

Sec. 1051.102. ISSUANCE OF CITATION FOR APPLICATION FOR GUARDIANSHIP.

(a) – (c) [No change.]

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.017 of SB 1093 provides: "Section 1051.102, Estates Code, as effective January 1, 2014, is amended to conform to Section 6, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, by adding Subsection (d) to read as [above]."

Sec. 1051.103. SERVICE OF CITATION FOR APPLICATION FOR GUARDIANSHIP.

(a) The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

- (1) a proposed ward who is 12 years of age or older;
- (2) the proposed ward's parents, if the whereabouts of the parents are known or can be reasonably ascertained;
- (3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;
- (4) the proposed ward's spouse, if the whereabouts of the spouse are known or can be reasonably ascertained; and
- (5) the person named in the application to be appointed guardian, if that person is not the applicant.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1051.252 that is required in the citation issued under Section 1051.102.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.018 of SB 1093 provides: "Section 1051.103, Estates Code, as effective January 1, 2014, is amended to conform to Section 6, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP.

(a) The person filing an application for guardianship shall mail a copy of the application and a

notice containing the information required in the citation issued under Section 1051.102 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) each adult child of the proposed ward;
- (2) each adult sibling of the 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 Subchapter E, Chapter 1104, 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 proposed 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 as required by Section 1101.001(b)(11) or (13) 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.

(b) – (c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.019 of SB 1093 provides: "Section 1051.104(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 6, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1051.152. VALIDITY OF SERVICE AND RETURN ON CITATION OR NOTICE SERVED BY POSTING.

(a) A citation or notice in a guardianship proceeding ~~[matter]~~ that is required to be served by posting and is issued in conformity with this title, and

the service of and return of the citation or notice, is valid if:

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and

(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.020 of SB 1093 provides: "Section 1051.152(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 13, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1051.253. SERVICE OF NOTICE OF INTENTION TO TAKE DEPOSITIONS IN CERTAIN PROCEEDINGS [MATTERS].

(a) – (b) [No change.]

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

(1) ~~[commission may issue for taking]~~ the depositions for which the notice was posted may be taken; and

(2) the judge may file cross-interrogatories if no person appears.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.021 of SB 1093 provides: "The heading to Section 1051.253, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1052.051. FILING PROCEDURES.

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

(b) – (c) [No change.]

(d) Except as provided by Subsection (e), the court clerk shall collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document.

(e) Notwithstanding any other law requiring the payment of a filing fee for the document, the following are not required to pay a fee on the filing of a document described by Subsection (a):

(1) a guardian;

(2) an attorney ad litem;

(3) a guardian ad litem;

(4) a person or entity who files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure;

(5) a guardianship program;

(6) a governmental entity; and

(7) a government agency or nonprofit agency providing guardianship services.

(f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:

(1) the guardianship estate; or

(2) the county treasury, if the guardianship estate is insufficient to pay the amount of the filing fee.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.022 of SB 1093 provides: "Section 1052.051(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 8, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1053.051. APPLICABILITY OF CERTAIN LAWS.

A law regulating costs in ordinary civil cases applies to a guardianship proceeding ~~[matter]~~ unless otherwise expressly provided by this title.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.023 of SB 1093 provides: "Section 1053.051, Estates Code, as effective January 1, 2014, is amended to conform to Section 9, Chapter 1085 (S.B. 1196), Acts of the 82nd

Legislature, Regular Session, 2011, to read as [above].”

Sec. 1053.052. SECURITY FOR CERTAIN COSTS.

(a) The clerk may require a person who files an application, complaint, or opposition relating to a guardianship proceeding [matter], other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the [guardianship] proceeding before filing the application, complaint, or opposition.

(b) – (c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.024 of SB 1093 provides: “Section 1053.052(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 9, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

**SUBCHAPTER C. PROCEDURES FOR
GUARDIANSHIP PROCEEDINGS [MATTERS]**

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.025 of SB 1093 provides: “The heading to Subchapter C, Chapter 1053, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1053.101. CALLING OF DOCKETS.

The judge in whose court a guardianship proceeding is pending, as determined by the judge, shall:

(1) call guardianship proceedings [matters] in the proceedings [matters] regular order on both the guardianship and claim dockets; and

(2) issue necessary orders.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.026 of SB 1093 provides: “Section 1053.101, Estates Code, as effective January 1, 2014, is amended to conform to Section 10, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

**Sec. 1053.102. SETTING OF CERTAIN HEARINGS
BY CLERK.**

(a) If a judge is unable to designate the time and place for hearing a guardianship proceeding [matter] pending in the judge's court because the judge is absent from the county seat or is on vacation, disqualified, ill,

or deceased, the county clerk of the county in which the proceeding [matter] is pending may:

(1) designate the time and place for hearing;

(2) enter the setting on the judge's docket; and

(3) certify on the docket the reason that the judge is not acting to set the hearing.

(b) If, after the perfection of the service of notices and citations required by law concerning the time and place of hearing, a qualified judge is not present for a hearing set under Subsection (a), 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.027 of SB 1093 provides: “Section 1053.102, Estates Code, as effective January 1, 2014, is amended to conform to Section 11, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

**Sec. 1053.103. RENDERING OF DECISIONS,
ORDERS, DECREES, AND JUDGMENTS.**

The court shall render a decision, order, decree, or judgment in a guardianship proceeding [matter] in open court, except as otherwise expressly provided.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.028 of SB 1093 provides: “Section 1053.103, Estates Code, as effective January 1, 2014, is amended to conform to Section 16, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

**Sec. 1053.104. CONFIDENTIALITY OF CERTAIN
INFORMATION.**

(a) On request by a person protected by a protective order issued under Chapter 85, Family Code, or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, the court may exclude from any document filed in a guardianship proceeding:

(1) the address and phone number of the person protected by the protective order;

(2) the place of employment or business of the person protected by the protective order;

(3) the school attended by the person protected by the protective order or the day-care center or other child-care facility the person attends or in which the person resides; and

(4) the place at which service of process on the person protected by the protective order was effectuated.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

(1) strike the information described by Subsection (a) from the public records of the court; and

(2) maintain a confidential record of the information for use only by the court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1053.105. INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE.

The following do not apply to guardianship proceedings:

(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1054.002. TERM OF APPOINTMENT.

(a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward's best interests, the attorney's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian in accordance with Subchapter D, Chapter 1101;

(2) appoints a successor guardian; or

(3) [(2)] denies the application for appointment of a guardian.

(b) The term of appointment of an attorney ad litem appointed under Section 1054.001 continues after the court appoints a temporary guardian under Chapter 1251 unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.029 of SB 1093 provides: "Section 1054.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 15, Chapter 1085 (S.B. 1196), Acts of the 82nd

Legislature, Regular Session, 2011, to read as [above]."

Sec. 1054.006. 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 Subchapter E to represent the person's interests in a guardianship proceeding instead of having those interests represented by an attorney ad litem appointed under Section 1054.001 or another provision of this title:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 1202.103; 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 1054.001 or any other provision of this title 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.030 of SB 1093 provides: "Subchapter A, Chapter 1054, Estates Code, as effective January 1, 2014, is amended to conform to Section 7, Chapter 599 (S.B. 220), and Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 1054.006 to read as [above]."

Sec. 1054.007. ATTORNEYS AD LITEM.

(a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;

(2) a proposed ward;

(3) a nonresident;

(4) an unborn or unascertained person; or

(5) an unknown or missing potential heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1055.002. DEFECT IN PLEADING.

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.031 of SB 1093 provides: "Section 1055.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 14, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1055.053. LOCATION OF HEARING.

(a) Except as provided by Subsection (b), the judge may hold a hearing on a guardianship proceeding involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship proceeding 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.032 of SB 1093 provides: "Subchapter B, Chapter 1055, Estates Code, as effective January 1, 2014, is amended to conform to Section 17 and other provisions of Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 1055.053 to read as [above]."

SUBCHAPTER D. MEDIATION

Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING.

(a) On the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or

underlined, that the agreement is not subject to revocation by the parties;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(d) Notwithstanding Subsections (b) and (c), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1056.001. EXECUTIONS IN GUARDIANSHIP PROCEEDINGS [~~MATTERS~~].

(a) An execution in a guardianship proceeding [~~matter~~] must be:

(1) directed "to any sheriff or any constable within the State of Texas";

(2) attested and signed by the clerk officially under court seal; and

(3) made returnable in 60 days.

(b) A proceeding under an execution in a guardianship proceeding [~~matter~~] is governed, to the extent applicable, by the laws regulating a proceeding under an execution issued by a district court.

(c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.033 of SB 1093 provides: "The heading to Section 1056.001, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]." Sec. 6.034 of SB 1093 provides: "Sections 1056.001(a) and (b), Estates Code, as effective January 1, 2014, are amended to conform to Section 18, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS.

(a) [No change.]

(b) The application must be sworn to by the applicant and state:

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

(2) the name, relationship, and address of the person the applicant seeks 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 the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

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

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

(9) 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;

(10) 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;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

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

(B) the name and age of each of the proposed ward's siblings, if any, and either 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;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

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

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

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, 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;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks 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 Subchapter G, Chapter 1104.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.035 of SB 1093 provides: "Section 1101.001(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 9, Chapter 599 (S.B. 220), Acts of

the 82nd Legislature, Regular Session, 2011, to read as [above].”

**Sec. 1101.002. CONTENTS OF APPLICATION;
CONFIDENTIALITY OF CERTAIN ADDRESSES.**

An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) the application states that the person is protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING INTELLECTUAL DISABILITY [MENTAL RETARDATION].

If an intellectual disability [mental retardation] is the basis of the proposed ward's alleged incapacity, 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 Sections 1101.103(a) and (b); 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 not earlier than 24 months before the hearing date [both]:

(A) [written documentation showing that, not earlier than 24 months before the hearing date,] 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 include[, including a statement as to whether the physician or psychologist has made] a determination of an intellectual disability; or~~

(B) a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the department [mental retardation in accordance with Section 593.005, Health and Safety Code].

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1235), effective January 1, 2014. Sec. 3 of SB 1235 provides: “The changes in law made by this Act to Section 1101.104, Estates Code, as effective January 1, 2014, apply only to an application to create a guardianship filed on or after the effective date of this Act. An application to create 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. 4 of SB 1235 provides: “To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.”

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.036 of SB 1093 provides: “Section 1101.104, Estates Code, as effective January 1, 2014, is amended to conform to Section 22, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY.

(a) [No change.]

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the

guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition; ~~and~~

(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY.

(a) – (b) [No change.]

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1102.003. INFORMATION LETTER.

(a) An interested person who submits an information letter under Section 1102.002(1) about a person believed to be incapacitated must, to the best of the interested person's knowledge ~~may~~:

(1) state ~~include~~ the person's name, address, telephone number, county of residence, and date of birth;

(2) state whether the person's residence is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the person and the interested person submitting the letter;

(4) state ~~contain~~ the names and telephone numbers of any known friends and relatives of the person;

(5) state whether a guardian of the person or estate has been appointed in this state for the person;

(6) state whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list the amount and source of any monthly income of the person;

(9) describe the nature and degree of the person's alleged incapacity; and

(10) state whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

(b) In addition to the requirements of Subsection (a), if an information letter under that subsection is submitted by an interested person who is a family member of the person believed to be incapacitated, the information letter must:

(1) be signed and sworn to before a notary public by the interested person; or

(2) include a written declaration signed by the interested person under penalty of perjury that the information contained in the information letter is true to the best of the person's knowledge.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. Sec. 35(d) of HB 2080 provides: "The changes in law made by this Act to Section 1102.003, Estates Code, apply to a guardianship proceeding that is commenced on or after the effective date of this Act. A guardianship proceeding commenced before that date 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."

