

The 2017 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

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AREAS OF PRACTICE

Probate litigation, probate administration, guardianship administration, trust administration, and estate planning law.

EDUCATION

Juris Doctor degree, Duke University School of Law, 1995.

Bachelor of Arts degree with high honors, Plan II program, University of Texas at Austin, 1990

PROFESSIONAL HISTORY

Hopper Mikeska, PLLC, 2012-Present

Hopper & Associates, P.C., 2005 - 2012

Shareholder, Graves, Dougherty, Hearon & Moody, 1998 - 2005

Law Clerk, Honorable Guy Herman, Travis County Probate Court No. 1, 1996-1998

PROFESSIONAL AFFILIATIONS

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization

Member, Austin Bar Association

Member, State Bar of Texas

Member, SBOT Real Estate, Probate and Trust Law (REPTL) Section Council Member 2010-2014; Chair of Estate and Trust Legislative Affairs Committee 2014-Present

Member, Estate Planning Council of Central Texas; Director 2008-2014; Chair 2012-2013

Member, Travis County Bar Association Probate and Estate Planning Section; Director, 1999- 2004; Chair, 2003

RECENT PRESENTATIONS/PAPERS

- Author/Speaker, "Extraordinary Remedies in Probate Proceedings," SBOT Probate and Estate Planning Drafting Course 2014, Dallas
- Author/Speaker, "Whack-a-Mole: Handling Problem Litigants and the Occasional Overzealous Ad Litem," SBOT Advanced Guardianship Course 2014, Dallas;
- Speaker, "Mock Guardianship Hearing—How and When to Put Your Ward on the Stand," SBOT Advanced Guardianship Course 2014, Dallas; Tarrant County Bar Association Probate Litigation Seminar 2014, Ft Worth
- Speaker, "Basic Guardianship," Docket Call in Probate Court, San Antonio, Texas 2014
- Speaker, "Ask the Experts" panel 15th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2013
- Author/Speaker, "Creating a Travis County Guardianship," Austin Advisors Forum, Austin 2013
- Course Director, SBOT Advanced Guardianship and Elder Law Courses, Houston, 2013
- Speaker, "Alternatives to Guardianship" and "Ask the Experts" panel 14th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2012
- Author/Speaker, "Drafting the Estate and Trust Distribution Documents," SBOT Advanced Drafting Course, Dallas 2011
- Speaker, "Contested Guardianships," SBOT Advanced Guardianship Course 2011, Houston; South Texas College of Law 26th Annual Wills and Probate Institute, Houston 2011
- Author/Speaker, "The Role of the Guardian," 13th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2011
- Speaker, "Call in the Sheriff: Handling Overzealous Ad Litem and Other Outlaws," SBOT Advanced Guardianship Course 2010, Houston
- Author/Speaker, "Extraordinary Preparation for Mediation in Guardianship Disputes," SBOT Advanced Guardianship Course 2009, Houston
- Author/Speaker, "Extraordinary Remedies in Probate Proceedings," SBOT Advanced Estate Planning and Probate Course 2008, Dallas
- Panel Member, "Ask the Experts," and "Former Statutory Probate Court Staff Attorneys Panel" 9th Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2007
- Speaker, "Attorney Ad Litem Duties" and Panel Member, "Ask the Experts," 8th Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2006

CRAIG HOPPER (cont.)

- Speaker/Panel Member, SBOT Building Blocks of Probate and Estate Planning: Probate Administration, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013
- Author/Speaker, “Using Independent Facilitators to Resolve Probate Disputes,” Guardianship and Elder Law Conference, Galveston, Texas, August 2004



Legal Experience

Bill Pargaman has been a partner in the Austin law firm of Saunders, Norval, Pargaman & Atkins since July of 2012. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and has been a Fellow in the American College of Trust and Estate Counsel (since 1994). He is very active in the Real Estate, Probate and Trust Law Section of the State Bar of Texas, having served as REPTL's Chair for the 2015-2016 bar year, as chair of its Estate and Trust Legislative Affairs Committee for the 2009, 2011, and 2013 legislative sessions, and as a Council member and chair of REPTL's Trusts Committee from 2004 to 2008.

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. He represents nonprofit entities with respect to issues involving charitable trusts and endowments. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

Education

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

Professional Licenses

- Attorney at Law, Texas, 1981

Court Admissions

- United States Tax Court

Prior Experience

- Brown McCarroll, L.L.P. (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, Advanced Estate Planning Strategies Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Advanced Real Estate Law Course, Advanced Real Estate Drafting Course, Advanced Tax Law Course, State Bar College Summer School, State Bar Annual Meeting, 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

William D. Pargaman (cont.)

- 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
- Tarrant County Probate Bar Association
- Hidalgo County Bar Association Estate Planning and Probate Section
- Bell County Bench Bar Conference
- Midland College/Midland Memorial Foundation Annual Estate Planning Seminar
- 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, San Antonio, and Tyler
- Austin Association of Life Underwriters

Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow
- State Bar of Texas
 - Real Estate, Probate and Trust Law Section, Member (Chair, 2015-2016)
 - Real Estate, Probate, and Trust Law Council, Member, 2004–2008
 - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
 - Public Service Committee, Chair, 2013–2014
 - 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

- Recipient, TexasBarCLE STANDING OVATION award, 2014
- 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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The 2017 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

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1. The Preliminaries.

1.1 Introduction and Scope. The 85th Regular Session of the Texas Legislature spans the 140 days beginning January 10, 2017, and ending May 29, 2017. This paper presents a summary of the bills that relate 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. (And, to be honest, sometimes I go off on a tangent and discuss a bill of interest to me that has nothing to do with any of the areas mentioned above.)

1.2 CMA Disclaimers. While reading this paper, please keep in mind the following:

- 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.
- In addition, some of the descriptions in this paper admittedly border on editorial opinion, in which case the opinion is my own, and not necessarily that of REPTL, Craig Hopper, or anyone else.
- I often work on this paper late at night, past my normal bedtime, perhaps, even, under the influence of strategic amounts of Johnnie Walker Black (donations of Red, Black, Green, Gold, Blue, Platinum, or even Swing happily accepted!¹).
- As companion bills make their way through the legislative process, I usually base descriptions on the most recently approved version in either chamber. In the case of REPTL bills, I sometimes have access to drafts of substitutes before they are officially posted, in which case the descriptions may be based on what we think the bill will look

like, rather than what the currently-online version looks like.

- As a consequence, while the descriptions contained in this paper are hopefully accurate at the time they are written, they may no longer accurately reflect the contents of a bill at a later stage in the legislative process.

Therefore, you'll find directions in Section 1.6 on page 2 for obtaining copies of the actual bills themselves so you may review and analyze them yourself before relying on any information in this paper.

1.3 If You Want to Skip to the Good Stuff ... If you don't want to read the rest of these preliminary matters and want to skip to the legislation itself, you'll find it beginning with **Part 6 on page 6**.

1.4A Note About Linking to the Electronic Version. Feel free to link to the electronic version of this paper if you'd like. If you do, use the URL found on the cover page to link to the most recent version of the paper:

www.snpalaw.com/resources/2017LegislativeUpdate

Once you click on that link, you'll open a PDF version of this paper. However, **don't** copy the URL that you'll find in your browser's address bar when you open the PDF! That's likely to be a 100+ character web address that will take you to that particular version of the paper only, and only so long as that version remains posted. Trust me – the link I've given you will take you to the right version each time.

And note that you can bring up my previous legislative updates going back to 2009 by substituting the appropriate odd-numbered year for "2017" in the URL.

1.5 Acknowledgments. A lot of the effort in every legislative session comes from the Real Estate, Probate & Trust Law Section of the State Bar of Texas ("REPTL"). REPTL, with approximately 9,000 members, has been active in proposing legislation in this area for more than three decades. During the year

¹ I checked with Craig Hopper, and he says Scotch donations are okay with him, too.

and a half preceding a session, the REPTL Council works hard to come up with a package that addresses the needs of its members and the public, and then works to get the package enacted into law. In addition to myself, others who have been deeply involved in this legislative process include:

- Craig Hopper of Austin, Chair, Estate and Trust Legislative Affairs Committee; and principal presenter of this paper
- Tina Green of Texarkana, Chair-Elect/Secretary of REPTL (and Chair beginning in July of 2017)
- Melissa Willms of Houston, Chair, Decedents' Estates Committee
- Catherine Goodman of Fort Worth, Chair, Guardianship Committee
- Laura Upchurch of Brenham, Immediate Past Chair, Guardianship Committee
- Jeffrey Myers of Fort Worth, Chair, Trusts Committee
- Lora Davis of Dallas, Chair, Powers of Attorney and Advance Directives (PAADs) Committee
- Gerry Beyer of Lubbock, Chair, Digital Assets 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 staff (in particular, KaLyn Laney, Assistant Deputy Director).

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.

Last, but of course not least, are the legislators and their staffs. In the 2017 session, sponsors of REPTL legislation include Rep. Jessica Farrar (D- Houston), Rep. Tan Parker (R-Flower Mound), Rep. John Wray (R-Waxahachie), Sen. José Rodríguez (D-El Paso), Sen. Van Taylor (R-Plano), and Sen. Judith Zaffirini (D-Laredo).

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.

1.6 Obtaining Copies of Bills. If you want to obtain copies of any of the bills discussed here, go to www.legis.state.tx.us. Near the top of the page, in the middle column, you'll see **Search Legislation**. First, select the legislative session you wish to search (for example, the 2017 regular legislative session that spans from January through May is "85(R) - 2017). Select the Bill Number button, and then type your bill number in the box below. So, for example, if you wanted to find the Decedents' Estates bill prepared by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas ("REPTL"), you'd type "HB _____" and press Go. (It's fairly forgiving – if you type in lower case, place periods after the H and the B, or include a space before the actual number, it's still likely to find your bill.)

Then click on the Text tab. You'll see multiple versions of bills. The "engrossed" version is the one that passes 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.

2. The People and Organizations Most Involved in the Process.

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

2.1 REPTL. REPTL acts through its Council.

Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL 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 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.

2.3 The Bankers. There are two groups of bankers that REPTL deals with. One is the Wealth Management and Trust Division of the Texas Bankers Association (“TBA”), which tends to represent the larger corporate fiduciaries, while the other is the Independent Bankers Association of Texas (“IBAT”), which tends to represent the smaller corporate fiduciaries, although the distinctions are by no means hard and fast.

2.4 The Texas Legislative Council. Among other duties, the Texas Legislative Council² provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by Leg. Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision program, Leg. Council was the primary drafter of the Texas Estates Code, a nonsubstantive revision of the Texas Probate Code.

2.5 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.

2.6 The Committees. All legislation goes through a committee in each chamber. In the House, most bills in our area go through the House Committee on Judiciary and Civil Jurisprudence, or “Judiciary.” The chair of Judiciary is Rep. John Smithee (R-Amarillo) and its vice chair is Rep. Jessica Farrar (D-Houston).

In the Senate, most bills in our area go through the Senate Committee on State Affairs, or “State Affairs.” The chair of State Affairs is Sen. Joan Huffman (R-Houston) and its vice chair is Sen. Bryan Hughes (R-Mineola).

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 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 by June. 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

² We usually refer to the Texas Legislative Council as simply “Leg. (pronounced “ledge”) Council.”

³ Note that the “RE” or real estate side of REPTL usually does not have a legislative package, but is very active in monitoring legislation filed in its areas of interest.

in 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 2017 legislative package received approval from the full Board of Directors at its September, 2016, 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 Leg. 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 During the Session. During the legislative session, the work of REPTL and members of its various committees 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 (in their individual capacities – not on behalf of REPTL without State Bar approval).