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM.

(a) [No change.]

(b) After examining the ~~[ward's or]~~ proposed ward's assets and determining that the ~~[ward or]~~ proposed ward is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1103.002. APPOINTMENT OF CONSERVATOR AS GUARDIAN WITHOUT HEARING.

(a) Notwithstanding any other law, if the applicant who files an application under Section 1101.001 or 1103.001 is a person who was appointed conservator of a disabled child and the proceeding is a guardianship proceeding described by Section 1002.015(1) 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)]~~, the applicant may present to the court a written letter or certificate that meets the requirements of Sections 1101.103(a) and (b).

(b) If, on receipt of the letter or certificate described by Subsection (a), the court is able to make the findings required by Section 1101.101, the court, notwithstanding Subchapter C, Chapter 1104, shall:

(1) appoint the conservator as guardian without conducting a hearing; and

(2) 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)]~~.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.037 of SB 1093 provides: "Section 1103.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 21, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1104.254. EXCEPTION FOR CERTAIN VOLUNTEERS.

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 Section 1104.251 to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.038 of SB 1093 provides: “Section 1104.254, Estates Code, as effective January 1, 2014, is amended to conform to Section 10, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1104.303. REQUIREMENTS OF APPLICATION.

(a) [No change.]

(b) The application must be:

(1) made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and

(2) accompanied by a nonrefundable fee of \$40 [set by the clerk in an amount necessary] to cover the cost of administering this subchapter.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1104.352. UNSUITABILITY.

A person may not be appointed guardian if the person is a person, institution, or corporation found by the court [finds the person] to be unsuitable.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.039 of SB 1093 provides: “Section 1104.352, Estates Code, as effective January 1, 2014, is amended to more closely conform to the source law from which the section was derived to read as [above].”

Sec. 1104.353. NOTORIOUSLY BAD CONDUCT; PRESUMPTION CONCERNING BEST INTEREST.

(a) [No change.]

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:

(1) any sexual offense, Section 1103.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 21, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as including sexual assault, aggravated sexual assault, and prohibited sexual conduct;

(2) aggravated assault;

(3) injury to a child, elderly individual, or disabled individual; [ø]

(4) abandoning or endangering a child;

(5) terroristic threat; or

(6) continuous violence against the family of the ward or incapacitated person.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1104.358. SUBJECT TO PROTECTIVE ORDER FOR FAMILY VIOLENCE.

A person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, may not be appointed guardian of a proposed ward or ward who is protected by the protective order.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE PERSON.

(a) – (b) [No change.]

(c) A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward; [and]

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code; and

(6) the power to sign documents necessary or appropriate to facilitate employment of the ward if:

(A) the guardian was appointed with full authority over the person of the ward under Section 1101.151; or

(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152.

(d) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1151.053. COMMITMENT OF WARD.

(a) [No change.]

(b) 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.

(c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.040 of SB 1093 provides: "Section 1151.053(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 26, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1154.051. INVENTORY AND APPRAISEMENT.

(a) Not later than the 30th day after the date the guardian of the estate qualifies, unless a longer period is granted by the court, the guardian shall file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all the ward's property that has come into the guardian's possession or of which the guardian has knowledge. The inventory must:

(1) include:

(A) all the ward's real property located in this state; and

(B) all the ward's personal property regardless of where the property is located; and

(2) specify:

(A) which portion of the property is separate property and which is community property; and

(B) if the property is owned in common with other persons, the ward's interest in that property ~~[and the names and relationship, if known, of the co-owners].~~

(b) – (d) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.041 of SB 1093 provides: "Section 1154.051(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 23, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1154.052. LIST OF CLAIMS.

The guardian of the estate shall make and attach to the inventory and appraisal required by Section 1154.051 a complete list of claims due or owing to the ward. The list of claims must state:

(1) the name and, if known, address of each person indebted to the ward; and

(2) regarding each claim:

(A) 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;

(B) the date the debt was incurred;

(C) the date the debt was or is due;

(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and

(E) if any portion of the claim is held in common with others, the interest of the estate in the claim ~~[and the names and relationships of the other part owners].~~

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.042 of SB 1093 provides: "Section 1154.052, Estates Code, as effective January 1, 2014, is amended to conform to Section 24, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

~~**Sec. 1155.051. COMPENSATION FOR PROFESSIONAL SERVICES IN GENERAL.**~~

[Repealed]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014 (Sec. 35(a)).

Sec. 1155.052. ATTORNEY SERVING AS GUARDIAN AND PROVIDING RELATED LEGAL SERVICES.

(a) Notwithstanding any other provision of this chapter ~~[or Section 665B]~~, an attorney who serves as guardian and who also provides legal services in connection with the guardianship is not entitled to compensation for the guardianship services or payment of attorney's fees for the legal services from the ward's estate or other funds available for that purpose unless the attorney files with the court a detailed description of the services performed that identifies which of the services provided were guardianship services and which were legal services.

(b) [No change.]

(c) The court shall set the compensation of an attorney described by Subsection (a) for the performance of guardianship services in accordance with Subchapter A. The court shall set attorney's fees for an attorney described by Subsection (a) for legal services provided in accordance with Sections 1155.054 ~~[1155.054]~~, 1155.101, and 1155.151 ~~[665B]~~.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1155.054 ~~[665B]~~. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS.

(a) A court that creates a guardianship or creates a management trust under Chapter 1301 ~~[Section 867 of this code]~~ for a ward ~~[under this chapter]~~, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, may authorize the payment of reasonable and necessary attorney's fees, as determined by the court, in amounts the court considers equitable and just, to an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from[=

~~[(1)]~~ available funds of the ward's estate or management trust, if created, subject to Subsections (b) and (d).

(b) The court may authorize amounts that otherwise would be paid from the ward's estate or the management trust as provided by Subsection (a) to instead be paid from the county treasury.~~[-or~~

~~[(2)]~~ subject to Subsection ~~(e)~~, ~~[(e) of this section, the county treasury]~~ if:

(1) [(A)] the ward's estate or~~[- if created,]~~ management trust~~[-]~~ is insufficient to pay ~~[for]~~ the amounts ~~[services provided by the attorney]~~; and

(2) [(B)] funds in the county treasury are budgeted for that purpose.

(c) [(b)] The court may not authorize attorney's fees under this section unless the court finds that the applicant acted in good faith and for just cause in the filing and prosecution of the application.

(d) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may require the party to

reimburse the ward's estate for all or part of the attorney's fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney's fees required to be reimbursed to the estate.

(e) ~~[(e)]~~ The court may authorize the payment of attorney's fees from the county treasury under Subsection (b) ~~[(a) of this section]~~ only if the court is satisfied that the attorney to whom the fees will be paid has not received, and is not seeking, payment for the services described by that subsection from any other source.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. Sec. 18 of HB 2080 provides: "Notwithstanding the transfer of Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, to the Estates Code and redesignation as Section 665B of that code effective January 1, 2014, by Section 3.01(e), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section 665B, Texas Probate Code, is transferred to Subchapter B, Chapter 1155, Estates Code, redesignated as Section 1155.054, Estates Code, and reenacted and amended to read as[above]."

Sec. 1155.101. REIMBURSEMENT OF EXPENSES IN GENERAL.

A guardian is entitled to reimbursement 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.043 of SB 1093 provides: "Section 1155.101, Estates Code, as effective January 1, 2014, is amended to conform to Section 19, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1155.151. COSTS IN GUARDIANSHIP [COST OF] PROCEEDING GENERALLY ~~[IN GUARDIANSHIP MATTER]~~.

(a) In a guardianship proceeding ~~[Except as provided by Subsection (b)]~~, the court costs ~~[cost]~~ of the proceeding ~~[in a guardianship matter]~~, including the cost of the guardians ~~[guardian]~~ ad litem, attorneys ad

litem, [or] court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (c), shall be paid out of the guardianship estate, or [the cost of the proceeding shall be paid out of] the county treasury if the estate is insufficient to pay the cost, and the court shall issue the judgment accordingly.

(b) The costs attributable to the services of a person described by Subsection (a) shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(c) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order the party to pay all or part of the costs of the proceeding. If the party found to be acting in bad faith or without just cause was required to provide security for the probable costs of the proceeding under Section 1053.052, the court shall first apply the amount provided as security as payment for costs ordered by the court under this subsection. If the amount provided as security is insufficient to pay the entire amount ordered by the court, the court shall render judgment in favor of the estate against the party for the remaining amount. [An applicant for the appointment of a guardian under this title shall pay the cost of the proceeding if the court denies the application based on the recommendation of a court investigator.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Also amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014, Secs. 6.044 and 6.045, which are presumably overridden due to Sec. 38 of HB 2080 and Sec. 1.002(b) of SB 1093.

Sec. 1155.201. DEFINITIONS.

In this subchapter:

(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) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.046 of SB 1093 provides: "Section 1155.201(1), Estates Code, as effective January 1, 2014, is amended to

conform to Section 8, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1155.202. COMPENSATION AND COSTS PAYABLE UNDER MEDICAL ASSISTANCE PROGRAM.

(a) Notwithstanding any other provision of this title 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 (b); and

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

(b) Costs ordered to be deducted ~~[paid]~~ under Subsection (a)(2) 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.

(c) A court may not order:

(1) that the deduction for compensation and costs under Subsection (a) 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).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.047 of SB 1093 provides: "Section 1155.202, Estates Code, as effective January 1, 2014, is amended to conform to Section 8, Chapter 599 (S.B. 220), Acts of the 82nd

Legislature, Regular Session, 2011, to read as [above].”

**CHAPTER 1162. TAX-MOTIVATED, ~~[AND]~~
CHARITABLE, ~~[AND]~~ NONPROFIT, AND OTHER
GIFTS**

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.048 of SB 1093 provides: “The heading to Chapter 1162, Estates Code, as effective January 1, 2014, is amended to conform to Section 27, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

**SUBCHAPTER A. CERTAIN ~~[TAX-MOTIVATED]~~
GIFTS AND TRANSFERS**

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.049 of SB 1093 provides: “The heading to Subchapter A, Chapter 1162, Estates Code, as effective January 1, 2014, is amended to conform to Section 28, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE OR OTHER TRANSFER PLAN.

On application of the guardian of the estate or any interested person ~~[party]~~, after the posting of notice and hearing, and on a showing that the ward will probably remain incapacitated during the ward's lifetime, the court 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 the ward's behalf, the court may authorize the guardian to make gifts or transfers described by this section, 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 of 1986 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 is 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 Subdivision (2) or (3).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.050 of SB 1093 provides: “Section 1162.001, Estates Code, as effective January 1, 2014, is amended to conform to Section 29, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1162.002. ESTATE OR OTHER TRANSFER PLAN: CONTENTS AND MODIFICATION.

(a) The person making an application to the court under Section 1162.001 shall:

(1) outline the proposed estate or other transfer plan; and

(2) state all the benefits that are to be derived from the ~~[estate]~~ plan.