3.9 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>

3.10 Where You Can Find Information About Previous Versions of Statutes. I frequently see requests on Glenn Karisch's [Texas Probate E-Mail List](#) for older versions of statutes, such as the intestacy laws applicable to a decedent dying many years ago. You

can find old law on your own (for free) rather than asking the list, and I'll use our intestacy statutes as an example.

- Former Texas Probate Code Sec. 38 had the rules for non-community property. If you've got a copy of it with the enactment information, you'll see that it came from "Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956." That means it was part of the original Probate Code, and was never amended. The key information you'll need is that it was from the **54th Legislature**, and it's found in **chapter 55**.
- Next, go to the search page of the Legislative Reference Library:
<http://www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm>
- Since you've got the session and chapter number, use the option to "Search by session law chapter." Click the down arrow and scroll down to "54th R.S. (1955)." Then type "55" as the Chapter number. Click "Search by chapter."
- You'll arrive at a page that has a hyperlink to chapter 55. Click on that and Voilà – you've got a PDF of the entire original Probate Code! Since Sec. 38 was never amended prior to its repeal on December 31, 2013 (and replacement by Estates Code Secs. 201.001 and 201.002), you've got the language of that section as it existed before 1993.
- Former Texas Probate Code Sec. 45 had the rules for community property. The PDF you just downloaded had the version in effect when the Probate Code went into effect in 1956. But if you've got the enactment information, you'll see that it was amended by Acts 1991, 72nd Leg., ch. 895, § 4, eff. Sept. 1, 1991, and by Acts 1993, 73rd Leg., ch. 846, § 33, eff. Sept. 1, 1993.
- If you're researching the law applicable to someone who died before September 1, 1991, look no further – the original version was still the law. But if your decedent happened to die on or after September 1, 1991, but before September 1, 1993, you need to see what the 1991 amendment did. So back to the search page mentioned above. Scroll to 72nd R.S. (1991) (you don't want either of the "called sessions"), type in 895 for the chapter number, and click on the search button. Again, click on the hyperlink to chapter 895, and you'll download all of that chapter. You need to scroll down to Section 4 of the act to find the 1991 amendment to Texas Probate Code Sec. 45.
- The same procedure should work for any bill or amendment.

3.11 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>

3.12 The Legislative Council Code Update

Bill. As statutes are moved around pursuant to the legislature's continuing statutory revision program, Legislative Council prepares general code update bills for the purposes of (and I quote):

- (1) codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;
- (2) conforming codifications enacted by the 83rd Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;
- (3) making necessary corrections to enacted codifications; and
- (4) renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

As an aside, if you're interested in learning more about the creation of the Estates Code as part of this statutory revision, you can download this author's paper, *The Story of the Estates Code*, at:

www.snpalaw.com/resources/EstatesCodeStory

After the 2015 legislative session, this author discovered numerous references to Probate Code provisions that still remained in other codes and forwarded those references to Leg. Council (they are too numerous to list in this paper). This year's Leg. Council code update bill **SB 1488** (West | Landgraf) updates most of those references. The code update bill is not limited to changes relating to the codification of the Probate Code, but those changes can be found in Art. 22 of the bill. The statutes amended due to the Probate Code codification can be found in the following codes: Business Organizations, Civil Practice and Remedies, Election, Family, Government, Health and Safety, Insurance, Local Government, Occupations, Penal, and Property, and Articles 6243h and 6243o, Vernon's Texas Civil Statutes.

SB 1488 was signed by the Governor on June 1st and is generally effective September 1st.

4. Key Dates.

Key dates for the enactment of bills in the 2017 legislative session include:

- **Monday, November 14, 2016** – Prefiling of legislation for the 85th Legislature begins.
- **Tuesday, January 10, 2017** (1st day) – 85th Legislature convenes at noon. [*Government Code, Sec. 301.001*]
- **Friday, March 10, 2017** (60th day) – Deadline for filing most bills and joint resolutions. [*House Rule 8, Sec. 8; Senate Rule 7.07(b); Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Monday, May 8, 2017** (119th day) – Last day for House committees to report House bills and joint resolutions. [*a "soft" deadline that relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(b), the deadline for consideration*]
- **Thursday, May 11, 2017** (122nd day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(b)*]
- **Friday, May 12, 2017** (123rd day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading. [*House Rule 8, Sec. 13(b)*]
- **Saturday, May 20, 2017** (131st day) – Last day for House committees to report Senate bills and joint resolutions. [*relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(c), the deadline for consideration*]
- **Tuesday, May 23, 2017** (134th day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(c)*]
- **Wednesday, May 24, 2017** (135th day) – Last day for House to consider most Senate bills or joint resolutions on **third** reading. [*House Rule 8, Sec. 13(c)*]
Last day for Senate to consider any bills or joint resolutions on third reading. [*Senate Rule 7.25; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Friday, May 26, 2017** (137th day) – Last day for House to consider Senate amendments. [*House Rule 8, Sec. 13(d)*]
Last day for Senate committees to report all bills. [*relates to Senate Rule 7.24(b), but note that the*

135th day (two days earlier) is the last day for third reading in the senate; practical deadline for senate committees is before the 135th day; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills]

- **Sunday, May 28, 2017** (139th day) – Last day for House to adopt conference committee reports. [House Rule 8, Sec. 13(e)]
Last day for Senate to concur in House amendments or adopt conference committee reports. [relates to Senate Rule 7.25, limiting a vote on the passage of any bill during the last 24 hours of the session to correct an error in the bill]
- **Monday, May 29, 2017** (140th day) – Last day of 85th Regular Session; corrections only in House and Senate. [Sec. 24(b), Art. III, Texas Constitution; House Rule 8, Sec. 13(f); Senate Rule 7.25]
- **Sunday, June 18, 2017** (20th day following final adjournment) – Last day Governor can sign or veto bills passed during the previous legislative session. [Section 14, Art. IV, Texas Constitution]⁴
- **Monday, August 28, 2017** (91st day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law. [Sec. 39, Art. III, Texas Constitution] (Note that most bills in recent years include a standard specific effective date of September 1st of the year of enactment.)

5. If You Have Suggestions ...

If you have comments or suggestions, you should feel free to contact the chairs of the relevant REPTL committee[s] identified in Section 1.4 on page 1. Their contact information can be found on their respective committee pages at www.reptl.org.

6. The REPTL Bills.

6.1 The Original REPTL Legislative Package.

The original REPTL 2017 legislative package consisted of a number of bills covering four general areas:

⁴ A few words of further explanation about this deadline. This provision states the general rule that if the Governor doesn't return a vetoed bill to the Legislature within 10 days (excluding Sundays) after it's presented to him (gender specific pronoun in original), it becomes law as if [s]he'd signed it. Regular sessions of the Legislature always end on a Monday, which means that there are two Sundays included in the 10 calendar days preceding adjournment. Since we don't count those Sundays, this means that for regular sessions, the 10-day period is really a 12-day period. **However**, if the Governor can't return it because the Legislature has adjourned by the end of this 12-day period, the Governor has until 20 days (no Sunday exclusion) after adjournment to veto it. Therefore, bills passed in the 2017 regular session must be sent to the Governor by May 17th in order to avoid the 20-day post adjournment deadline.

(i) decedents' estates; (ii) guardianships; (iii) trusts; and (iv) powers of attorney and advance directives. In addition, REPTL's legislative package includes a Texas version of the revised Uniform Fiduciary Access to Digital Assets Act. 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, we (or sometimes Leg. Council) strip out provisions from one or more of the "general" bills that may violate the one-subject rule and place them in separate, smaller bills. In each of the substantive sections of this paper, we will identify any REPTL bills and begin with descriptions of them.

6.2 Consolidation Into REPTL Bills. As hearings begin, legislators often ask 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 usually agree to consolidate all or a portion of a number of other bills into one or more of the REPTL bills. Therefore, keep in mind that not everything that ends up in a REPTL bill by the time it passes was originally a REPTL proposal. Where non-REPTL provisions have been added to REPTL bills, we've attempted to identify the original bill[s] that served as the source of the amendments.

7. Decedents' Estates.⁵

7.1 The REPTL Decedents' Estates Bill. The REPTL 2017 Decedents' Estates bill is [HB 2271](#) (Wray | Rodriguez). As usual, many of the changes fall into the "tinkering" category.⁶

(a) Proof of CP Survivorship Agreement (Sec. 112.103). This change conforms the provisions regarding proof of a community property survivorship agreement by deposition on written questions with the 2013 Estates Code changes regarding proof of wills.

(b) Allocation of Estate – NOT GST – Taxes (Sec. 124.001). This change clarifies that GST taxes are not covered by the allocation provisions of Ch. 124 applicable to estate taxes.

⁵ Section references are to the Texas Estates Code unless otherwise noted.

⁶ "Tinkering" is my personal term of art for primarily technical provisions.

Drafting Tip

Remember, you can allocate any transfer tax anyway you want if you're specific enough in your documents. See Sec. 124.005(b).

(c) Adoption by Estoppel (Secs. 22.004 & 201.054). This change clarifies children adopted equitably or by estoppel are considered adopted children.

Drafting Tip

Remember, you can define who is, and is not, considered a child or descendant in your documents.

(d) Minor's Waiver of Citation in Heirship (Sec. 202.057). This change clarifies that if someone is waiving service on behalf of a minor younger than 12, both the minor's name and the person waiving, and that person's relationship to the minor, should be included in the required affidavit or certificate of service on heirs.

(e) Increased Value for Small Estate Affidavits (Sec. 205.001). This change increases the availability of small estate affidavits to estates with nonexempt property (as of the date of the affidavit) not exceeding \$75,000 (it's been \$50,000 for almost 40 years).

(f) Determining Beneficiaries of Class Gifts (Sec. 255.401). This change clarifies that members of a class include persons born before, or in gestation at, the death of the person or persons who are the measuring lives for the class. (The 2015 change, designed to deal with who is considered to be "in gestation," mistakenly referred to persons born before, or in gestation at, the testator's death.) See Section 9.2(b) on page 16 for a similar Trust Code change.

(g) Time Limit to Modify or Reform Will (Sec. 255.451). This change limits the period during which a will may be modified or reformed (a remedy added in 2015) to four years following the admission of the will to probate.

Drafting Tip

The time limit for modifying or reforming a will does **not** limit the time for modifying or reforming a trust created in the will under the Trust Code. See Sec. 9.1(a) on page 14.

(h) Time Limit to Open Administration (Sec. 256.003). This change authorizes the opening of an estate administration more than four years after the decedent's death if the application was filed before the fourth anniversary.

(i) Availability of Muniment Proceeding (Secs. 257.051 & 257.054). Sec. 257.001 authorizes a muniment proceeding if there are no unpaid debts, other than those secured by real estate, or if the court "finds for another reason that there is no necessity for administration of the estate." However, the second basis for a muniment proceeding isn't listed in the required contents of the application or the required proof. This change fixes that.

(j) Citation on Application for Letters (Sec. 303.003). Probate Code Ch. V dealt with probate and the grant of administrations. It included former Secs. 72 through 129A. That last section provided that if an attempt to make service under Part 4 of the chapter (which deals solely with citations and notices) is unsuccessful, service may be made as provided by TRCP Rules 109 or 109A. When the Probate Code was codified, that section made its way into Ch. 303. This change repeals the section to make clear that the issuance and service of citation as provided in Sec. 303.001 *cannot* be unsuccessful. (Remember, when Leg. Council was drafting the Estates Code, it was not allowed to make **any** substantive changes, even to clarify a confusing provision.)

(k) County for Publishing Notice to Creditors (Sec. 308.051). Many of you have had to deal with the relatively recently-discovered problem of the standard notice to creditors being required to be published in a newspaper *printed* in the county in which the letters are issued. *Por ejemplo*, in Travis County, the Austin American-Statesman is printed in either Bexar or Harris Counties, and the Austin Business Journal is printed in Dallas County. That leaves us with the Austin Chronicle. Many smaller counties have **no** newspaper printed in the county. To remedy this unnecessary problem, the notice must now be published in a newspaper of *general circulation* in the county, regardless of where it's actually printed.

(l) Distributees, not Beneficiaries. Several amendments change the term *beneficiaries* to *distributees* of an estate:

(i) Frequency and Method of Distributions (Sec. 310.006). The executor has sole discretion to determine the frequency and method of distributions to the *distributees* of an estate, rather than the *beneficiaries*.

(ii) Consent to Power of Sale (Sec. 401.006). The *distributees* of an estate, rather than the *beneficiaries*, must consent to granting a power of sale in independent administrations.

(iii) Judicial Discharge of Independent Executor (Sec. 405.003). The *distributees* of an estate,

rather than the *beneficiaries*, must be personally served with an action for declaratory judgment seeking a judicial discharge.

(m) Deadline for Annual Accounts

(Secs. 359.001 & 359.002). This change clarifies that annual accounts of executors and administrators are due 60 days after each anniversary of qualification, rather than on each anniversary (before there's any time to prepare them). This is similar to the deadline in guardianships.

(n) No Need to Pay Texas Inheritance Taxes

(Sec. 362.010). Since we took our inheritance tax off the books in 2015 (even though we've effectively had no inheritance tax since 2005), we're repealing the requirement that a final account show, and that the court find, that all inheritance taxes have been paid.

(o) Non Pro Rata Distributions

(Sec. 405.0015). This new section authorizes an independent executor with a power of sale to make non pro rata distributions of property unless the will or a court order prohibit them. This lessens potential adverse income tax consequences of non pro rata distributions.

(p) Lawyer Trust Accounts (Secs. 456.003 & 456.0045).

This change requires eligible institutions holding a deceased lawyer's trust account to comply with appropriate instructions within 7 **business** days (rather than a "reasonable time") and provides remedies if the institution fails to comply.

(q) Last Will and Testament.

Numerous references to "last will and testament" throughout the Estates Code are shortened to just "will," including references in the two-step method of self-proving affidavit (see Attachment 2).

Drafting Tip

Why not change your will forms? I revised mine decades ago to just call them wills. First, you never know if it's really going to be someone's "last" will until after the person dies without executing another will. (Perhaps "Latest Will" would be acceptable.) Second, how many of you actually know the difference between a will and a testament?⁷

⁷ According to Black's Law Dictionary (10th Ed. 2009), citing an 1866 commentary on American law, a will is the disposition of real and personal property taking effect at a testator's death. The term *testament* may be used when the will operates on personal property and the term *devise* may be used when it operates on real property. So if you insist on using "testament," maybe you should call it the testator's "latest will, including a testament and devise."

HB 2271 passed the Senate on May 19th without amendment, so it should've been sent to the Governor shortly afterwards. When it hadn't moved 9 days later, we checked. It was being held up to correct a technical error. Both chambers adopted HCR 158 on May 28th. That concurrent resolution directed the enrolling clerk to change "Subsection (4)" to "Subdivision (4)" in amended Est. Code Sec. 205.001(3). The bill was finally sent to the Governor on May 30th.

I think we could've lived with "subdivision."

HB 2271 was signed by the Governor on June 15th and is generally effective September 1, 2017.

7.2 The REPTL Guardianship Bill – Failure to File Affidavit or Certificate of Notice to Beneficiaries (Secs. 361.052 & 404.0035).

Currently, an executor or administrator may be removed for failing to file the affidavit or certificate that notice of the probate proceeding was provided to beneficiaries only after citation by personal service. **SB 38** (Zaffirini, *et al.* | Murr), a non-REPTL bill, would have moved this ground for removal to the portion of the removal statutes requiring only 30-days' notice by certified mail. **SB 39** (Zaffirini | Farrar), the REPTL Guardianship bill, was amended on the House floor to include the substance of **SB 38**.

SB 39 was signed by the Governor on June 9th and is generally effective September 1st.

7.3 The REPTL Digital Assets Bill. See Part 13 on page 25 for provisions applicable to executors and administrators.

7.4 DLs and SSNs in Probate Applications (Secs. 256.052, 257.051, and 301.052).

HB 1814 (Murr | Zaffirini) requires applications to probate wills or for letters of administration to include the last three digits of the applicants' driver's license and social security numbers, and the same information for the decedent, if known.

HB 1814 was signed by the Governor on June 15th and is generally effective September 1st.

Please don't blame REPTL for this – it wasn't our idea!

Drafting Tip

You'll need to revise your probate applications to include the required numbers, even in statutory probate courts.

7.5 Penalty for Inaccurate Affidavit in Lieu (Sec. 309.0575).

HB 1877 (Murr | Zaffirini) authorizes the court, on its own motion or on motion of an interested person, to fine an independent executor up to \$1,000 if the executor misrepresents in an affidavit

in lieu of inventory that all required beneficiaries have received a copy of the inventory. The executor is also liable for any damages caused by the misrepresentation.

HB 1877 was signed by the Governor on June 15th and is generally effective September 1st.

7.6 Uniform Partition of Heirs Property Act (Prop. Code Ch. 23A). SB 499 (West | Wray) adds the Uniform Partition of Heirs Property Act, first promulgated in 2010 by the Uniform Law Commission, as new Prop. Code Ch. 23A. It is intended to address problems faced by many low to middle-income families who inherit property with relatives as tenants-in-common. The assumption is that many of these families lose their real property-related wealth as a result of court-ordered partition sales, while wealthier families are able to address the problems associated with TIC's through co-ownership agreements or placing the property in entities. Essentially, the act places limits on the ability of any tenant-in-common to seek a partition of family-owned real estate. More information on the uniform act can be found here:

[http://www.uniformlaws.org/Act.aspx?title=Partition of Heirs Property Act](http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act)

(a) "Heirs' Property." This defined term refers to real property held in tenancy in common that satisfies all of these conditions when the partition action is filed:

(A) there's no binding agreement among the cotenants governing partition of the property;

(B) at least one of the cotenants acquired title from a living or deceased relative; and

(C) any of the following applies:

(i) at least 20% of the interests are held by cotenants who are relatives;

(ii) at least 20% of the interests are held by someone who acquired title from a living or deceased relative; or

(iii) at least 20% of the cotenants are relatives.

(b) Applicability. The new chapter supplements existing Prop. Code Ch. 23 and the Rules of Civil Procedure relating to partitions. If the new chapter applies, it supersedes any inconsistent provisions of those other laws.

(c) Notice by Posting – Literally. If the plaintiff in a partition action seeks citation by publication and the court determines the subject property may be heirs' property, the plaintiff has 10 days to post a conspicuous sign on the property that states the action has commenced, identifies the court, and identifies the common designation for the property.

The court may require the plaintiff to identify the plaintiff and the known defendants on the sign. The plaintiff must maintain the sign while the action remains pending,

(d) Determination of Value. If the court determines the subject property may be heirs' property, then unless all cotenants have agreed to the value (or another method of valuing the property), or the court determines the evidentiary value of the appraisal is outweighed by its cost, the court must appoint a disinterested appraiser to determine the fair market value of the property as if it was owned by one person. A party has 30 days after notice of the appraiser's determination is sent to object to the value. The court must set a hearing to determine the value of the property after the expiration of that 30-day period, whether or not an objection is filed.

(e) Cotenant Buyout. If any cotenant requested partition by sale, then after the determination of value, the other cotenants have 45 days to elect to buyout all of the requesting cotenant's interest for a price equal to the full value of the property multiplied by that cotenant's fractional interest (*i.e.*, no discounts). If anyone elects, Sec. 23A.007 contains procedures for allocating the interest among multiple electing cotenants and procedures for payment of the purchase price.

(f) Preference for Partition in Kind. If after any cotenant buyouts there remains any co-tenant who requested a partition, then the court must order a partition in kind unless the court determines that will result in substantial prejudice to the cotenants as a group. In determining whether substantial prejudice would result, the court must consider the following factors without allowing any one to be dispositive:

- (1) whether the property can be practicably divided;
- (2) whether partition in kind would cause the aggregate fair market value of the resulting parcels to be materially less than the value of the unpartitioned property, taking into account the condition under which a court-ordered sale likely would occur;
- (3) evidence of the collective duration of ownership or possession of the property by a cotenant and any predecessors in title or possession who are or were relatives;
- (4) a cotenant's sentimental attachment to the property, including ancestral or other unique or special value;
- (5) the lawful use being made of the property and the degree of harm to a cotenant who could not continue the same use;
- (6) the degree to which the cotenants have contributed their pro rata share of taxes, insurance,

improvement, maintenance, upkeep, and other expenses associated with the property; and
(7) any other relevant factor.

(g) Method of Sale. If the court orders partition by sale, it must be an open-market sale unless the court finds that a sealed bid sale or auction would be more economically advantageous and in the best interest of the cotenants as a group. Procedures are included for selecting a broker to market the property, or setting procedures for a sealed bid sale or auction.

(h) Prospective Application. New Ch. 23A only applies to partition actions filed on or after the September 1st effective date.

SB 499 was signed by the Governor on May 29th and is effective September 1st.

7.7 Adverse Possession by Co-Tenant Heirs (Civ. Prac. & Rem. Code⁸ 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. In 2011, **SB 473** (West), in 2013, **SB 108** (West), and in 2015, **HB 2544** (Lozano), tried to change this rule for co-tenancies created by intestacies. None of these bills was enacted. This session, **SB 1249** (West | Schofield), which appears similar to the 2013 and 2015 bills, takes another crack at it.

(a) Required Conditions. New Civil Practice and Remedies Code Sec. 16.0265 provides that a cotenant heir may acquire the interests of other cotenant heirs who simultaneously acquired their interests by intestacy (or successors to those persons) if for an uninterrupted 10-year period:

- 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; and
- 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 to 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

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

- file an affidavit of heirship (in the form prescribed by Estates Code Sec. 203.002) **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) (see also Sec. 15.2 on page 68);
- publish notice of the claim in a 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.

(c) 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.

(d) When Title Vests. If no controverting affidavit is filed by that 5-year deadline (*i.e.*, at least 15 years after the uninterrupted use commenced), then title vests in the possessing cotenant.

(e) 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.

(f) 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.

SB 1249 was signed by the Governor on June 12th and is effective September 1st.

8. Guardianships and Persons With Disabilities.⁹

8.1 The REPTL Guardianship Bill. **SB 39** (Zaffirini | Farrar) constitutes the REPTL Guardianship bill. The following description is based on the Senate version of bill as it emerged from the House.

⁸ Future references are to the “CP&R Code.”

⁹ Again, section references are to the Texas Estates Code unless otherwise noted.

(a) Intervention by Interested Person (Sec. 1055.003). Last session, [HB 4058](#) (Naishtat) added this provision requiring an interested person wishing to intervene in a guardianship proceeding to file a motion, serve parties, state grounds, etc. The court could grant or deny the motion. This year's REPTL Guardianship bill clarifies that the new requirements do not apply to any person entitled to notice of the filing of the guardianship application.