(b) 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 Sections 1162.001 and 1162.004.

(c) A subsequent modification of an approved ~~[estate]~~ plan may be made by similar application to the court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.051 of SB 1093 provides: “Section 1162.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 29, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF ESTATE OR OTHER TRANSFER PLAN.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.052 of SB 1093 provides: “The heading to Section 1162.003, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT REGARDING TAXES AND STATUS AS GUARDIAN.

(a) The guardian of the estate shall attach to an account the guardian's affidavit stating:

(1) that the account contains a correct and complete statement of the matters to which the account relates;

(2) that the guardian has paid the bond premium for the next accounting period;

(3) that the guardian has filed all tax returns of the ward due during the accounting period; ~~and~~

(4) that the guardian has paid all taxes the ward owed during the accounting period, the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes; and

(5) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1163.101. ANNUAL REPORT REQUIRED.

(a) – (b) [No change.]

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address, telephone number, and age;

(3) a description of the type of home in which the ward resides, which shall be described as:

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

(F) a relative's home, in which case the description must specify the relative's relationship to the ward;

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

(A) the length of time the ward has resided in the present home;

(B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;

(C) the date the guardian most recently saw the ward;

(D) how frequently the guardian has seen the ward in the past year;

(E) whether the guardian has possession or control of the ward's estate;

(F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(H) whether the ward has regular medical care; and

(I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:

(i) a physician;

(ii) a psychiatrist, psychologist, or other mental health care provider;

(iii) a dentist;

(iv) a social or other caseworker; or

(v) any other individual who provided treatment;

(5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;

(6) the guardian's evaluation of:

(A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(B) whether the ward is content or unhappy with the ward's living arrangements; and

(C) unmet needs of the ward;

(7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(8) a statement indicating that the guardian has paid the bond premium for the next reporting period; ~~and~~

(9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and

(10) any additional information the guardian desires to share with the court regarding the ward, including:

(A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and

(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1163.1011. USE OF UNSWORN DECLARATION FOR ELECTRONIC FILING OF ANNUAL REPORT.

(a) A guardian of the person who files the annual report required by Section 1163.101 electronically with the court may use an unsworn declaration made as provided by this section instead of a written sworn declaration or affidavit required by Section 1163.101.

(b) An unsworn declaration authorized by this section must be:

(1) in writing; and

(2) subscribed by the person making the declaration as true under penalty of perjury.

(c) The form of an unsworn declaration authorized by this section must be substantially as follows:

I, (insert name of guardian of the person), the guardian of the person for (insert name of ward) in _____ County, Texas, declare under penalty of perjury that the foregoing is true and correct.

Executed on (insert date)

(signature)

(d) An unsworn declaration authorized by Section 132.001, Civil Practice and Remedies Code, may not be used instead of a written sworn declaration or affidavit required by Section 1163.101.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

SUBCHAPTER E. RESTORATION OF RIGHTS ON TERMINATION OF GUARDIANSHIP

Sec. 1202.201. REMOVAL OF FIREARM DISABILITY ON COMPLETE RESTORATION OF WARD'S CAPACITY.

(a) A person whose guardianship was terminated because the person's capacity was completely restored may file an application with the court that created the guardianship for an order requesting the removal of the person's disability to purchase a firearm imposed under 18 U.S.C. Section 922(g)(4).

(b) At a proceeding involving the complete restoration of the ward's capacity under Subchapter B, the ward or a person interested in the ward's welfare may request an order seeking relief from a firearms disability described by Subsection (a).

(c) In determining whether to grant the relief sought under Subsection (a) or (b), the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability;

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(d) A court may not grant relief under this section unless the court makes and enters in the record the following affirmative findings:

(1) the person or ward is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's or ward's disability to purchase a firearm is in the public interest.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2407), effective January 1, 2014.

Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING.

(a) Except as provided by Section 1202.201, at [A] a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2407), effective January 1, 2014.

Sec. 1203.051. REMOVAL WITHOUT NOTICE; APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY AD LITEM.

(a) The court, on the court's own motion or on the motion of an interested person, including the ward, and without notice, may remove a guardian appointed under this title who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, not later than the 30th day after the date the guardian qualifies, an inventory of the guardianship estate property and a list of claims that have come to the guardian's knowledge, unless that deadline is extended by court order;

(3) if required, fails to give a new bond within the period prescribed;

(4) is absent from the state for a consecutive period of three or more months without the court's permission, or removes from the state;

(5) cannot be served with notices or other processes because:

(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) subject to Section 1203.056(a):

(A) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care; or

(B) 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

(7) 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.

(b) In a proceeding to remove a guardian under Subsection (a)(6) or (7), the court shall appoint a guardian ad litem as provided by Subchapter B, Chapter 1054, and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 1054.004. 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.053 of SB 1093 provides: "Section 1203.051, Estates Code, as effective January 1, 2014, is amended to conform to Section 11, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1203.052. REMOVAL WITH NOTICE.

(a) The court may remove a guardian on the court's 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, if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has 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 guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) 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~~];

(7) 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;

(8) the guardian interferes with the ward's progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) 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

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.054 of SB 1093 provides: "Section 1203.052(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 11, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1203.0531. NOTICE OF REMOVAL ORDER.

The court clerk shall issue notice of an order rendered by the court removing a guardian under Section 1203.051(a)(1), (2), (3), (4), (6), or (7). 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 1203.051(a)(6)(A) or (B), Estates Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 1203.056, Estates 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.055 of SB 1093 provides: "Subchapter B, Chapter 1203, Estates Code, as effective January 1, 2014, is amended to conform to Section 1, Chapter 1218 (S.B. 481), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 1203.0531 to read as [above]."

Sec. 1203.056. REMOVAL AND REINSTATEMENT OF GUARDIAN UNDER CERTAIN CIRCUMSTANCES.

(a) The court may remove a guardian under Section 1203.051(a)(6)(A) [~~1203.051(6)(A)~~] or (B) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 30th [~~10th~~] day after the date the court signs the order of removal, a guardian who is removed under Section 1203.051(a)(6)(A) [~~1203.051(6)(A)~~] or (B) may file an application with the court for a hearing to determine whether the guardian should be reinstated.

(c) – (d) [No change.]

(e) 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:

(1) set aside any order appointing a successor guardian; and

(2) enter an order reinstating the applicant as guardian of the ward or estate.

(f) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.056 of SB 1093 provides: "Sections 1203.056(a), (b), and (e), Estates Code, as effective January 1, 2014, are amended to conform to Section 11, Chapter 599 (S.B. 220), and Section 2, Chapter 1218 (S.B. 481), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1203.102. APPOINTMENT BECAUSE OF RESIGNATION, REMOVAL, OR DEATH; HEARING TO SET ASIDE IMMEDIATE APPOINTMENT.

(a) [No change.]

(b) The court may appoint a successor guardian under this section without citation or notice if the court finds that a necessity exists for the immediate appointment. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(c) The appointment of a successor guardian under Subsection (b) 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 Subchapter B or C, Chapter 1104, as applicable.

(d) 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.057 of SB 1093 provides: "The heading to Section 1203.102, Estates Code, as effective January 1, 2014, is amended to conform to Section 11, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]." Sec. 6.058 of SB 1093 provides: "Section 1203.102, Estates Code, as effective January 1, 2014, is amended to conform to Section 11, Chapter 599 (S.B. 220), Acts of the 82nd Legislature, Regular Session,

2011, by amending Subsection (b) and adding Subsections (c) and (d) to read as [above]."

Sec. 1204.001. SETTLEMENT OF GUARDIANSHIP.

(a) [No change.]

(b) A guardianship of the estate of a ward shall be settled when:

(1) the ward dies;

(2) a minor ward becomes an adult by:

(A) becoming 18 years of age;

(B) removal of disabilities of minority according to the law of this state; or

(C) marriage;

(3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;

(4) the spouse of a married ward has qualified as survivor in community and the ward does not own separate property;

(5) the ward's estate is exhausted;

(6) the foreseeable income accruing to the ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome;

(7) all of the assets of the estate have been placed in a management trust under Chapter 1301 or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Chapter 1302, and the court determines that a guardianship of [for] the ward's estate [ward] is no longer necessary; or

(8) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(c) – (d) [No change.]

(e) In the settlement of a guardianship of the estate, the court may appoint an attorney ad litem to represent the ward's interests 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.059 of SB 1093 provides: "Sections 1204.001(b) and (e), Estates Code, as effective January 1, 2014, are amended to conform to Section 25, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1251.013. COURT COSTS.

If the court appoints a temporary guardian after the hearing required by Section 1251.006(b), all court costs, including attorney's fees, may be assessed as provided by Sections 1155.054 and [1155.051, 1155.151], and 665B.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST.

The following persons may apply for the creation of a trust under this subchapter:

- (1) the guardian of a ward;
- (2) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;
- (3) a person interested in the welfare of an alleged incapacitated person who does not have a guardian ~~of the estate~~; ~~or~~
- (4) an attorney ad litem or guardian ad litem appointed to represent:

~~[(A)]~~ an alleged incapacitated person who does not have a guardian; or

(5) a person who has only a physical disability ~~[(B) the interests of a person described by Paragraph (A)]~~.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.060 of SB 1093 provides: "Section 1301.051, Estates Code, as effective January 1, 2014, is amended to conform to Section 30, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING TRUST FOR AN ALLEGED INCAPACITATED PERSON.

(a) [No change.]

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001 ~~[640]~~.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1002.002.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.061 of SB 1093 provides: "Section 1301.052(b), Estates Code, as effective January 1, 2014, is amended to conform a reference to a redesignation made by Section 6.015(c) of this Act to read as [above]."

Sec. 1301.053. CREATION OF TRUST ~~[FOR WARD]~~.

(a) On application by an appropriate person as provided by Section 1301.051 and subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings ~~[a 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) The court may ~~[shall]~~ maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.062 of SB 1093 provides: "Section 1301.053, Estates Code, as effective January 1, 2014, is amended to conform to Section 30, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON WITHOUT GUARDIAN.

(a) – (b) [No change.]

(c) Except as provided by Subsection (c-1), the ~~[The]~~ court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a).

(c-1) If the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).

(d) The court may ~~[shall]~~ maintain a trust created under this section 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 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. Sec. 35(b) of HB 2080 provides: “The changes in law made by this Act to Sections 1301.054, 1301.055, 1301.057(b), (c), and (d), 1301.058, 1301.101, and 1301.102(a), Estates Code, apply only to an application for the creation, modification, or termination of a management trust 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.”

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.063 of SB 1093 provides: “Section 1301.054(d), Estates Code, as effective January 1, 2014, is amended to conform to Section 30, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST.

If, after a hearing under Section 1301.054, the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person's best interests for the court to create a trust under this subchapter for the incapacitated person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.054.

Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST.

An order creating a management trust must:

(1) direct any [a] person or entity holding property that belongs to the [ward or incapacitated] person[, as applicable,] for whom the trust is created or to which that [the ward or incapacitated] person is entitled[,] to deliver all or part of that property to a person or [the] corporate fiduciary [or other person] appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.064 of SB 1093 provides: “Section 1301.056, Estates Code, as effective January 1, 2014, is amended to conform to

Section 30, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and to more closely conform to the source law from which the section was derived to read as [above].”