(b) Omission of Address (Sec. 1102.002). This section allows the address of a person named in the application for guardianship to be omitted if the application states that the person is protected by a protective order under the Family Code. This amendment extends the allowed omission if the person **was previously** protected by such an order.

(c) Notice of Transport of Ward to Inpatient Medical Facility (Sec. 1151.051). A non-REPTL amendment to the bill requires the guardian of the person of a ward who files an application for transport of a ward to an inpatient mental health facility for preliminary examination pursuant to an emergency detention to immediately provide written notice of the application to the court supervising the guardianship.

(d) Removal of Guardian (Sec. 1203.052). [SB 38](#) (Zaffirini, *et al.* | Murr), a non-REPTL bill, would have authorized notice to a guardian by certified mail instead of personal service if a court attempts to remove the guardian on its own motion. (Personal service is still required if removal is on the motion of anyone else.) [SB 39](#) (Zaffirini | Farrar), the REPTL Guardianship bill, was amended on the House floor to include the substance of [SB 38](#).

(e) Fiduciary Duties of Supporter in SDMA (Secs. 1357.052 & 1357.056). This amendment adds a notice of the fiduciary duties the supporter owes to the principal and clarifies that the supporter owes those duties whether or not the statutory form is used.

(f) Designation of Alternate Supporter (Sec. 1357.0525). A non-REPTL amendment allows the principal may designate an alternate supporter to assist with determining the provisions of an SDMA that provides for compensation to the primary supporter.

(g) Termination of SDMA (Sec. 1357.053). Qualification of a guardian of the person or estate of the principal subject to an SDMA terminates the agreement.

[SB 39](#) was signed by the Governor on June 9th and is generally effective September 1st.

8.2 The REPTL Digital Assets Bill. See Part 13 on page 25 for provisions applicable to guardians.

8.3 Election to Receive Information About Ward (Sec. 1151.056). Last session, [HB 2665](#) (Moody) added provisions providing access to the ward for certain relatives and requiring the guardian to provide notice of certain events (*e.g.*, death, admission to acute care facility for more than three days, change of residence). In considering a motion for notice, the court was to consider whether a protective order had been issued against the relative to protect the ward, or whether a court or state agency found that the relative had abused, neglected or exploited the ward. [SB 1709](#) (Zaffirini | Moody) limits a guardian's duty to inform relatives about health or residence changes to those relatives who have elected in writing to receive that notice about the ward (and who do not have a protective order issued against them to protect the ward and who have not been found guilty of abuse, neglect, or exploitation of the ward). The initial citation or notice to relatives upon filing a guardianship application must notify them of the requirement that they elect to receive notice of health or residence changes.

[SB 1709](#) was signed by the Governor on June 15th and is effective immediately.

Drafting Tip

In addition to modifying the citation issued and notice sent upon filing a guardianship application, current guardians (or ones appointed pursuant to applications filed before the change in the notice requirement) are required to notify each relative of the need to elect to continue to receive health or residence change notices. The deadline to fulfill this requirement is "as soon as possible but not later than September 1, 2019."

8.4 Redetermination of Capacity Ward (Secs. 1202.051 & 1202.054). [SB 1710](#) (Zaffirini | Neave) makes the restrictions on intervention of an interested person inapplicable to an application to find (1) that the ward is no longer incapacitated, (2) that the ward lacks the capacity to do some or all of the necessary tasks of daily life, or (3) that the ward has sufficient capacity to do some or all of the necessary tasks of daily life. If such an application is filed and the guardian has resigned, was removed, or has died, the court may not appoint a successor before considering the application. The bill also clarifies that if the ward makes a request for such a determination by informal letter, a physician's certificate or letter is **not** required before appointing a court investigator or guardian ad litem. The court is required to send a letter to the ward by certified mail within 30 days of receipt of that informal letter acknowledging receipt and notifying the ward of the date the investigator or ad litem was appointed, and his or her contact information.

In addition to filing a report with the court, the investigator or ad litem is required to provide a copy to the ward.

SB 1710 was signed by the Governor on June 15th and is effective September 1st.

8.5 Termination of Guardianship on Creation of ABLÉ Account (Secs. 1161.003 & 1202.003; Prop. Code Sec. 142.004). SB 1764 (Zaffirini, *et al.* | Burkett) adds an ABLÉ account for the ward under the Texas Achieving a Better Life Experience (ABLE) Program (see Subchapter J, Chapter 54, Education Code) as an authorized investment (without court authority) for a ward's assets. If the guardian places all of the ward's assets in an ABLÉ account, the court may terminate the guardianship of the estate if the ward no longer needs that guardian. ABLÉ accounts are also added as an authorized investment for money recovered by a minor or incapacitated person in a suit where that person is represented by a next friend or guardian ad litem.

SB 1764 was signed by the Governor on June 15th and is effective September 1st.

8.6 Guardianship Fee Exemption for Military and First Responders (Secs. 1053.053 & 1053.054). SB 1559 (Taylor, L., *et al.* | Bonnen, G.) exempts a ward or proposed ward from filing fees and fees for any service rendered by the court regarding the administration of the guardianship if the incapacity arose as a result of a personal injury sustained while in active service as a member of the armed forces in a combat zone. A similar exemption would apply to certain law enforcement officers, firefighters, and other first responders injured in the line of duty.

SB 1559 was signed by the Governor on June 1st and is generally effective September 1st.

8.7 Appointment and Duties of Court Investigators (Secs. 1002.009, 1054.152, and 1054.156). SB 1016 (Creighton | Bell) authorizes the judge of a court exercising probate jurisdiction over guardianships (other than statutory probate courts) to appoint a court investigator if authorized by the commissioners court.

SB 1016 was signed by the Governor on June 1st and is generally effective September 1st.

8.8 Changes Related to Notice of Ward's Detention and Training of Guardians. SB 1096 (Zaffirini | Smithee) makes a number of changes related to guardianships:

(a) **Notification of Ward's Detention (Code Crim. Proc. Secs. 14.055 & 15.171; Fam. Code Sec. 52.011; Gov't. Code Sec. 573.0021).** A peace

officer who detains or arrests a ward (including a child who is a ward) must notify the court with jurisdiction over the ward within one working day.

(b) **Training of Guardian; Criminal History Check (Est. Code Secs. 1104.003, 1104.004, & 1253.0515; Gov't. Code Ch. 155, Sec. 411.1386).** A court may not appoint an individual as a guardian until the individual has been trained, unless the training is waived by the court pursuant to rules to be established by the Supreme Court. The Supreme Court is also directed to establish a process by which the Judicial Branch Certification Commission will provide training and conduct criminal background checks for persons (other than private professional guardians and attorneys) seeking to become a guardian. The training must be made available for free on the commission's website and designed to educate proposed guardians about their responsibilities, alternatives to guardianships, supports and services available to the proposed ward, and the ward's bill of rights. The proposed guardian must complete the training at least ten days prior to any hearing appointing the guardian. The training requirement does not apply to the initial appointment of a temporary guardian, but does apply to any term extension. (A clerk need not obtain a criminal history check on the proposed guardian if the Judicial Branch Certification Commission has already conducted the check.)

(c) **Guardianship Registration and Database (Gov't. Code Ch. 155, Secs. 411.1386, 573.0021).** The Supreme Court is directed to establish a mandatory registration program for all guardianships in the state and maintain a central database of those guardianships. Certain information from the database is to be made available to law enforcement personnel. This information includes the name, sex, and date of birth of a ward; the name, telephone number, and address of the guardian; and the name of the court with jurisdiction over the guardianship. The information in the database remains confidential and is not subject to an open records request.

SB 1096 was signed by the Governor on May 29th and is generally effective September 1st.

8.9 Registration of Guardianship Programs (Sec. 1104.359 & Gov't. Code Ch. 155). SB 36 (Zaffirini | Thompson, S.) requires the Judicial Branch Certification Commission, in consultation with the Health and Human Services Commission, to establish standards to monitor and ensure the quality of guardianship programs. Those programs may not provide services to incapacitated persons unless registered with the Judicial Branch Certification Commission. (Note that these provisions do not apply

to services provided by a guardianship program under a contract with the Health and Human Services Commission.) A guardianship program may not be appointed as guardian unless its registration is current and not suspended. The commission must make available on its website a list of all registered guardianship programs. A guardianship program may not employ an individual to provide guardianship services on its behalf if that individual's certification is not current or is suspended.

SB 36 was signed by the Governor on June 12th and is effective September 1st.

8.10 Order Authorizing Temporary Care for Minor Child (Fam. Code Ch. 35). **HB 1043** (Blanco | Zaffirini) allows a person who is eligible to consent to treatment of a child under Fam. Code Ch. 32 or enter an authorization agreement under Ch. 34 to seek a court order for temporary authorization for care of the child. Prior to filing the petition, the child must have resided with the person without an authorization agreement or other document enabling the person to provide necessary care. The court must award temporary authorization for care if it's necessary for the child's welfare and no objection is made by the child's parent, conservator or guardian. The court must dismiss a petition if there is an objection. The petitioner, parent, conservator or guardian may request the court to terminate the order at any time.

HB 1043 was signed by the Governor on June 1st and is generally effective September 1st.

8.11 Reporting Financial Exploitation of Vulnerable Adults (Fin. Code Ch. 280; Securities Act, VTCS Art. 581-1, Sec. 45; Hum. Res. Code Ch. 48). **HB 3921** (Parker *et al.* | Hancock, *et al.*) requires a financial institution employee or securities professional to notify the institution, dealer, or investment adviser of suspected financial exploitation of a vulnerable adult who is an account holder. A "vulnerable adult" is an elderly person (≥ 65 years old), a disabled individual (under Hum. Res. Code Sec. 48.002), or an individual receiving services defined by rule under Hum. Res. Code Sec. 48.251(b). After receiving this notice, a financial institution must assess the suspected exploitation and submit a report to the Department of Family and Adult Protective Services, while a dealer or investment adviser must investigate and submit a report to the Securities Commissioner and DFAPS. They must also notify a third-party reasonably associated with the vulnerable adult, unless the third party is suspected of the exploitation.

HB 3921 was signed by the Governor on June 1st and is generally effective September 1st.

8.12 Guardianship Compliance Program. **SB 667** (Zaffirini, *et al.* | Smithee) directs the Office of Court Administration to establish a guardianship compliance program designed to provide additional resources and assistance to courts handling guardianship proceedings by:

- engaging guardianship compliance specialists to review guardianships and identify reporting deficiencies, audit annual accounts and report their findings, work with courts to develop best practices, and report any concerns relating to a ward's well-being or potential financial exploitation discovered as a result of this work; and
- maintaining a database to monitor filings of inventories, annual reports, and other accounts.

Courts are required to participate in the program if selected by the OCA to participate in the program, or may voluntarily apply to the OCA for participation in the program. A judge's actions or failure to act with respect to a specialist's report indicating a concern may constitute judicial misconduct. The OCA is directed to submit an annual report to the legislature regarding the performance of the program.

SB 667 was vetoed by the Governor on June 15th. His veto message reads:

This session the Legislature passed, and I have signed, several bills that improve the guardianship system in Texas. This is an important endeavor, and I look forward to seeing the effect of these needed reforms during the interim. Senate Bill 667 would have created a large new staff of state employees to oversee local guardianship arrangements at a cost of over \$5 million a biennium. We should give the new statutory reforms a chance to work, and we should continue to look for cost-effective ways to address this challenge. The creation of a new state bureaucracy should be a last resort.

Three days earlier, Gov. Abbott signed SB 1, the General Appropriations Bill. However, in doing so, he exercised his authority to veto the line item funding this compliance program. His veto message stated that he would be vetoing SB 667.

8.13 Temporary and Emergency Detention (Health & Saf. Code Secs. 573.001, 573.002, 573.005, 573.012, 573.013, 573.021, & 573.022). Instead of transporting a person subject to temporary detention to a mental health facility, **SB 344** (West, *et al.* | Sheffield) authorizes a peace officer to request EMS personnel to transport the person to an appropriate facility if (1) the EMS provider has executed a memorandum of understanding under Health & Saf. Code Sec. 573.005 and (2) the officer determines the

transfer is safe for the person and the EMS personnel. The memo of understanding must address responsibility for the transport cost and be approved by the county and the local mental health authority.

SB 344 was signed by the Governor on June 9th and is effective immediately.

8.14 Notice of Right to Use Public Transportation (Trans. Code Sec. 461.009). SB 402 (Zaffirini *et al.* | Allen) requires a public transportation provider, to the extent practicable within available resources, to notify eligible individuals that they are entitled to use another provider's services for up to 21 days without further application.

SB 402 was signed by the Governor on June 9th and is effective September 1st.

9. Trusts.¹⁰

9.1 The REPTL Trusts Bill. SB 617 (Rodríguez | Wray) is the REPTL Trusts bill. Many of its provisions are derived from the 2015 bill that didn't pass.

(a) Reformation (Secs. 111.0035(b) & 112.054). Reformation, as opposed to modification, of trusts is expressly authorized.¹¹ Additional grounds for modification or reformation include qualifying a distributee for governmental benefits and correcting a scrivener's error (even if the document is unambiguous). However, correcting a scrivener's error requires clear and convincing evidence of the settlor's intent. The amendment also makes clear that the new statutory reformation procedure is not intended to replace any equitable or common law grounds for reformation. They remain unaffected.

(b) Spendthrift Provisions (Sec. 112.035(e)). The withdrawal power that may lapse each year without treating a beneficiary as a settlor would have been clarified to be the greater of a "5-or-5" power or the annual gift tax exclusion **with respect to each donor**.

(c) Forfeiture Clauses (Sec. 112.038(b)). When a floor vote was taken on revisions to this statute in the 2013 session, the author of the bill read into the

official proceedings a statement [that REPTL suggested] recognizing that forfeiture provisions do not apply to suits by beneficiaries to compel a fiduciary to perform his duties, seek redress for a breach of duty, or seek a judicial construction, and that the revisions were not meant to change that rule. Not satisfied with legislative history, new Subsection (b) enacts this recognition into law. (The same change was made to the Estates Code forfeiture provision in 2015.)

(d) Decanting (Secs. 112.071, 112.072, 112.078, and 112.085). Several changes are made to the decanting subchapter, making the technique more available than as originally enacted in 2013.

(i) Definitions (Sec. 112.071). Three definitions have changed:

- "Full discretion" now means any power to distribute principal that is not limited discretion.
- "Limited discretion" now means a power to distribute principal that is either mandatory with no trustee discretion or limited by an **ascertainable** standard, such as health, education, support, or maintenance.
- "Presumptive remainder beneficiary," now means a beneficiary who would be eligible to receive a distribution if either the trust terminated on that date or the interests of all **current** beneficiaries ended on that date without causing termination.

(ii) Full Discretion (Sec. 112.072(a)). A trustee with full discretion may make distributions to a second trust for the benefit of any or more current, successor, or presumptive remainder beneficiaries of the first trust (whether or not they are eligible to receive distributions from the first trust).

(iii) Beneficiary Notice (Sec. 112.074). The statute already authorizes beneficiaries entitled to notice of decanting to waive that notice. In addition, the trustee must notify the attorney general if a charitable interest is involved. The amendment authorizes the attorney general to waive that notice. Further, notice to an authorized person on behalf of an incapacitated beneficiary is considered notice to that beneficiary.

(iv) Beneficiary's Right to Sue for Breach of Trust (Sec. 112.078). This section already allows a trustee to petition a court to order a distribution to a different trust. But remember, a decanting power is just like a power of sale. The trustee may be fully authorized to exercise the power, but "authority" does not protect the trustee from liability if the trustee exercises the power in a manner that constitutes a breach of the trustee's fiduciary duties. New Subsection (f) provides that this section

¹⁰ Section references are to the Texas Property Code unless otherwise noted.

¹¹ Reformation and modification are sometimes confused as being the same, but they are not. Reformation is the appropriate remedy when there is a mistake in the original instrument that did not conform to the settlor's intent. Modification is the appropriate remedy when there was nothing originally wrong with the instrument, but something subsequent to the creation of the trust makes a change appropriate or desirable. And neither of these terms apply to ambiguities. Those involve interpreting language already in the instrument that is unclear.

does not limit a beneficiary's right to sue for breach of trust.

(v) Exceptions to Distribution Powers (Sec. 112.085). The limitation preventing any exercise of a decanting power that would materially impair the rights of any beneficiary is repealed, while a prohibition against adding a trustee exoneration provision is added.

Drafting Tip

Don't forget that these rules apply to statutory decanting in the absence of decanting provisions in a trust agreement. You can always include whatever decanting provisions you want in a trust. But be careful that you don't inadvertently introduce any tax problems with those powers.

(e) Delegation of Real Property Powers to Agent (Sec. 113.018). The statutory authority of a trustee to employ agents is expanded to expressly recognize a trustee's ability to delegate authority to engage in a laundry list of powers related to real property transactions. The trustee remains liable for the actions of the agent, and the delegation terminates in six months unless earlier terminated by the death, incapacity, resignation or removal of the trustee, or the delegation specifies an earlier date.

(f) Application of Trust Code to TUPMIFA (Sec. 163.011). The Texas Uniform Prudent Management of Institutional Funds Act (Prop. Code Ch. 163) contains provisions applicable to charitable endowments that are in many ways similar to the prudent investor, principal and income, and modification provisions applicable to trusts.

(i) Background. TUPMIFA was enacted in 2007 to replace the prior Texas Uniform Management of Institutional Funds Act, which was originally adopted in Texas in 1989. While both were based on uniform acts, both also included a provision making the entire Trust Code, not just parts of the Trust Code, inapplicable to a fund governed by TUMIFA (from 1989 to 2007) or TUPMIFA (from 2007 to the present). This causes problems. As just one example, if a trustee of a charitable trust needs to be replaced, the provisions of Trust Code Sec. 113.083 don't apply, and there is no other statute providing guidance on what such a petition should look like, who are necessary parties, etc.

(ii) Why is the Trust Code Inapplicable? This was drawn to this author's attention several years ago. The comments to the uniform acts don't help for the simple reason that there is no corresponding provision in either of the uniform acts making a state's

trust laws inapplicable to a fund governed by the institutional funds act. I have been unable to determine a definitive answer as to why these provisions were added to the Texas versions of the uniform acts,¹² but I do have an educated guess.

(iii) Educated Guess. In 1989, when the original TUMIFA was adopted, we had not yet adopted the two UPIAs – the Uniform Principal and Income Act (Ch. 116) and the Uniform Prudent Investor Act (Ch. 117). We had modification provisions in Sec. 112.054 (although much less liberal than our current version), principal and income provisions in Secs. 113.101-113.111 (although much less detailed than current Ch. 116), and a modified "prudent person" standard for asset management in Sec. 113.056 (although much less detailed and significantly different than current Ch. 117). It is my belief that when the exclusion of Trust Code application was included in TUMIFA when it was adopted, it was merely to eliminate the need to identify the specific sections of the Trust Code that were in essence being replaced by TUMIFA with respect to charitable funds. And when TUPMIFA was enacted, that provision was carried on, without considering that the two UPIAs had now been isolated into two easily identifiable chapters, and that the modification provisions in the Trust Code might not be harmful if also applicable to charitable funds.

(iv) The Amendment. The amendment contained in the REPTL Trust bill when it emerged from Judiciary limits the "inapplicability" of the Trust Code to funds subject to TUPMIFA to Chs. 116 and 117 (the two UPIAs). Presumably, this leaves the rest of the Trust Code available for application to charitable funds that are held in trust form.

(g) Notice of Trustee's Disclaimer (Sec. 240.0081). The 2015 disclaimer changes authorized a trustee to disclaim property otherwise passing to the trust without going to court, but required the trustee to provide written notice to certain beneficiaries. The statute already authorizes beneficiaries entitled to notice to waive that notice. In addition, the trustee must notify the attorney general if a charitable interest is involved. The amendment authorizes the attorney general to waive that notice. Further, notice to an authorized person on behalf of an incapacitated beneficiary is considered notice to that beneficiary.

SB 617 was signed by the Governor on May 22nd and is generally effective September 1st.

¹² If anyone out there was involved in the adoption of TUMIFA, where this uniquely Texas provision was born, and has knowledge of the real reason for it, please be a lamb and let me know why.

9.2 The REPTL Decedents' Estates Bill – Trust Changes. The REPTL 2017 Decedents' Estates bill (**HB 2271** (Wray | Rodriguez)) makes several changes involving trusts.

(a) Divorced Trust Beneficiaries (Est. Code Secs. 123.052 & 123.056). One change clarifies that the divorce of a person who is **not** a settlor of a trust does not automatically revoke provisions for the benefit of the person's former spouse or relatives. Further, if spouses are settlors of a joint revocable trust, divorce, and fail to divide the trust prior to one's death, the trust is divided into shares allocable to each settlor, and the deceased settlor's share omits provisions in favor of the surviving settlor and relatives.

(b) Determining Beneficiaries of Class Gifts (Prop. Code Sec. 112.011). Another change adds to the Trust Code the 2015 Estates Code amendment regarding who is considered "in gestation," as that provision is being amended this session. (See Section 7.1(f) on page 7.)

HB 2271 was signed by the Governor on June 15th and is generally effective September 1, 2017. (See note following Sec. 7.1 for more details.)

9.3 The REPTL Digital Assets Bill. See Part 13 on page 25 for provisions applicable to trustees.

9.4 Perpetual Care Cemetery Trusts (Health & Saf. Code Secs. 712.0351, et seq). **HB 1948** (Elkins | Creighton) establishes the default rule that permissible distributions from a perpetual care cemetery trust fund should be determined based on the traditional net income method, but allows the cemetery and the trustee to modify the trust to use the total return method by providing 60-days' notice to the Banking Commissioner. It can be converted back to the net income method also.

HB 1948 was signed by the Governor on June 15th and is effective September 1st.

10. The REPTL Financial Power of Attorney Bill.

10.1 The REPTL Financial Power of Attorney Bill. The REPTL Financial Power of Attorney bill (**HB 1974** (Wray | Rodríguez)) is big enough that it deserves a "Part" all to itself. In 2011, REPTL unsuccessfully proposed a Texified version of the 2006 Uniform Power of Attorney Act. (Our power of attorney statutes are based on the 1987 version of the uniform act.) In 2015, REPTL tried again by sticking with our current act, but proposing a number of changes, many of which came from the new version of the uniform act. During the course of the 2015 session, at least two alternative committee substitutes were prepared to alleviate concerns raised by other

stakeholders (e.g., TLTA, the Texas Business Law Foundation, the Texas Medical Association, the Texas Hospital Association, and others). Nevertheless, those concerns slowed up the bill to the point where it ran out of time to pass. This session's bill takes up where the 2015 proposal left off, with additional modifications to address stakeholder concerns.