Sec. 1301.057. APPOINTMENT OF TRUSTEE.

(a) [No change.]

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the [ward or incapacitated] person for whom the trust is created; and

(2) if the value of the trust's principal is more than \$150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) The following are eligible for appointment as trustee of a management trust created for a ward or incapacitated person under Subsection (c):

(1) an individual, including an individual who is certified as a private professional guardian;

(2) a nonprofit corporation qualified to serve as a guardian; and

(3) a guardianship program.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.054.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.065 of SB 1093 provides: “Section 1301.057(c), Estates Code, as effective January 1, 2014, is amended to conform to Section 30, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above].”

Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES.

(a) The following serve [A trustee of a management trust that is a corporate fiduciary serves] without giving a bond in accordance with the trust

terms required by Sections ~~[Section]~~ 1301.101(a)(4) and (a-1):

(1) a trustee of a management trust that is a corporate fiduciary; and

(2) any other trustee of a management trust created for a person who has only a physical disability.

(b) Except as provided by Subsection (a), the ~~[The]~~ court shall require a person~~[- other than a corporate fiduciary,]~~ serving as trustee of a management trust to file with the county clerk a bond that:

(1) is in an amount equal to the value of the trust's principal and projected annual income; and

(2) meets the conditions the court determines are necessary.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.054.

Sec. 1301.101. REQUIRED TERMS.

(a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:

(1) the ward, ~~[or]~~ incapacitated person, or person who has only a physical disability ~~[for whom the trust is created]~~ 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 spend for the health, education, maintenance, or support of the ~~[ward or incapacitated]~~ person for whom the trust is created;

(3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;

(4) a trustee that is a corporate fiduciary serves without giving a bond; and

(5) subject to the court's approval and Subsection (b), a ~~[the]~~ trustee is entitled to receive reasonable compensation for services the trustee provides to the ~~[ward or incapacitated]~~ person for whom the trust is created as the person's trustee.

(a-1) A management trust created for a person who has only a physical disability must provide that the trustee of the trust:

(1) serves without giving a bond; and

(2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's trustee.

(b) A trustee's compensation under Subsection (a)(5) must be:

(1) paid from the management trust's income, principal, or both; and

(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian ~~[of an estate]~~ under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) ~~[(a)(1) or (2) only]~~ if the court is creating the trust for a person who has only a physical disability, or 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; or ~~[and]~~

(2) is in the ~~[ward's or incapacitated person's]~~ best interests of the person for whom the trust is created.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.054. Sec. 30 of HB 2080 provides: "Section 1301.101, Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended to read as [above]."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.066 of SB 1093 provides: "Section 1301.101, Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.102. OPTIONAL TERMS.

(a) A management trust created for a ward or incapacitated person may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support 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:

(1) as necessary and without the intervention of:

(A) a guardian or other representative of the ward; or

(B) a representative of the incapacitated person or person who has only a physical disability; and

(2) to:

(A) the ward's guardian;

(B) a person who has physical custody 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; or

(C) a person providing a good or service to the ~~[ward or incapacitated]~~ person for whom the trust is created or to another person whom the ~~[ward or incapacitated]~~ person for whom the trust is created is legally obligated to support.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.054. Sec. 31 of HB 2080 provides: "Section 1301.102(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended to read as [above]."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.067 of SB 1093 provides: "Section 1301.102(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS.

A provision in a management trust created for a ward or incapacitated person that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the trust beneficiary.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. Sec. 35(c) of HB 2080 provides: "The changes in law made by this

Act to Sections 1301.103 and 1301.154(a), Estates Code, and by Section 1301.202(a-1), Estates Code, as added by this Act, apply to a management trust created before, on, or after the effective date of this Act"

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.

(a) This section applies only to a trustee of a management trust created 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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.068 of SB 1093 provides: "Subchapter D, Chapter 1301, Estates Code, as effective January 1, 2014, is amended to conform to Section 35, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 1301.1535 to read as [above]."

Sec. 1301.154. ANNUAL ACCOUNTING.

(a) Except as provided by Subsection (d), the [The] trustee of a management trust created for a ward 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 of the estate under this title.

(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).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.103.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.069 of SB 1093 provides: "Section 1301.154, Estates Code, as effective January 1, 2014, is amended to conform to Section 36, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsection (a) and adding Subsection (d) to read as [above]."

Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST.

(a) [No change.]

(b) The following may not revoke a management trust:

(1) the ward for whom the trust is created or the guardian of the ward's estate; ~~or~~

(2) 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.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.070 of SB 1093 provides: "Section 1301.201(b), Estates Code, as effective January 1, 2014, is amended to conform to Section 33, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT.

(a) If the court determines that it is in the best interests of the ~~a~~ ~~ward or incapacitated~~ person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 1302.

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount 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.

(c) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2080), effective January 1, 2014. See transitional note following Sec. 1301.103.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.071 of

SB 1093 provides: "Sections 1301.202(a) and (b), Estates Code, as effective January 1, 2014, are amended to conform to Section 32, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.203. TERMINATION OF TRUST.

(a) If the ~~ward or incapacitated~~ person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the ~~ward's or incapacitated~~ person's death; or

(B) the ~~ward's or incapacitated~~ person's 18th birthday; or

(2) 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 management trust is created is not a minor, the trust terminates ~~on~~:

(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 1301.202(c); or

(3) on ~~(2)~~ the ~~ward's or incapacitated~~ person's death.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.072 of SB 1093 provides: "Section 1301.203, Estates Code, as effective January 1, 2014, is amended to conform to Section 34, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY.

(a) Unless otherwise provided by the court and except as provided by Subsection (b), the trustee of a management trust shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Sections 1204.101 and 1204.102; and

(2) on court approval, distribute the principal or any undistributed income of the trust to:

(A) the ward or incapacitated person when the trust terminates on the trust's own terms;

(B) the successor trustee on appointment of a successor trustee; or

(C) 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). The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) for a trust the beneficiary of which is a ward or incapacitated person.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.073 of SB 1093 provides: "Section 1301.204, Estates Code, as effective January 1, 2014, is amended to conform to Section 37, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 1302.002. APPLICATION TO ESTABLISH SUBACCOUNT.

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 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.074 of SB 1093 provides: "Section 1302.002, Estates Code, as effective January 1, 2014, is amended to conform to Section 39, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

PART 2. GUARDIANSHIP PROCEEDINGS [AND MATTERS]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.075 of SB 1093 provides: "The heading to Part 2, Subtitle Y, Title 3, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

SUBTITLE Z. TEXAS PROBATE CODE: [§] ADDITIONAL GUARDIANSHIP PROVISIONS

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.076 of SB 1093 provides: "The heading to Subtitle Z, Title 3, Estates Code, as effective January 1, 2014, is amended to read as [above]."

PART 2. GUARDIANSHIP PROCEEDINGS [AND MATTERS]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1093), effective January 1, 2014. Sec. 6.077 of SB 1093 provides: "The heading to Part 2, Subtitle Z, Title 3, Estates Code, as effective January 1, 2014, is amended to conform to Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, to read as [above]."

Sec. 6.078 of SB 1093 provides:

(a) Sections 3.01(b) and (c), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, which transferred to the Estates Code Sections 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, and 618, Texas Probate Code, are repealed.

(b) Subtitle Y, Title 2, Estates Code, as effective January 1, 2014, is repealed.

(c) Subparts A and B, Part 2, Subtitle Y, Title 3, Estates Code, as effective January 1, 2014, are repealed.

Attachment 8 – 2013 Amendments to the Texas Estates Code (Other Provisions)

[The following excerpts reflect amendments made by H.B. 2918.]

Sec. 752.051. FORM.

The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

(1) you die or revoke the power of attorney;

(2) your agent (attorney in fact) resigns or is unable to act for you; or

(3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD [except for a power that I have crossed out below.

~~[TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD].~~

____ (A) Real property transactions;

____ (B) Tangible personal property transactions;

____ (C) Stock and bond transactions;

____ (D) Commodity and option transactions;

____ (E) Banking and other financial institution transactions;

____ (F) Business operating transactions;

____ (G) Insurance and annuity transactions;

____ (H) Estate, trust, and other beneficiary transactions;

____ (I) Claims and litigation;

____ (J) Personal and family maintenance;

____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

____ (L) Retirement plan transactions;

____ (M) Tax matters;

____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

~~[IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.]~~

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

____ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR

EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third

party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____,

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____
(date) by _____

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT
(ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

(1) act in good faith;

(2) do nothing beyond the authority granted in this power of attorney;

(3) act loyally for the principal's benefit;

(4) avoid conflicts that would impair your ability to act in the principal's best interest; and

(5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

(1) maintain records of each action taken or decision made on behalf of the principal;

(2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and

(3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;

(B) each action taken or decision made by you as agent or attorney in fact;

(C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;

(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(F) each known liability;

(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

(1) the principal's death;

(2) the principal's revocation of this power of attorney or your authority;

(3) the occurrence of a termination event stated in this power of attorney;

(4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;

(5) the appointment and qualification of a permanent guardian of the principal's estate; or

(6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2918), effective January 1, 2014. Sec. 3 of HB 2918 provides: "The changes in law made by this Act apply only to a power of attorney executed on or after the effective date of this Act. A power of attorney executed before the effective date of this Act is governed by the law in effect on the date the power of attorney was executed, and that law is continued in effect for that purpose."

Sec. 752.002. VALIDITY NOT AFFECTED.

A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

(1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed ~~struck~~; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2918), effective January 1, 2014. See transitional note following Sec. 752.051.

Attachment 9 – 2013 Amendments to the Texas Probate Code

[The following excerpts reflect amendments made by H.B. 789 and H.B. 2380.]

Sec. 64. FORFEITURE CLAUSE.

A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that ~~unenforceable if~~:

(1) just cause existed for bringing the action; and

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2380), effective September 1, 2013. Sec. 2.02 of HB 2380, effective January 1, 2014, provides “Section 64, Texas Probate Code, as amended by Article 1 of this Act, is repealed.”

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 \$45,000 [~~\$15,000~~] and the allowance for other exempted property shall in no case exceed \$30,000 [~~\$5,000~~], exclusive of the allowance for the support of the surviving spouse, minor children, and adult incapacitated children which is hereinafter provided for.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 789), effective September 1, 2013. Sec. 2.02 of HB 789, effective January 1, 2014, provides “Section 273, Texas Probate Code, as amended by Article 1 of this Act, is repealed.”

Attachment 10 – 2013 Amendments to the Texas Trust Code

[The following excerpts reflect amendments made by H.B. 2380, H.B. 2913, and S.B. 778.]

Sec. 111.004. DEFINITIONS.

In this subtitle:

(1) – (11) [No change.]

(12) "Property" means any type of property, whether real, tangible or intangible, legal, or equitable, including property held in any digital or electronic medium. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust, retirement account, or other arrangement.

(13) – (25) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. Sec. 9(a) and (b) of HB 2913 provide: "(a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2013. (b) For a trust existing on September 1, 2013, 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, 2013."

Sec. 112.035. SPENDTHRIFT TRUSTS.

(a) – (c) [No change.]

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or

(2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.

(e) – (f) [No change.]