A "style" change was that most of the references throughout the act to the "attorney in fact or agent" are shortened to just the "agent." In the interest of saving paper, we won't list all of those stylistic changes here. Other, more substantive changes include the following:

Chapter 751 – General Provisions Regarding Durable Powers of Attorney

10.2 Changes to Subchapter A – General Provisions.

(a) Applicability (Sec. 751.0015).

Chapters 751 and 752 (the statutory power) apply to all powers of attorney *except*:

- powers of attorney coupled with an interest (including a power given to or for a creditor in connection with a credit transaction),
- medical powers,
- proxies to exercise voting or management rights, or
- powers created on a form prescribed by a governmental entity for a governmental purpose.

(b) Definitions (Sec. 751.002). Several definitions are added.

- "Actual knowledge" means actual knowledge *without due inquiry* and *without any imputed knowledge* (except as provided in Sec. 751.211).
- "Affiliate" means a business entity that directly or indirectly controls, is controlled by, or is under common control with, another business entity.
- "Agent" includes an attorney-in-fact, co-agent, successor agent, or successor co-agent.
- "Durable power of attorney" means a power of attorney that complies with new Sec. 751.0021(a) or is described in Sec. 751.0021(b).
- "Principal" means a person who signs (or directs another to sign) a power of attorney designating an agent.
- "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

(c) Incapacity (Sec. 751.00201). Unless otherwise defined in the power, a person is considered "disabled or incapacitated" if a physician certifies in writing (after execution of the power of attorney) that, based on a medical examination, the person is mentally incapable of managing his or her financial affairs.

(d) Requirements for Durability

(Sec. 751.0021). The requirements for a durable power of attorney remain the same, except that the instrument may be “a writing or other record” and it may be signed by another individual in the conscious presence of and at the direction of the principal. If the law of the jurisdiction that determines the meaning and effect of the power (under Sec. 751.0024 below) provides that the authority conferred on the agent is exercisable despite the principal's subsequent incapacity, the power is considered a durable power of attorney under Texas law – regardless of whether the term “power of attorney” is used.

(e) Presumption of Genuine Signature

(Sec. 751.0022). If the power of attorney is properly acknowledged, then the signature of the principal (or the person signing on behalf of the principal) is presumed to be genuine.

(f) Validity of Non-Texas Powers

(Sec. 751.0023). A power executed outside Texas is valid if executed in accord with the law of the jurisdiction that determines the meaning and effect of the power or military law (10 U.S.C. Sec. 1044b). Further, a photocopy or electronically transmitted copy of an original has the same effect as the original and may be relied on, without liability, as if it is an original.

(g) Governing Law (Sec. 751.0024). The meaning and effect of a power of attorney is governed by the law of the jurisdiction specified in the power, or if none, the principal's domicile (if indicated in the power), or the jurisdiction where executed.

(h) Uniformity (Sec. 751.003). Since our power of attorney statute will now be somewhat different than the current or previous uniform acts, the standard provision regarding promotion of uniform interpretation is modified so that it is a goal “*to the fullest extent possible.*”

(i) Other Remedies (Sec. 751.006). Any remedies under Ch. 751 are not exclusive, and do not abrogate any other lawful right or remedy.

(j) Other Laws Control; No Validation of Void Instruments (Sec. 751.007). To the extent this chapter is inconsistent with another law applicable to financial institutions or entities, the other law controls. In addition, this chapter will not have the effect of validating a void (not voidable) real property conveyance (*i.e.*, a forgery).

10.3 New Subchapter A-1 – Appointment of Agents.

(a) Co-Agents (Sec. 751.021). A principal may name two or more co-agents, each of whom may

act independently of the other unless the power provides otherwise.

(b) Acceptance of Appointment

(Sec. 751.022). Unless the power provides otherwise, a person accepts appointment as agent by exercising authority or performing duties as agent, or by any other conduct indicating acceptance. See also Sec. 751.101 below that provides an agent's fiduciary duties commence when the agent “accepts” his or her appointment.

Background: In *Vogt v. Warnock*, 107 S.W.3d 778 (Tex. App.—El Paso 2003, *no pet.*), after the principal designated an agent in a power of attorney, the principal made many gifts to the agent and paid her to manage his affairs. The agent knew about her appointment but never exercised any authority under the power. Nevertheless, after the executor of the principal's estate sued the agent for breach of fiduciary duty under the power, the appellate court held as a matter of law that the agent stood in a fiduciary capacity to the principal, and had the burden of proving that all transactions were fair.

(c) Successor Agents (Sec. 751.023). A

principal may name one or more successor agents, and may delegate authority to name successor agents to an agent or another person designated by name, office, or function. However, unless the power provides otherwise, a successor is not considered an agent, and may not act as such, until none of the predecessors can or will act.

(d) Reimbursement and Compensation

(Sec. 751.024). Unless the power provides otherwise, an agent is entitled to (1) reimbursement of reasonable expenses and (2) reasonable compensation.

10.4 New Subchapter A-2 – Authority of Agent Under Durable Power of Attorney.

(a) General Authority of the Agent and Limitations (Sec. 751.031).

(i) General Extent (Sec. 751.031(a)). If an agent is given the power to perform all acts the principal could perform, then the agent has the authority described in all the defined powers in a statutory durable power of attorney.

(ii) “Hot” Powers (Sec. 751.031(b)). An agent may take the following actions only if the power expressly grants them (note that they're not included in the statutory form):

- (1) create, amend, or revoke a trust;
- (2) make a gift;
- (3) create or change survivorship rights;
- (4) create or change beneficiary designations; or

(5) delegate authority under the power.

(iii) Creation of Interest in Agent (Sec. 751.031(c)). Even then, unless the power provides otherwise, an agent who isn't an ancestor, spouse, or descendant of the principal may not create in the agent (or in a person to whom the agent owes an obligation of support) an interest in the principal's property.

(iv) Overlapping Authority (Sec. 751.031(d)). If subjects over which authority is granted overlap, the broadest authority controls. The agent's authority isn't limited to property located in Texas.

(v) Authority Outside Texas (Sec. 751.031(e)). The agent's authority over the principal's property is exercisable whether or not the property is in Texas, and whether or not it is exercised, or the power is executed, in Texas.

(b) Gift Authority (Sec. 751.032). Gifts for the benefit of a person include gifts in trust, to a TUTMA or similar account, and to a Sec. 529 plan. Unless the power provides otherwise, a power to make gifts is limited to amounts within the annual gift tax exclusion, or twice that amount if the principal's spouse agrees to split gifts. It also includes the power to consent to split annual exclusion gifts made by the spouse.

An agent may make gifts only if consistent with the principal's objectives, if the agent actually knows them, or if not, if consistent with the principal's best interest based on all relevant factors, including the factors in Sec. 751.122 and the principal's personal gift history.

(c) Beneficiary Designation Authority (Sec. 751.033). Unless the power expressly provides otherwise, a specific grant of a "hot" power regarding beneficiary designations authorizes the agent to create or change beneficiary designations, create or change a P.O.D. or trust account, and create or change a nontestamentary transfer under Estates Code Chapter 111, and in most cases will not be subject to the limitations relating to an agent naming himself or herself. Absent the grant of this "hot" power, the general grant of these powers as defined in a statutory durable power will remain subject to the limitations.

(d) Incorporation of Statutory Powers by Reference (Sec. 751.034). A grant of authority using one of the terms used in a statutory durable power will incorporate the statutory definition by reference, unless modified by the principal.¹³

¹³ This new section applies to all durable powers, not just to statutory powers. One of the main benefits of using a

10.5 Subchapter B – Effect of Certain Acts on Exercise of Durable Power of Attorney (Sec. 751.051). An act performed by an agent has the same effect as if the principal had performed the act. (The current language only applies to acts performed while the principal is incapacitated, even if the power is effective immediately.)

10.6 Subchapter C – Duty to Inform and Account (Sec. 751.101). The amendment to Sec. 751.101 provides that an agent who accepts appointment under a power of attorney becomes a fiduciary as to the principal only when acting as an agent under the power. See the discussion of Sec. 751.022 in Section 10.3(b) above.

10.7 New Subchapter C-1 – Other Duties of Agent.

(a) Duty to Notify Principal of Breach by Co-Agent (Sec. 751.121). An agent with actual knowledge of a breach (or imminent breach) of duty by another agent must notify the principal, or, if the latter is incapacitated, take reasonable action to safeguard the principal's best interest. Failure to do so can result in liability for the reasonably foreseeable damages that could have been avoided. A co-agent who doesn't participate in or conceal a breach of fiduciary duty by a co-agent or predecessor agent is not liable for those actions.

(b) Duty to Preserve Estate Plan (Sec. 751.122). An agent has a statutory duty to preserve the principal's estate plan, to the extent actually known by the agent, if preservation is consistent with the principal's best interest, after considering all relevant factors, including the value and nature of the principal's property; the principal's foreseeable obligations and need for maintenance; minimization of taxes; and eligibility for governmental assistance.

10.8 New Subchapter C-2 – Duration of Durable Power of Attorney and Agent's Authority.

(a) Termination of Entire Power (Sec. 751.131). A power of attorney terminates when:

- (1) the principal dies,
- (2) the principal revokes the power,
- (3) the power provides that it terminates,
- (4) the purpose of the power is accomplished,

statutory power is incorporating by reference the lengthy statutory definitions of the descriptive terms used to grant the agent authority. This new section pretty much eliminates any concern over whether or not a statutory power form has been modified to such an extent that it would no longer be considered a "statutory" power of attorney. The statutory definitions of the descriptive terms will apply regardless.

- (5) the principal revokes the agent's authority (without revoking the entire power), or the agent dies, becomes incapacitated, or resigns, and no other agent is named, or
- (6) a permanent guardian of the estate has qualified.

(b) Termination of Agent's Authority

(Sec. 751.132). On the other hand, an agent's authority (as opposed to the power itself) terminates when:

- (1) the principal revokes the authority,
- (2) the agent dies, becomes incapacitated, or resigns,
- (3) the agent's marriage to the principal is dissolved (unless the power provides otherwise), or
- (4) the power terminates.

Unless the power provides otherwise, an agent's authority continues until terminated, despite the fact that it may be an "old" power of attorney.

(c) Effect of Termination (Sec. 751.134). An agent or another without actual knowledge of termination is protected from actions taken in good faith or in reliance on the power, unless the action is otherwise invalid or unenforceable.

(d) Previous Powers Continue

(Sec. 751.135). The execution of a subsequent power of attorney **does not** revoke any prior power unless the subsequent power says so.

10.9 Subchapter D – Recording Durable Power of Attorney for Certain Real Property Transactions (Sec. 751.151). Last session, the legislature added a new provision requiring that a power of attorney used in any real property transaction be filed with the county clerk within 30 days of the filing of the real property transaction. This amendment adds home equity liens and reverse mortgages to the laundry list of applicable real estate transactions.¹⁴

10.10 New Subchapter E – Acceptance of and Reliance on Durable Power of Attorney.

(a) Acceptance of Power Required

(Sec. 751.201). This is the subchapter that has generated the most concern (and the most negotiation) among stakeholders. While at first glance, the new provisions appear to require *mandatory acceptance* by third parties, because of the numerous exceptions allowing a third party to refuse acceptance of a power of attorney, a more accurate description of these new provisions would be that they require *reasonable acceptance*. Or perhaps that they require a third party to *reasonably* refuse acceptance.

¹⁴ Note that the statute already referred to powers used to execute a deed of trust, which would include home equity liens and reverse mortgages. This addition is apparently for those people who don't realize that.