(g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed

settlor of the following trusts may not be treated as a settlor:

(1) an irrevocable inter vivos marital trust if:

(A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) the trust is treated as:

(i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

(3) an irrevocable trust for the benefit of a person:

(A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or

(B) to the extent that the property of the trust was subject to a general power of appointment in another person.

(h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:

(1) under the initial trust instrument; or

(2) through the exercise of a limited or general power of appointment by:

(A) that person's spouse; or

(B) another person.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

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 enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that [unenforceable if]:

(1) just cause existed for bringing the action; and

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

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2380), effective September 1, 2013. Sec. 3.02 of HB 2380 provides: "Section 112.038, Property Code, as amended by this Act, applies to a court action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act 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."

**SUBCHAPTER D. DISTRIBUTION OF TRUST
PRINCIPAL IN FURTHER TRUST**

Sec. 112.071. DEFINITIONS.

In this subchapter:

(1) "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.

(2) "Charity" means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(3) "Current beneficiary," with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

(4) "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.

(5) "Full discretion" means the power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to purposes such as the best interests, welfare, or happiness of the beneficiaries.

(6) "Limited discretion" means a limited or modified power to distribute principal to or for the benefit of one or more beneficiaries of a trust.

(7) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under

the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or

(B) the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

(8) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.

(9) "Second trust" means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.

(10) "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004. Sec. 8 of HB 2913 provides: "The legislature intends Subchapter D, Chapter 112, Property Code, as added by this Act, to be a codification of the common law of this state in effect before the effective date of this Act."

**Sec. 112.072. DISTRIBUTION TO SECOND TRUST:
TRUSTEE WITH FULL DISCRETION.**

(a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust who are eligible to receive income or principal from the trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust who are eligible to receive income or principal from the trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become members of that class after the distribution to the second trust.

(e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION.

(a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The authorized trustee shall exercise a power of distribution under this section in good faith, in

accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.074. NOTICE REQUIRED.

(a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

(c) In addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The authorized trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the authorized trustee intends to exercise the power of distribution;

(B) the beneficiary has the right to object to the exercise of the power; and

(C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter;

(2) describe the manner in which the trustee intends to exercise the power;

(3) specify the date the trustee proposes to distribute the first trust to the second trust;

(4) include the name and mailing address of the trustee;

(5) include copies of the agreements of the first trust and the proposed second trust;

(6) be given not later than the 30th day before the proposed date of distribution to the second trust; and

(7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.075. WRITTEN INSTRUMENT REQUIRED.

A distribution under Section 112.072 or 112.073 must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.076. REFERENCE TO TRUST TERMS.

A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed under this subchapter.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.077. SETTLOR OF SECOND TRUST.

(a) Except as provided by Subsection (b), the settlor of a first trust is considered to be the settlor of a second trust established under this subchapter.

(b) If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this subchapter.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.078. COURT-ORDERED DISTRIBUTION.

(a) An authorized trustee may petition a court to order a distribution under this subchapter.

(b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.

(c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this subchapter.

(d) In a judicial proceeding under this section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

(e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.079. DIVIDED DISCRETION.

If an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust's principal under Section 112.072.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.080. LATER DISCOVERED ASSETS.

To the extent the authorized trustee does not provide otherwise:

(1) the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust; and

(2) the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.081. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER TRUST NOT LIMITED.

This subchapter may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED.

An authorized trustee may exercise the power to distribute principal to a second trust under Section 112.072 or 112.073 regardless of whether there is a current need to distribute principal under the terms of the first trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.083. DUTIES NOT CREATED.

(a) This subchapter does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as a result of the trustee not exercising a power conferred by Section 112.072 or 112.073.

(b) An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this subchapter or a duty to review the trust to determine whether any action should be taken under this subchapter.

Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED.

(a) Except as provided by Subsection (b), an authorized trustee may not exercise a power to distribute principal of a trust otherwise provided by Section 112.072 or 112.073 if the distribution is expressly prohibited by the terms of the governing instrument of the trust.

(b) A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Section 112.072 or 112.073.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION.

An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) materially impair the rights of any beneficiary of the trust;

(3) materially limit a trustee's fiduciary duty under the trust or as described by Section 111.0035;

(4) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(6) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.086. TAX-RELATED LIMITATIONS.

(a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

(1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;

(2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

(3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

(4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or

(5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust's interest in the property to a second trust under Section 112.072

or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 112.087. COMPENSATION OF TRUSTEE.

(a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.

(b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee's compensation into conformance with reasonable limits authorized by state law.

(c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.

(d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section 112.072 or 112.073.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 113.029. DISCRETIONARY POWERS; TAX SAVINGS.

(a) [No change.]

(b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:

(1) a person, other than a settlor, who is a beneficiary and trustee, trustee affiliate, or discretionary power holder of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's, the trustee affiliate's, or the discretionary power holder's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's, the trustee affiliate's, or the discretionary power holder's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) – (d) [No change.]

(e) In this section, "discretionary power holder" means a person who has the sole power or power shared with another person to make discretionary decisions on behalf of a trustee with respect to distributions from a trust.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. See transitional note following Sec. 111.004.

Sec. 113.053. PURCHASE OR SALE OF TRUST PROPERTY BY TRUSTEE.

(a) – (e) [No change.]

(f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services~~[-, provided, however, nothing in this section shall allow an affiliate or division to engage in the sale or business of insurance if not otherwise permitted to do so]; [and]~~

(2) unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge, purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that:

(A) the person conducting the insurance transaction is appropriately licensed if required by applicable licensing and regulatory requirements administered by a functional regulatory agency of this state; and

(B) the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate; and

(3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, ~~[or]~~ division within the financial institution, or syndicate or selling group that includes the financial institution or an affiliate, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, ~~[or]~~ division, or syndicate or selling group that includes the financial institution or an affiliate for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, ~~[or]~~ division, or syndicate or selling group that includes the financial institution or an affiliate, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust.

(g) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 778), effective September 1, 2013. Sec. 4 of SB 778 provides: "(a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2013. (b) For a trust existing on September 1, 2013, 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, 2013."

Sec. 115.002. VENUE.

(a) – (b) [No change.]

(b-1) If there are multiple noncorporate trustees and the trustees maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) the trustees maintain the principal office.

(b-2) If there are multiple noncorporate trustees and the trustees do not maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during

the four-year period preceding the date the action is filed; or

(2) any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.

(c) If there are one or more corporate trustees ~~[multiple trustees or a corporate trustee]~~, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any ~~[, provided that an action against a corporate trustee as defendant may be brought in the county in which the]~~ corporate trustee maintains its principal office in this state.

(c-1) Notwithstanding Subsections (b), (b-1), (b-2), 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), (b-1), (b-2), or (c); or

(2) in the county in which the administration of the settlor's estate is pending.

(d) – (e) [No change.]

(f) For the purposes of this section:

(1) "Corporate trustee" means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.

(2) "Principal office" means:

(A) if there are one or more corporate trustees, an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee; or

(B) if there are multiple trustees, none of which is a corporate trustee, an office in this state that is not maintained within the personal residence of any trustee, and in which one or more trustees conducts the daily affairs of the trustees.

(2-a) The mere presence of an agent or representative of a ~~[the corporate]~~ trustee does not establish a principal office as defined by Subdivision (2). The principal office of a ~~[the]~~ corporate trustee or

the principal office maintained by multiple noncorporate trustees may also be but is not necessarily the same as the situs of administration of the trust.

(3) "Situs of administration" means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013. Sec. 9(c) of HB 2913 provides: "Section 115.002, Property Code, as amended by this Act, applies only to a court action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose."

Sec. 116.201. DISBURSEMENTS FROM INCOME.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 116.051(2)(B) or (C) applies:

(1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income;

(2) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 778), effective September 1, 2013. See transitional note following Sec. 113.053.

Sec. 116.202. DISBURSEMENTS FROM PRINCIPAL.

(a) A trustee shall make the following disbursements from principal:

(1) the remaining one-half of the disbursements described in Section [~~Sections~~] 116.201(1) unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of those disbursements should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal;

(1-a) the remaining one-half of the disbursements described in Section 116.201(2) [and
(2)];

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in Section 116.201(4) of which the trust is the owner and beneficiary;

(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 778), effective September 1, 2013. See transitional note following Sec. 113.053.

Attachment 11 – 2013 Selected Amendments to the Texas Property Code (Excluding Trust Code)

[The following excerpts reflect amendments made by S.B. 649 and S.B. 1240.]

Sec. 42.0021. 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, Roth IRA, or inherited Roth IRA, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent 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), 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. 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) Contributions to an individual retirement account~~[, other than contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986, or an annuity]~~ that exceed the amounts permitted ~~[deductible]~~ under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as qualified rollover contributions

under Section 408A, Internal Revenue Code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(c) – (f) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 649), effective September 1, 2013. Sec. 3 of SB 649 provides: "The changes in law made by this Act do not apply to property that is, as of the effective date of this Act, subject to a voluntary bankruptcy proceeding or to a valid claim of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that would otherwise be held by a trustee in bankruptcy if a bankruptcy petition were then pending against the debtor. That property is subject to the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose."

CHAPTER 124. PARTITION OF MINERAL INTERESTS OF CHARITABLE TRUST

Sec. 124.001. DEFINITIONS.

In this chapter:

(1) "Charitable entity" means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3), Internal Revenue Code of 1986.

(2) "Charitable trust" means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) "Mineral interest" means an interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which such mineral substance is found.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1240), effective immediately (June 14, 2013). Sec. 2 of SB 1240 provides: "The change in law made by this Act applies only to a proceeding commenced on or after the effective date of this Act."

Sec. 124.002. COMPULSORY DIVESTMENT PROHIBITED.

In a suit or other judicial proceeding the object or effect of which is to compel the partition of a mineral interest owned or claimed by a charitable trust, a sale or other action that would divest the charitable trust of the trust's ownership of a mineral interest may not be ordered unless the trust has refused to execute a mineral lease, the terms of which are fair and reasonable, to the plaintiff or petitioner in the proceeding.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1240), effective immediately (June 14, 2013). See transitional note following Sec. 124.001.

Attachment 12 – 2013 Selected Amendments to the Texas Health & Safety Code

[The following excerpts reflect amendments made by H.B. 1738, S.B. 646, S.B. 651, and S.B. 718.]

Sec. 166.163. FORM OF DISCLOSURE STATEMENT.

The disclosure statement must be in substantially the following form:

INFORMATION CONCERNING THE MEDICAL
POWER OF ATTORNEY

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID
UNLESS:

(1) YOU SIGN IT AND HAVE YOUR
SIGNATURE ACKNOWLEDGED BEFORE A
NOTARY PUBLIC; OR

(2) YOU SIGN IT ~~[IS SIGNED]~~ IN THE
PRESENCE OF TWO COMPETENT ADULT
WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 651), effective January 1, 2014. Sec. 3 of SB 651 provides: "Not later than October 1, 2013, the executive commissioner of the Health and Human Services Commission shall adopt the forms necessary to comply with the changes in law made by this Act to Sections 166.163 and 166.164, Health and Safety Code."

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY.

The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY

DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone: _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone: _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone: _____

The original of this document is kept at:

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of

attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

**ACKNOWLEDGMENT OF DISCLOSURE
STATEMENT.**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

**SIGNATURE ACKNOWLEDGED BEFORE
NOTARY**

I sign my name to this medical power of attorney
on _____ day of _____ (month, year) at

(City and State)

(Signature)

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on
_____ (date) by _____ (name of
person acknowledging).

NOTARY PUBLIC, State of Texas

Notary's printed name:

My commission expires:

OR

**SIGNATURE IN PRESENCE OF TWO
COMPETENT ADULT WITNESSES**

I sign my name to this medical power of attorney
on _____ day of _____ (month, year) at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____

Print Name: _____ Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____

Print Name: _____ Date: _____

Address: _____

Amended by Acts 2013, 83rd Legislature, Ch. _____ (SB 651), effective January 1, 2014. See transitional note following Sec. 166.163. Sec. 4 of SB 651 provides: "The change in law made by this Act to Section 166.164, Health and Safety Code, does not affect the validity of a document executed under that section before the effective date of this section. A document executed before the effective date of this section is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose."

Sec. 166.165. CIVIL ACTION.

(a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action ~~in district court~~ to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or

(2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over an action brought under this section.

(b) [No change.]

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the ~~district~~ court orders otherwise.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 651), effective September 1, 2013. Sec. 5 of SB 651 provides: "The change in law made by this Act to Section 166.165, Health and Safety Code, applies to an action brought under that section on or after the effective date of this Act, regardless of whether the power of attorney was executed before, on, or after the effective date of this Act."

**CHAPTER 572. VOLUNTARY ~~INPATIENT~~
MENTAL HEALTH SERVICES**

Sec. 572.001. REQUEST FOR ADMISSION.

(a) A person 16 years of age or older ~~[or a person younger than 16 years of age who is or has been married]~~ may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where [to which] admission or outpatient treatment is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age ~~[who is not and has not been married]~~ may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where [to which] admission or outpatient treatment is requested.

(a-1) Except as provided by Subsection (c), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and

younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) [No change.]

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age only with the person's consent. If the person does not consent, the person may be admitted for inpatient services only pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, other state law, or department rule.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older ~~[or a person younger than 16 years of age who is or has been married]~~ to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 718), effective immediately (June 14, 2013).

Sec. 572.002. ADMISSION.

The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is[:

~~[(i)] 16 years of age or older; or~~

~~[(ii) younger than 16 years of age and is or has been married; or]~~

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age ~~[and is not and has not been married].~~

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 718), effective immediately (June 14, 2013).

Sec. 572.0051. TRANSPORTATION OF PATIENT TO ANOTHER STATE.

A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 718), effective immediately (June 14, 2013).

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) – (f) [No change.]

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1738), effective September 1, 2013.

Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF [APPLICATION FOR] DETENTION.

(a) A peace officer shall immediately file with a facility a notification of [an application for] detention after transporting a person to that [a] facility in accordance with [under] Section 573.001.

(b) The notification of [application for] detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person [himself] or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person's clinical file the notification of detention described by this section.

(d) The peace officer shall give the notification of detention on the following form:

Notification—Emergency Detention

NO. _____

DATE: _____ TIME: _____

THE STATE OF TEXAS

FOR THE BEST INTEREST AND PROTECTION OF:

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained) _____ evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

For the above reasons, I present this notification to seek temporary admission to the (name of facility) _____ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) _____ on an emergency basis.

6. Was the person restrained in any way? Yes ☐ No ☐

BADGE NO. _____

PEACE OFFICER'S SIGNATURE _____

Address: _____ Zip Code: _____

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained under Section 573.001.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1738), effective September 1, 2013.

Sec. 573.021. PRELIMINARY EXAMINATION.

(a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer files a notification of detention under Section 573.002(a).

(b) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1738), effective September 1, 2013.

Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION.

(a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;

(4) to be released from a facility as provided by Section 573.023;

(5) to be advised that communications with a mental health professional may be used in proceedings for further detention; ~~and~~

(6) to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner of the Health and Human Services Commission by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1738), effective September 1, 2013.

Sec. 574.0125. IDENTIFICATION OF PERSON RESPONSIBLE FOR COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES.

Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge

intends to designate to be responsible for those services under Section 574.037.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. Sec. 12 of SB 646 provides: "The change in law made by this Act applies only to an application for court-ordered mental health services or temporary detention filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose."

Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES.

(a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as [identify a person who is] responsible for those services or may designate a different person if necessary. The person designated [identified] must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located.

(b) The person responsible for the services shall submit to the court [~~within two weeks after the court enters the order~~] a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.034 or 574.035 or before the court modifies an order under Section 574.061, as appropriate.

(c) [No change.]

(c-1) A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order.

(c-2) A court may, on its own motion, set a status conference with the person responsible for the services, the patient, and the patient's attorney.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

(d) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

(a) – (e) [No change.]

(f) If the court modifies the order, the court shall designate [identify] a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) – (h) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.063. ORDER FOR TEMPORARY DETENTION.

(a) [No change.]

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1) the patient meets the criteria described by Section 574.064(a-1) [574.065(a)]; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER.

SECTION 5. Section 574.064, Health and Safety Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsections (b) and (e) to read as follows:

(a) [No change.]

(a-1) A physician shall evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). The determination that the patient presents a substantial risk of serious harm to the patient or others may be demonstrated by:

(1) the patient's behavior; or

(2) evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period,

the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062 ~~[meets the criteria described by Section 574.065(a)]~~; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) – (d) [No change.]

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES.

(a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT ORDER FOR ~~[INPATIENT]~~ MENTAL HEALTH SERVICES

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.102. APPLICATION OF SUBCHAPTER.

This subchapter applies to the application of medication to a patient subject to a court ~~[an]~~ order for ~~[inpatient]~~ mental health services under this chapter or other law.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES.

Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

(a) [No change.]

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 1001.083. REPORT ON COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES.

(a) Not later than December 1, 2016, the department shall prepare and submit to the legislature a report containing information about persons receiving court-ordered outpatient mental health services in this state and the effectiveness of those services.

(b) This section expires September 1, 2017.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.034. ORDER FOR TEMPORARY MENTAL HEALTH SERVICES.

(a) – (h) [No change.]

(i) [Repealed]

Acts 2013, 83rd Legislature, Ch. ____ (SB 646), effective September 1, 2013. See transitional note following Sec. 574.0125.

Sec. 574.035. ORDER FOR EXTENDED MENTAL HEALTH SERVICES.

(a) – (i) [No change.]

(j) [Repealed]

Attachment 13 – Other Selected 2013 Amendments

[The following excerpts reflect amendments made by H.B. 908, H.B. 1366, H.B. 1755, H.B. 2302, H.B. 2913, S.B. 60, S.B. 649, S.B. 847, S.B. 1235, and S.B. 1236.]

BUSINESS & COMMERCE CODE

SUBCHAPTER A. GENERAL REQUIREMENTS

Sec. 20.01, 20.02, 20.021, and 20.03 [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

Sec. 20.031, 20.032, 20.033, 20.034, 20.035, 20.036, 20.037, 20.038, 20.0385, and 20.039 [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND CONSUMER REPORTING AGENCIES

Sec. 20.04, 20.05, 20.06, and 20.07 [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

SUBCHAPTER D. ENFORCEMENT

Sec. 20.08, 20.09, 20.10, 20.11, 20.12, and 20.13 [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

Sec. 20.21. DEFINITIONS.

In this subchapter:

(1) "Protected consumer" means an individual who resides in this state and is younger than 16 years of age at the time a request for the placement of a security freeze is made.

(2) "Record," with respect to a protected consumer, means a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with this subchapter.

(3) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(4) "Security freeze," with respect to a protected consumer, means:

(A) if a consumer reporting agency does not have a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's record in accordance with this subchapter; and

(ii) prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving the consumer's record without the express authorization of the consumer's representative or the consumer, as applicable; or

(B) if a consumer reporting agency has a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's consumer report in accordance with this subchapter; and

(ii) except as otherwise provided by this subchapter, prohibits a consumer reporting agency from releasing the protected consumer's consumer report relating to the extension of credit involving that consumer file, or any information derived from the protected consumer's consumer report.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.22. APPLICABILITY; CONFLICT OF LAW.

(a) This subchapter does not apply to the use of a protected consumer's consumer report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(A) the protected consumer has subscribed; or

(B) the representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) a person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative;

(3) a consumer reporting agency with respect to a database or file that consists entirely of information concerning, and is used solely for, one or more of the following:

- (A) criminal history record information;
- (B) personal loss history information;
- (C) fraud prevention or detection;
- (D) tenant screening; or
- (E) employment screening; or

(4) an entity described by Section 20.038(11), (12), or (13).

(b) To the extent of a conflict between a provision of this subchapter relating to a protected consumer and another provision of this chapter, this subchapter controls.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.23. PROOF OF AUTHORITY AND IDENTIFICATION.

(a) Documentation that shows a person has authority to act on behalf of a protected consumer is considered sufficient proof of authority for purposes of this subchapter, including:

(1) an order issued by a court; or

(2) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(b) Information or documentation that identifies a protected consumer or a representative of a protected consumer is considered sufficient proof of identity for purposes of this subchapter, including:

(1) a social security number or a copy of the social security card issued by the United States Social Security Administration;

(2) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

(3) a copy of a driver's license or identification card issued by the Department of Public Safety; or

(4) any other government-issued identification.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.24. USE OF RECORD TO CONSIDER CREDITWORTHINESS OR FOR OTHER PURPOSES PROHIBITED.

A protected consumer's record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity,

character, general reputation, personal characteristics, or mode of living for any purpose described by Section 20.01(4).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.25. REQUEST TO PLACE A SECURITY FREEZE; CREATION OF RECORD.

(a) Except as provided by Subsection (b), a consumer reporting agency shall place a security freeze on a protected consumer's consumer file if:

(1) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze as provided by this section; and

(2) the protected consumer's representative:

(A) submits the request to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(B) provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

(C) provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

(D) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) If a consumer reporting agency does not have a consumer file pertaining to a protected consumer when the consumer reporting agency receives a request under Subsection (a) and if the requirements of Subsection (a) are met, the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the protected consumer's record.

(c) The consumer reporting agency shall place the security freeze on the protected consumer's consumer file or record, as applicable, not later than the 30th day after receiving a request that meets the requirements of Subsection (a).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.26. RELEASE OF CONSUMER REPORT PROHIBITED.

Unless a security freeze on a protected consumer's consumer file or record is removed under Section 20.28 or 20.30, a consumer reporting agency may not release any consumer report relating to the protected consumer.

any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.27. PERIOD OF SECURITY FREEZE.

A security freeze on a protected consumer's consumer file or record remains in effect until:

(1) the protected consumer or the protected consumer's representative requests that the consumer reporting agency remove the security freeze in accordance with Section 20.28; or

(2) a consumer reporting agency removes the security freeze under Section 20.30.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.28. REMOVAL OF SECURITY FREEZE.

(a) A protected consumer or a protected consumer's representative may remove a security freeze on a protected consumer's consumer file or record if the protected consumer or representative:

(1) submits a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(2) provides to the consumer reporting agency:

(A) in the case of a request by the protected consumer:

(i) sufficient proof of identification of the protected consumer; and

(ii) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; or

(B) in the case of a request by the representative of a protected consumer:

(i) sufficient proof of identification of the protected consumer and the representative; and

(ii) sufficient proof of authority to act on behalf of the protected consumer; and

(3) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) The consumer reporting agency shall remove the security freeze on the protected consumer's consumer file or record not later than the 30th day after

the date the agency receives a request that meets the requirements of Subsection (a).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.29. FEES.