- (a) Unless one or more grounds for refusal exist (see Sec. 751.206), a person presented with and asked to accept a power of attorney must either:

- accept the power;
- request a certification (under Sec. 751.203) within 10 **business** days;¹⁵
- request an attorney's opinion (under Sec. 751.204) within 10 **business** days; **or**
- request an English translation (under Sec. 751.205) within 5 **business** days

- (b) If the person requests a certification or attorney's opinion, they must accept the power within 7 **business** days after the certification or the opinion is received.

- (c) These time periods may be extended by agreement.
- (d) If a translation is requested, the power is not considered "presented" until the translation is provided.

- (e) A person need not accept a power if the agent refuses to or does not provide a requested certification, attorney's opinion, or translation.

(b) Other Form Not Required

(Sec. 751.202). A person may not require an additional or different form of power or that the power be recorded unless recordation is otherwise required by law.

(c) Agent's Certification (Sec. 751.203). If a certification is requested, the agent must provide a certification under penalties of perjury of any factual matter concerning the principal, the agent, or the power. If it's a springing power, the person may request a written statement from a physician stating that the principal is incapacitated. An optional form of certification is included in the statute (see Attachment 3). A certification made in compliance with this section is conclusive proof of the factual matters subject to the certification.

(d) Attorney's Opinion (Sec. 751.204). If an attorney's opinion is requested, the agent must provide the opinion regarding any matter of law as long as the person requesting the opinion provides the reason for the request in writing or other record. An attorney's opinion must be provided at the principal's expense unless requested more than 10 **business** days after the power is presented for acceptance. If requested after that period, the principal or agent may, but is not required to, provide the opinion at the requestor's expense.

¹⁵ I've highlighted the term "business" to stress that most of these time periods are pretty generous, extending the deadlines by two to four calendar days (depending on when the power is presented), or more if there's an intervening legal holiday.

(e) **English Translation (Sec. 751.205).** An English translation of any portion of a power that is not in English must be provided at the principal's expense unless requested more than 5 **business** days after the power is presented for acceptance. If requested after that period, the principal or agent may, but is not required to, provide the translation at the requestor's expense.

(f) **Grounds for Refusing Acceptance (Sec. 751.206).** A person is *not* required to accept a power under the following circumstances:

- (1) The person is not otherwise required to engage in a transaction with the principal under the same circumstances (*e.g.*, the agent seeks to open a new account and the principal isn't a current customer), or the agent seeks a product or service the person doesn't offer.
- (2) Engaging in a transaction with the agent or principal would be inconsistent with a state or federal law, rule, or regulation, a request from a law enforcement agency, or a policy adopted by the person in good faith necessary to comply with a state or federal law, rule, regulation, regulatory directive, guidance, or executive order applicable to the person.
- (3) The person would not engage in a similar transaction because the person has filed a suspicious activity report (SAR) with respect to the principal or agent, the person believes in good faith that the principal or agent has a prior criminal financial history, or the person has had a previous unsatisfactory relationship with the agent involving substantial loss to the person, financial mismanagement by the agent, litigation between the person and the agent alleging substantial damages, or multiple nuisance lawsuits filed by the agent.
- (4) The person has actual knowledge of the termination of the agent's authority or the power.
- (5) A request for a certification, attorney's opinion, or translation is refused, or if provided, the person in good faith is still unable to determine the validity of the power or authority of the agent.
- (6) The person in good faith believes the power isn't valid, that the agent doesn't have authority, or that the requested act would violate governing business documents of an entity or an agreement affecting the entity.
- (7) The person brought, or has actual knowledge another person has brought, an action to construe the power or review the agent's conduct.
- (8) The person brought, or has actual knowledge another person has brought, an action making a final determination that the power is invalid with

respect to the purpose for which it is being presented or the agent lacks authority to act in the attempted manner.

- (9) The person makes, has made, or has actual knowledge that another person has made, a report to a law enforcement or other federal or state agency, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting on behalf of the agent.
- 10) The person has received conflicting instructions or communications from co-agents.
- 11) The person isn't required to accept the power by the law governing the meaning and effect of the power, or the powers conferred on the agent by that law don't include the power the agent is attempting to exercise.

(g) **Written Refusal (Sec. 751.207).** A person refusing to accept a power must provide the agent a written statement advising the agent of the reason, or a statement signed under penalty of perjury that the reason is described in Secs. 751.206(2) or (3) above. The statement must be provided by the date the person would otherwise be required to accept the power.

(h) **Date of Acceptance (Sec. 751.208).** A power is considered accepted by a person to whom it was presented on the first day the person agrees to act at the agent's direction under the power.

(i) **Reliance by Third Party on Certain Facts (Sec. 751.209).** A person accepting a power in good faith without actual knowledge that the principal's signature (or the signature of a person signing on behalf of the principal) is not genuine is entitled to rely on the presumption in Sec. 751.022 that the signature is genuine and the power was properly executed. A person accepting a power in good faith without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the power of attorney as if the power of attorney were genuine, valid, and still in effect; the agent's authority were genuine, valid, and still in effect; and the agent had not exceeded and had properly exercised the authority.

(j) **Reliance by Third Party on Requested Information (Sec. 751.210).** A person requesting an agent's certification, an attorney's opinion, or a translation may rely on it without further investigation or liability.

(k) **Actual Knowledge Through Employees (Sec. 751.211).** A "person" conducting activities through employees is without actual knowledge if the

employee conducting the transaction involving the power is without actual knowledge.

(l) Cause of Action for Refusal to Accept (Sec. 751.212). The principal or agent may bring an action against a person refusing to accept a power in violation of these provisions. If the court finds that a violation has occurred, it shall order the person to accept the power and award the plaintiff costs and reasonable attorney's fees. The court must dismiss an action commenced after a person provides a statement signed under penalty of perjury that the reason for refusal is described in Secs. 751.206(2) or (3) above. However, if such a statement is provided after the action is timely commenced, the person won't be forced to accept the power, but will still be liable for costs and fees.

(m) Liability of Principal (Sec. 751.213). On the other hand, if an enforcement action is brought and the court finds that a refusal described in Secs. 751.206(2) or (3) has been provided, the person's refusal to accept was permitted under Sec. 751.206, or, if the court does not order the person to accept the power (and the reason for the lack of order isn't that the person provided a late refusal described in Secs. 751.206(2) or (3)), the principal may be liable for the person's costs and attorney's fees.

10.11 New Subchapter F – Civil Remedies (Sec. 751.251). The following persons may bring an action to construe a power of attorney or review the agent's conduct:

- (1) the principal or the agent,
- (2) a guardian, conservator, or other fiduciary for the principal,
- (3) a person named as a beneficiary to receive property on the principal's death,
- (4) a governmental agency with authority to protect the principal's welfare,
- (5) another person who demonstrates to the court sufficient interest in the principal's welfare or estate.

Further, a person asked to accept a power may bring an action to construe it. However, on the principal's motion, the court must dismiss an action brought by another unless the court finds the principal lacks authority to revoke the agent's authority or the power of attorney.

Chapter 752 – Statutory Durable Power of Attorney

10.12 Subchapter B – Form of Statutory Durable Power of Attorney.

(a) Statutory Form (Sec. 752.051). The statutory form contains several modifications. First, the

notice at the beginning of the form advises the principal that if he or she wants the agent to have authority to sign home equity loan documents, the power must be signed at the office of the lender, an attorney, or a title company. This is intended to address the *Norwood* problem discussed at length in [my 2015 legislative update](#). Second, following the initial appointment of the agent is a new notice to the principal that he or she may appoint co-agents who, unless otherwise provided, may act independently of each other. Optional provisions regarding reimbursement and compensation of agents, or whether co-agents should act jointly or independently, are added to the special provisions. References in the form to "revocation" are changed to "termination." A sentence is added stating that the meaning and effect of the power is determined by Texas law. Finally a clause is added to the appointment of alternate agents triggering that appointment if the principal's marriage to an agent is dissolved (see Attachment 4).

(b) Modification of Statutory Form to Include "Hot" Powers (Sec. 752.052). The "hot" powers mentioned in Section 10.10 are **not** part of the basic statutory form. A new but separate section contains additional language that may be added to the statutory form to grant those powers. And it will still be considered a statutory power.

10.13 Subchapter C – Construction of Powers Related to Statutory Durable Power of Attorney. Several of the provisions setting out the extent of a particular grant of authority in a statutory power are modified.

(a) Real Property Transactions (Sec. 752.102). Much more extensive language dealing with mineral transactions is added to the statutory definition of authority related to real property transactions. In addition, the power to designate the principal's homestead is added.

(b) Insurance and Annuity Transactions (Sec. 752.108). Reference is made to the ability of a principal to grant a "hot" power regarding beneficiary designations.

(c) Estate, Trust, and Other Beneficiary Transactions (Sec. 752.109). Authority with respect to life estates is added.

(d) Personal and Family Maintenance (Sec. 752.111). Authority with respect to the principal's mail and to provide for the care of the principal's pets is added.

(e) Retirement Plan Transactions (Sec. 752.113). Reference is made to the ability of a principal to grant a "hot" power regarding beneficiary

designations. Also, the agent's ability to name himself or herself only to the extent already named in the plan is extended to plans (such as a rollover) where the agent was named in a predecessor plan.

10.14 Repealers. Because of the changes described above, the following current sections are repealed:

- (1) Section 751.004;
- (2) Section 751.053;
- (3) Section 751.054;
- (4) Section 751.055;
- (5) Section 751.056; and
- (6) Section 751.058.

HB 1974 was signed by the Governor on June 15th and is generally effective September 1, 2017.

Drafting Tip

Really? You expect me to summarize the last 5+ pages in a "Drafting Tip?" This whole darn Part 10 is one big drafting tip!

However, I would point out again that (i) Attachment 4 highlights all of the changes to the statutory form made by three separate bills this session, (ii) the statutory form isn't mandatory, but (iii) a power of attorney "in substantially the form prescribed by Section 752.051" is considered a statutory power of attorney. Therefore, if your power of attorney form is based on the statutory form, I see no harm in changing it now, rather than waiting until September 1st.

11. Other Bills Relating to Disability Documents.

11.1 The REPTL Guardianship Bill – Financial Powers of Attorney. The REPTL Guardianship bill (**SB 39** (Zaffirini | Farrar)) makes a few changes to our financial power of attorney provisions.

(a) Effect of Guardianship of Estate (Sec. 751.052). The powers of an agent under a financial power of attorney automatically terminate upon qualification of a permanent guardian of the principal's estate. This amendment revokes the agent's powers upon qualification of a permanent guardian of the estate, and suspends those powers on the qualification of a temporary guardian of the estate. However, in the case of a temporary guardian, the court has the option to affirm the power of attorney and confirm the validity of the agent's appointment.

(b) Removal of Agent (Secs. 751.054, 751.055, & 752.051 & Ch. 753). New Ch. 753 authorizes a named successor agent in a power of attorney or an interested person (including an ad litem) in a guardianship proceeding with respect to the

principal to file a petition to remove the current agent under a power of attorney. The court may remove the agent (and deny compensation) if the court finds that the agent (i) has breached fiduciary duties to the principal, (ii) materially violated (or attempted to violate) the terms of the power of attorney resulting in a material financial loss to the principal, (iii) is incapacitated or otherwise incapable of performing the agent's duties, or (iv) fails to make a required accounting. In the event of removal, the court may authorize the appointment of a named successor if the successor is willing to accept the authority. In that event, the successor must provide notice of the order to each third party whom the agent believes relied on (or may rely on) the power of attorney within 21 days of the order. The statutory form is also revised to add judicial removal of an agent as one of the grounds for authorizing a successor agent to act (see Attachment 4).