(a) A consumer reporting agency may not charge a fee for any service performed under this subchapter other than a fee authorized by this section.

(b) Except as provided by Subsection (c), a consumer reporting agency may charge a reasonable fee in an amount not to exceed \$10 for each placement or removal of a security freeze on the protected consumer's consumer file or record.

(c) A consumer reporting agency may not charge a fee for the placement of a security freeze under this subchapter if:

(1) the protected consumer's representative submits to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the commission of an offense under Section 32.51, Penal Code; or

(2) at the time the protected consumer's representative makes the request for a security freeze:

(A) the protected consumer is under the age of 16; and

(B) the consumer reporting agency has created a consumer report pertaining to the protected consumer.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.30. EFFECT OF MATERIAL MISREPRESENTATION OF FACT.

A consumer reporting agency may remove a security freeze on a protected consumer's consumer file or record, or delete a record of a protected consumer, if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 20.31. REMEDY FOR VIOLATION.

Notwithstanding Subchapter D or any other law, the exclusive remedy for a violation of this subchapter is a suit filed by the attorney general under Section 20.11.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 60), effective January 1, 2014.

Sec. 24.003. INSOLVENCY.

(a) – (b) [No change.]

(c) [Repealed]

(d) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

BUSINESS ORGANIZATIONS CODE

Sec. 3.059. RESTATED CERTIFICATE OF FORMATION.

(a) – (c) [No change.]

(d) A restated certificate of formation that makes new amendments to the certificate of formation being restated must:

(1) be accompanied by a statement that each new amendment has been made in accordance with this code;

(2) ~~identify by reference or description each added, altered, or deleted provision;~~

~~(3)~~ be accompanied by a statement that each amendment has been approved in the manner required by this code and the governing documents of the entity;

~~(3)~~ ~~(4)~~ be accompanied by a statement that the restated certificate of formation:

(A) accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, as further amended by the restated certificate of formation; and

(B) does not contain any other change in the certificate of formation being restated except for information omitted under Subsection (b); and

~~(4)~~ ~~(5)~~ include any other information required by the title of this code applicable to the entity.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 7.001. LIMITATION OF LIABILITY OF GOVERNING PERSON.

(a) – (c) [No change.]

(d) The liability of a governing person may be limited or eliminated ~~[restricted]~~:

(1) in a general partnership by its partnership agreement to the same extent Subsections (b) and (c)

permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 152;

(2) in a limited partnership by its partnership agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 153 and, to the extent applicable to limited partnerships, Chapter 152; and

(3) in a limited liability company by its certificate of formation or company agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Section 101.401.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 11.052. WINDING UP PROCEDURES.

(a) Except as provided by the title of this code governing the domestic entity, on the occurrence of an event requiring winding up of a domestic entity, unless the event requiring winding up is revoked under Section 11.151 or canceled under Section 11.152, the owners, members, managerial officials, or other persons specified in the title of this code governing the domestic entity shall, as soon as reasonably practicable, wind up the business and affairs of the domestic entity. The domestic entity shall:

(1) cease to carry on its business, except to the extent necessary to wind up its business;

(2) if the domestic entity is not a general partnership, send a written notice of the winding up to each known claimant against the domestic entity;

(3) collect and sell its property to the extent the property is not to be distributed in kind to the domestic entity's owners or members; and

(4) perform any other act required to wind up its business and affairs.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 21.301. DEFINITIONS.

In this subchapter:

(1) "Distribution limit," with respect to a distribution made by a corporation, other than a distribution described by Subdivision (2), means:

(A) the net assets of the corporation if the distribution:

(i) is a purchase or redemption of its own shares by a corporation that:

(a) is eliminating fractional shares;

(b) is collecting or compromising indebtedness owed by or to the corporation; or

(c) is paying dissenting shareholders entitled to payment for their shares under this code; or

(ii) is made by a consuming assets corporation and is not the purchase or redemption of its own shares [~~by a consuming assets corporation~~]; or

(B) the surplus of the corporation for a distribution not described by Paragraph (A).

(2) – (3) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 101.052. COMPANY AGREEMENT.

(a) – (d) [No change.]

(e) A company agreement may provide rights to any person, including a person who is not a party to the company agreement, to the extent provided by the company agreement.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 101.605. GENERAL POWERS OF SERIES.

A series established under this subchapter has the power and capacity, in the series' own name, to:

(1) sue and be sued;

(2) contract;

(3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property; [~~and~~]

(4) grant liens and security interests in assets of the series; and

(5) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER OR TITLE 1; SYNONYMOUS TERMS.

(a) – (b) [No change.]

(c) To the extent not inconsistent with this subchapter, a series and the governing persons and officers associated with the series have the powers and rights provided by Subchapters C and D, Chapter 3, and Subchapter F, Chapter 10. For purposes of those provisions, and as the context requires:

(1) a reference to "entity," "domestic entity," or "filing entity" includes the "series";

(2) a reference to "governing person" includes "governing person associated with the series";

(3) a reference to "governing authority" includes "governing authority associated with the series"; and

(4) a reference to "officer" includes "officer associated with the series."

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION.

For purposes of this chapter and Title 1, a series has the rights, powers, and duties provided by this subchapter to the series but is not a separate domestic entity or organization.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP AGREEMENT.

A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent provided by the partnership agreement.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 847), effective September 1, 2013.

CIVIL PRACTICE & REMEDIES CODE

Sec. 11.001. DEFINITIONS.

(1) – (2) [No change.]

(3) [Repealed]

(4) [No change.]

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. Sec. 11 of SB 1630 provides: "The change in law made by this Act applies only to an action commencing on or after the effective date of this Act. An action commencing before the effective date of this Act is governed by the law as it existed on the date when the action commenced, and that law is continued in effect for that purpose."

Sec. 11.002. APPLICABILITY.

(a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT.

A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained ~~[in propria persona]~~ at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se ~~[in propria persona]~~, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same

defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.101. PREFILING ORDER; CONTEMPT.

(a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se ~~[in propria persona]~~, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation ~~[in this state]~~ if the court finds, after notice and hearing as provided by Subchapter B, that[:

[~~(1)~~] the person is a vexatious litigant[; and

~~[(2) the local administrative judge of the court in which the person intends to file the litigation has not granted permission to the person under Section 11.102 to file the litigation].~~

(b) – (c) [No change.]

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE.

(a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if

the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate [A] local administrative judge described by Subsection (a) may grant permission to a [person found to be a] vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) [(b)] The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) [(e)] A decision of the appropriate [a] local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d) [(a)], or conditioning permission to file a litigation on the furnishing of security under Subsection (e) [(b)], is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.103. DUTIES OF CLERK; ~~MISTAKEN FILING~~.

(a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) [Repealed]

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation [~~under Subsection (b)~~], the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section ~~11.102~~ [41.102(e)].

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.1035. MISTAKEN FILING.

(a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST.

(a) – (b) [No change.]

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under

Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1630), effective September 1, 2013. See transitional note following Sec. 11.001.

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER.

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;
- (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;
- (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;
- (9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal

may not be taken from an order granting an extension under Section 74.351;

(10) grants relief sought by a motion under Section 74.351(l); or

(11) denies a motion to dismiss filed under Section 90.007.

(b) – (e) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1874 and SB 1083), effective September 1, 2013. Sec. 2 of HB 1874 and SB 1083 provides: “The change in law made by this Act to Subsection (a), Section 51.014, Civil Practice and Remedies Code, applies only to an appeal of an interlocutory order rendered on or after the effective date of this Act. An appeal of an interlocutory order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.”

FAMILY CODE

Sec. 6.708. COSTS; ATTORNEY’S FEES AND EXPENSES.

(a) – (b) [No change.]

(c) In a suit for dissolution of a marriage, the court may award reasonable attorney's fees and expenses. The court may order the fees and expenses and any postjudgment interest to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1366), effective September 1, 2013. Sec. 10 of HB 1366 provides: “Section 6.708(c), Family Code, as added by this Act, applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit filed before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.”

FINANCE CODE

Sec. 59.006. DISCOVERY OF CUSTOMER RECORDS.

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of:

(A) the investigation or prosecution of a criminal offense;

(B) [øø] the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code; or

(C) the assessment for or provision of guardianship services under Subchapter E, Chapter 161, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;

(5) a record request by a duly appointed receiver for the customer;

(6) an investigative demand or inquiry from a state legislative investigating committee;

(7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; or

(8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law.

(b) – (g) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1235), effective September 1, 2013.

GOVERNMENT CODE

Sec. 21.011. ELECTRONIC OR DIGITAL SIGNATURE.

A judge or justice presiding over a court in this state may sign an electronic or digital court document, including an order, judgment, ruling, notice,

commission, or precept, electronically, digitally, or through another secure method. The document signed in that manner is the official document issued by the court.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013.

Sec. 25.00251. PUBLIC PROBATE ADMINISTRATOR.

(a) A statutory probate court judge, with the concurrence of the commissioners court, may appoint a public probate administrator for the county in which the statutory probate court is located. One person shall serve as the public probate administrator for all statutory probate courts in the county unless the commissioners court has authorized additional public probate administrators.

(b) If a county has more than one statutory probate court, the presiding judges of all of the statutory probate courts located in the county shall designate, by a majority vote, a specific statutory probate court judge to appoint and administer the office of the public probate administrator in that county. If the statutory probate court judges cannot, by a majority vote, determine which statutory probate court judge shall appoint and administer the office of the public probate administrator in that county, the chief presiding statutory probate court judge shall cast the tiebreaking vote to decide which statutory probate court judge shall appoint and administer the office of the public probate administrator in that county.

(c) The public probate administrator may be a person, a charitable organization, or any other suitable entity.

(d) The commissioners court shall set the compensation of the public probate administrator.

(e) The public probate administrator, with the consent of and at salaries set by the commissioners court, may employ assistants, deputies, clerks, and any other employees as necessary to carry out Chapter 455, Estates Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

SUBCHAPTER I-1. ELECTRONIC FILING FEE

Sec. 51.851. ELECTRONIC FILING FEE.

(a) In this section, "conviction" has the meaning assigned by Section 133.101, Local Government Code.

(b) In addition to other fees authorized or required by law, the clerk of the supreme court, a court of

appeals, a district court, a county court, a statutory county court, or a statutory probate court shall collect a \$20 fee on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to be used as provided by Section 51.852.

(c) In addition to other fees authorized or required by law, the clerk of a justice court shall collect a \$10 fee on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to be used as provided by Section 51.852.

(d) In addition to other court costs, a person shall pay \$5 as a court cost on conviction of any criminal offense in a district court, county court, or statutory county court.

(e) A court may waive payment of a court cost or fee due under this section for an individual the court determines is indigent.

(f) Court costs and fees due under this section shall be collected in the same manner as other fees, fines, or costs in the case.

(g) The clerk of a district court, a county court, a statutory county court, a statutory probate court, or a justice court shall deposit the court costs and fees collected under this section in the appropriate local treasury and remit the court costs and fees to the comptroller in the manner provided by Subchapter B, Chapter 133, Local Government Code.

(h) The clerk of the supreme court or of a court of appeals shall remit the fees collected under this section to the comptroller.

(i) The comptroller shall deposit the court costs and fees received under this section to the credit of the statewide electronic filing system fund established under Section 51.852.

(j) The comptroller may audit the records of a county related to costs and fees collected under this section.

(k) Money spent from costs and fees collected under this section is subject to audit by the state auditor.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. Sec. 21(b) of HB 2302 provides: "The changes in law made by this Act apply only to a fee that becomes payable on or after September 1, 2013. A fee that becomes payable before

that date is governed by the law in effect when the fee became payable, and the former law is continued in effect for that purpose."

Sec. 51.852. STATEWIDE ELECTRONIC FILING SYSTEM FUND.

(a) The statewide electronic filing system fund is an account in the general revenue fund.

(b) Money in the statewide electronic filing system fund may only be appropriated to the Office of Court Administration of the Texas Judicial System and used to:

(1) support a statewide electronic filing technology project for courts in this state;

(2) provide grants to counties to implement components of the project; or

(3) support court technology projects that have a statewide impact as determined by the office of court administration.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 72.031. ELECTRONIC FILING SYSTEM.

(a) In this section:

(1) "Appellate court" means the supreme court, the court of criminal appeals, or a court of appeals.

(2) "Electronic filing system" means the filing system established by supreme court rule or order for the electronic filing of documents in courts of this state.

(3) "Electronic filing transaction" means the simultaneous electronic filing of one or more documents related to a proceeding before a court in this state.

(4) "Local government" means a county or municipality.

(b) The office as authorized by supreme court rule or order may implement an electronic filing system for use in the courts of this state.

(c) A local government or appellate court that uses the electronic filing system may charge a fee of \$2 for each electronic filing transaction if:

(1) the fee is necessary to recover the actual system operating costs reasonably incurred by the local government or appellate court to:

(A) accept electronic payment methods; or

(B) interface with other technology information systems;

(2) the fee does not include an amount to recover local government or appellate court employee costs, other than costs for directly maintaining the system;

(3) the governing body of the local government or the appellate court approves the fee using the local government or appellate court's standard approval process for fee increases; and

(4) the local government or appellate court annually certifies to the office on a form prescribed by the office that the amount of the fee is necessary to recover the actual system operating costs incurred by the local government or appellate court.

(c-1) This subsection and Subsection (c) expire September 1, 2019.

(d) A local government or appellate court that uses the electronic filing system may accept electronic payment methods, including payments made with credit and debit cards.

(e) A governmental entity not otherwise required to pay a filing fee under any other law may not be required to pay a fee established under this section.

(f) A court shall waive payment of any fee due under this section for an individual the court determines is indigent.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.0211. ADDITIONAL SUPREME COURT FEES: GOVERNMENT CODE.

The clerk of the supreme court shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.0411. ADDITIONAL COURT OF APPEALS FEES: GOVERNMENT CODE.

The clerk of a court of appeals shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.06118. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT CODE.

The clerk of a district court shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.08117. ADDITIONAL STATUTORY COUNTY COURT FEES: GOVERNMENT CODE.

The clerk of a statutory county court shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.08145. ADDITIONAL STATUTORY COUNTY COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.

The clerk of a statutory county court shall collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 101.10116. ADDITIONAL STATUTORY PROBATE COURT FEES: GOVERNMENT CODE.

The clerk of a statutory probate court shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.103. ADDITIONAL STATUTORY PROBATE COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.

The clerk of a statutory probate court shall collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 101.12126. ADDITIONAL COUNTY COURT FEES: GOVERNMENT CODE.

The clerk of a county court shall collect a statewide electronic filing system fund fee of \$20 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 101.12145. ADDITIONAL COUNTY COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.

The clerk of a county court shall collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 101.1411. ADDITIONAL JUSTICE COURT FEES: GOVERNMENT CODE.

The clerk of a justice court shall collect a statewide electronic filing system fund fee of \$10 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 102.0415. ADDITIONAL COURT COSTS ON CONVICTION IN DISTRICT COURT: GOVERNMENT CODE.

The clerk of a district court shall collect from a defendant a court cost on conviction of \$5 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 102.0615. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: GOVERNMENT CODE.

The clerk of a statutory county court shall collect from a defendant a court cost on conviction of \$5 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 102.082. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: GOVERNMENT CODE.

The clerk of a county court shall collect from a defendant a court cost on conviction of \$5 under Section 51.851, Government Code.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

Sec. 103.027. MISCELLANEOUS FEES AND COSTS: GOVERNMENT CODE.

(a) Fees and costs shall be paid or collected under the Government Code as follows:

(1) filing a certified copy of a judicial finding of fact and conclusion of law if charged by the secretary of state (Sec. 51.905, Government Code) . . . \$15;

(2) cost paid by each surety posting the bail bond for an offense other than a misdemeanor punishable by fine only under Chapter 17, Code of Criminal Procedure, for the assistant prosecutor supplement fund and the fair defense account (Sec. 41.258, Government Code) . . . \$15, provided the cost does not exceed \$30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal or cash bond;

(3) to participate in a court proceeding in this state, a nonresident attorney fee (Sec. 82.0361, Government Code) . . . \$250 except as waived or reduced under supreme court rules for representing an indigent person;

(4) on a party's appeal of a final decision in a contested case, the cost of preparing the original or a certified copy of the record of the agency proceeding, if required by the agency's rule, as a court cost (Sec. 2001.177, Government Code) . . . as assessed by the court, all or part of the cost of preparation;

(5) compensation to a referee in juvenile court in Wichita County taxed as costs if the judge determines the parties are able to pay the costs (Sec. 54.403, Government Code) . . . as determined by the judge; and

(6) the expense of preserving the record as a court cost in Brazos County if imposed on a party by the referring court or magistrate (Sec. 54.1111, Government Code) . . . actual cost.

(b) Any fee of \$2 charged by a local government or appellate court for an electronic filing transaction as authorized under Section 72.031(c), Government Code,

shall be collected. This subsection expires September 1, 2019.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2302), effective September 1, 2013. See transitional note following Sec. 58.851.

HUMAN RESOURCES CODE

Sec. 48.208. EMERGENCY ORDER FOR PROTECTIVE SERVICES.

(a) – (c-2) [No change.]

(c-3) An assessment of the elderly or disabled person's psychological status must be performed by a licensed professional counselor, licensed psychologist, or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation. The person performing the assessment shall sign a report stating:

(1) that the elderly or disabled person is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) that in the professional opinion of the licensed professional counselor, licensed psychologist, or master social worker, as applicable, the issuance of an emergency order authorizing protective services without the elderly or disabled person's consent is necessary under the circumstances.

(c-4) – (e-1) [No change.]

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section, other than an emergency order that terminated as provided under Subsection (e-1), for a period of not more than 30 days after the date the original emergency order for protective services would have expired under Subsection (e) [was rendered]. The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's welfare.

(f) – (i) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 908), effective immediately (June 14, 2013).

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 1236), effective immediately (June 14, 2013).

INSURANCE CODE:

Sec. 1108.052. EXEMPTIONS UNAFFECTED BY BENEFICIARY DESIGNATION.

The exemptions provided by Section 1108.051 apply regardless of whether:

(1) the power to change the beneficiary is reserved to the insured; or

(2) the insured or the insured's estate is a ~~[contingent]~~ beneficiary.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (SB 649), effective September 1, 2013. Sec. 3 of SB 649 provides: "The changes in law made by this Act do not apply to property that is, as of the effective date of this Act, subject to a voluntary bankruptcy proceeding or to a valid claim of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that would otherwise be held by a trustee in bankruptcy if a bankruptcy petition were then pending against the debtor. That property is subject to the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose."

LOCAL GOVERNMENT CODE

Sec. 118.052. FEE SCHEDULE.

Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) [No change.]

(2) PROBATE COURT ACTIONS

(A) – (E) [No change.]

(F) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator (Sec. 118.068) . . . \$10.00

(3) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

Sec. 118.068. SUPPLEMENTAL PUBLIC PROBATE ADMINISTRATOR FEE.

(a) The "supplemental public probate administrator fee" under Section 118.052(2)(F) is for the support of the office of public probate administrator under Chapter 455, Estates Code. Fees collected under Section 118.052(2)(F) shall be deposited in the county treasury to fund the expenses of the public probate administrator's office.

(b) The supplemental public probate administrator fee is charged for:

(1) a probate original action described by Section 118.055 and for which a fee is charged in accordance with Section 118.052(2)(A)(i), (ii), (iii), (iv), or (v); and

(2) an adverse probate action described by Section 118.057 and for which a fee is charged in accordance with Section 118.052(2)(C).

(c) The supplemental public probate administrator fee must be paid by the person against whom the fee for a probate original action or adverse probate action, as applicable, is charged and is due at the time that fee is due.

(d) The supplemental public probate administrator fee is in addition to all other fees charged in probate original actions and adverse probate actions.

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 1755), effective January 1, 2014.

TAX CODE:

Sec. 11.13. RESIDENCE HOMESTEAD.

(a) – (h) [No change.]

(j) For purposes of this section:

(1) "Residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(A) is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;

(B) is designed or adapted for human residence;

(C) is used as a residence; and

(D) is occupied as the individual's ~~[his]~~ principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.

(2) "Trustor" means a person who transfers an interest in real or personal ~~[residential]~~ property to a qualifying trust, whether during the person's lifetime or at death ~~[by deed or by will]~~, or the person's spouse.

(3) "Qualifying trust" means a trust:

(A) in which the agreement, will, or court order creating the trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that the trustor of the trust or a ~~[the]~~ beneficiary of the trust ~~[if created by court order]~~ has the right to use and occupy as the trustor's or beneficiary's principal residence residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument or court order:

(i) for life;

(ii) for the lesser of life or a term of years; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

(B) that acquires the property in an instrument of title or under a court order that:

(i) describes the property with sufficient certainty to identify it and the interest acquired; and

(ii) is recorded in the real property records of the county in which the property is located; ~~and~~

~~[(iii) in the case of a trust that is not created by court order, is executed by the trustor or the personal representative of the trustor].~~

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013.

Sec. 152.025. TAX ON GIFT OF MOTOR VEHICLE.

(a) A tax is imposed on the recipient of a gift of a motor vehicle. This section applies only if the person receiving the motor vehicle:

(1) receives the vehicle from:

(A) the person's:

(i) spouse;

(ii) parent or stepparent;

(iii) grandparent or grandchild;

(iv) child or stepchild;

(v) sibling; or

(vi) guardian; ~~[or]~~

(B) a decedent's estate;

(C) a trust subject to the Texas Trust Code (Subtitle B, Title 9, Property Code) that was revocable by a decedent or that was jointly revocable by a decedent and the decedent's spouse; or

(D) a trust subject to the Texas Trust Code that is revocable by the person receiving the motor vehicle or that is jointly revocable by the recipient and the recipient's spouse;

(2) is a trust subject to the Texas Trust Code that is revocable by the transferor of the motor vehicle or that is jointly revocable by the transferor and the transferor's spouse; or

(3) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, and the vehicle will be used for the purposes of the organization.

(b) [No change.]

Amended by Acts 2013, 83rd Legislature, Ch. ____ (HB 2913), effective September 1, 2013.