SB 39 was signed by the Governor on June 9th and is generally effective September 1st.

11.2 The REPTL Medical Power of Attorney Bill (Health & Saf. Code Secs. 166.155 & 166.162-164). **HB 995** (Wray, *et al.* / Rodriguez) is a REPTL bill that revokes the authority of a spouse under a medical power of attorney if the marriage is dissolved. It moves the separate disclosure statement to the medical power form itself, rather than it being a separate document. As originally filed, it made the statutory form permissive, rather than mandatory. However, an amendment left the form mandatory (see Attachment 5).

HB 995 was signed by the Governor on June 15th and is generally effective January 1, 2018.

Drafting Tip

Time to change your medical power of attorney forms? Not quite yet! REPTL wanted to make the statutory form optional, but due to opposition from the Texas Hospital Association, it remains mandatory. And since the changes to the statutory form don't go into effect until January 1st, prudence would dictate waiting until then to change your forms. (Although I find it hard to believe that if you made the relatively minor changes to the form early, a medical provider would refuse to honor it. Or at least I hope that wouldn't happen!)

11.3 The REPTL Guardianship Declaration Bill (Est. Code Secs. 1104.203-204). **SB 511** (Rodríguez) is a REPTL bill that allows the declaration of guardian for oneself (not for children) to be executed before a notary in lieu of two witnesses if the declaration does not expressly disqualify anyone from serving as guardian. Such a declaration is considered

self-proved merely with the principal's acknowledgement (see Attachment 6).

SB 511 was signed by the Governor on May 29th and is generally effective September 1st.

Drafting Tip

Time to change your guardianship declaration forms? My preference (since 2009) has always been to use one notary in lieu of two witnesses where allowable because it speeds up the execution ceremony. I can notarize all documents that don't require witnesses, and then ask for witnesses to come into the ceremony for just the remaining documents (which may be just the wills – and guardianship declarations for minor children – after September 1st).

11.4 **The REPTL Declaration of Mental Health Treatment Bill (Civ. Prac. & Rem. Code Secs. 137.003 & 137.011).** **HB 1787** (Wray / Rodriguez) is a REPTL bill that authorizes the use of one notary in lieu of two witnesses on a declaration of mental health treatment (see Attachment 7).

HB 1787 was signed by the Governor on June 1st and is generally effective September 1st.

Drafting Tip

Time to change any declaration of mental health treatment forms? See the Drafting Tip following Section 11.2, although keep in mind that this change goes into effect September 1st.

11.5 **The REPTL Digital Assets Bill.** See Part 13 on page 25 for provisions applicable to agents under financial powers of attorney. They include minor revisions to the statutory durable power of attorney form (see Attachment 4).

11.6 **Display of Information on Bone Marrow Donation (Trans. Code Sec. 521.012).** **HB 3359** (Casper) directs the DPS to make informational material and videos on bone marrow donation available in a publicly accessible area of each driver's license office.

HB 3359 was signed by the Governor on June 15th and is effective September 1st.

11.7 **Authority to Sign Medical Certification for Death Certificates (Health & Saf. Code Secs. 193.005, 671.001 & 671.002).** **SB 919** (Rodríguez | Coleman) authorizes a physician's assistant or advanced practice registered nurse to sign a medical certification for a death certificate if the patient has elected to receive hospice or palliative care. . (Currently, only the attending physician may sign a medical certification.)

SB 919 was signed by the Governor on June 1st and is effective immediately.

11.8 **Designation of Caregiver for Aftercare Instructions (Health & Saf. Code Ch. 317).** **HB 2425** (Price, *et al.* | Taylor, V.) requires a hospital to allow a patient, the patient's guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver upon the patient's admission or before discharge. The hospital must consult with the patient and designated caregiver regarding the caregiver's capabilities and limitations, and issue a discharge plan to meet the patient's aftercare needs.

HB 2425 was signed by the Governor on May 26th and is effective immediately.

11.9 **General Procedures for DNR Orders (Health & Saf. Code Secs. 166.201-166.209).** During the regular session, **HB 2063** (Bonnen, G.) would have outlined required procedures for issuing and revoking in-hospital DNR orders, as opposed to out-of-hospital DNR orders that are already dealt with in Subch. C of Health & Saf. Code Ch. 166. (For further description of the bill, see Sec. 11.5 in Attachment 8.) On July 20th, Gov. Abbott expanded the call of the First Called Session that began July 18th (the official name of the 30-day special session) to include "[l]egislation enhancing patient protections contained in the procedures and requirements for do-not-resuscitate orders." Several bills similar to the regular session bill were introduced, but **SB 11** (Perry, *et al.* | Bonnen, G., *et al.*) is the one that moved forward. Because this new provision deals with an area that previously was not addressed by statute, and because it is so controversial (take a look at [the 4-page witness list](#) from the first hearing in the Senate), I'll go into significantly more detail than I otherwise might.

(a) **Application of Subchapter.** The version that originally passed the Senate was quite similar to the regular session proposal, but after intense negotiations in the House, the bill was substantially revised, creating a new Subch. E of Health & Saf. Code Ch. 166 entitled "Health Care Facility Do-Not-Resuscitate Orders." The new provisions **only** apply to a DNR order issued in a health care facility or hospital, explicitly excluding application to out-of-hospital DNR orders.¹⁶ An in-hospital DNR order is only valid if issued by the patient's attending physician, dated, and the order is:

¹⁶ Out-of-hospital DNRs are those issued in out-of-hospital settings, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transportation. Health & Saf. Code Sec. 166.081(7).

1. Issued in compliance with any of the following five categories:
 - a. Written, dated directions of a patient made while competent;
 - b. Oral directions of a competent patient delivered to or observed by two witnesses (at least one of whom must not be an employee of the physician or hospital);
 - c. Directions in an advance directive;
 - d. Directions of the patient's guardian or agent under a medical power; or
 - e. A treatment decision made under Sec. 166.039 for an incompetent or noncommunicative person without an advanced directive; **or**
2. Is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions, and in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent regardless of the provision of CPR, and the DNR order is medically appropriate.

The DNR order must be placed in the patient's medical record. However, if it is issued under 2 above, the physician, assistant, nurse, or someone acting on behalf of the hospital must inform the patient of the issuance of the order. If the patient is incompetent, they must make a diligent effort to notify a known agent under a medical power or legal guardian, or if none, the patient's spouse, reasonably available adult children, or parents. If there is any conflict with any other valid treatment decision or advance directive, the one validly executed or issued most recently controls.

(b) Notification on Behalf of Incompetent

Patient. If a DNR order is issued for an incompetent patient, and one of the individuals required to be notified arrives at the hospital and notifies a physician, physician's assistant, or nurse providing direct care to the patient of the individual's arrival, the medical provider with actual knowledge of the DNR order must disclose it to the individual.¹⁷ If a person makes a good faith effort to comply with the notification requirements (and documents those efforts in the patient's medical record, they will have no civil or criminal liability or be subject to any disciplinary action. Also, upon admission, a hospital must notify the patient or person authorized to make treatment decisions of its policies regarding the rights of the patient or decision-maker under the new subchapter.

(c) Required Revocation. A physician must revoke a DNR order if the patient, or the patient's medical agent or legal guardian (if the patient is incompetent), effectively revokes an advance directive

for which a DNR order is issued, or expresses to anyone providing direct care a revocation of consent or intent to revoke a DNR order (in which case that person must notify the physician). Again, a person is not civilly or criminally liable for failure to act on a revocation that they have no actual knowledge of.

(d) Failure to Execute Instructions. If the attending physician or hospital does not wish to comply with a DNR order or the patient's instructions, they must inform the patient or representative of an incompetent patient of the benefits and burdens of CPR. If disagreement still remains, the physician or hospital must make a reasonable effort to transfer the patient to a physician or hospital willing to carry out the patient's instructions.

(e) Liability Limitations. A medical professional or hospital that issues a DNR order in good faith, or causes CPR to be withheld in accordance with the subchapter, is immune from civil or criminal liability or disciplinary review or action. Similarly, they're protected if they fail to act in accordance with a DNR order of which they had no actual knowledge.

(f) Enforcement. A medical professional commits a Class A misdemeanor if he or she intentionally conceals, cancels, effectuates, or falsifies a patient's DNR order or if the professional intentionally conceals or withholds personal knowledge of the patient's revocation of a DNR order. A medical professional or hospital is subject to disciplinary review for intentionally failing to effectuate a valid DNR order or issuing one in violation of the subchapter.

SB 11 was signed by the Governor on August 16th and is effective April 1, 2018.

12. Nontestamentary Transfers.

12.1 The REPTL Decedents' Estates Bill – Multi-Party Accounts. The REPTL 2017 Decedents' Estates bill (**HB 2271** (Wray | Rodriguez)) contains several provisions relating to multi-party accounts

(a) Liability of Multi-Party Accounts for Taxes and Administration Expenses (Est. Code Sec. 113.252). One change clarifies that multiparty accounts are liable for their share of estate taxes charged under Ch. 124, and, if other estate assets are insufficient, amounts needed to pay debts, other taxes, and administration expenses.

(b) Divorce of Parties (Est. Code Sec. 113.252 & 123.151). If spouses who have a joint account with survivorship rights divorce, this change clarifies that rights in favor of a former spouse or relatives are revoked.

¹⁷ Note that the notification requirement only extends to the first person notified in the priority set forth in the statute.

HB 2271 was signed by the Governor on June 15th and is generally effective September 1, 2017. (See note following Sec. 7.1 for more details.)

12.2 Multi-Party and POD Accounts (Secs. 113.052, 113.053, & 113.0531). SB 714

(Seliger | Geren) modifies the optional statutory account form to include an acknowledgment by the customer that he or she has read each paragraph, received a disclosure of the ownership rights to each type of account, and has placed his or her initials next to the type of account desired. (This replaces the current requirement that the customer place initials to the right of each paragraph.) If the financial institution does not use the statutory form, it must either make the required disclosures separately from other account information (current law), or if included in other account documentation, the disclosures must be the first item of the documentation (new law). A financial institution is not required to provide disclosures about any type of account it does not offer. Finally, the disclosure obligations won't apply to credit unions or to a customer who is a legal entity or is acting as a legal representative for another person.

SB 714 was signed by the Governor on May 29th and is generally effective September 1st.

12.3 Transfer on Death Deeds (Secs. 114.103 & 114.151). SB 2150 (Huffman | Farrar) clarifies that the lapsed share of a designated beneficiary of a TODD who fails to survive the transferor by 120 hours passes in accordance with the rules applicable to failure of devise under a will (Sec. 255.151, *et seq.*). A number of options are added to the statutory form of TODD to deal with the shares of predeceasing beneficiaries.

- If at least one primary beneficiary survives the transferor, the transferor may elect (1) to have the share of a deceased beneficiary who was a descendant of the transferor's parents pass to the descendants of the deceased beneficiary, or (2) to have the share of any deceased beneficiary pass to the surviving primary beneficiaries only.
- On the other hand, if no primary beneficiary survives the transferor, the transferor may elect (1) to have the share of a deceased primary beneficiary who was a descendant of the transferor's parents pass to the descendants of the deceased primary beneficiary, or (2) to have the share of any deceased primary beneficiary pass to the alternate beneficiaries.
- To make things even more confusing, if an alternate beneficiary does not survive the transferor, the transferor may elect (1) to have the share of the deceased alternate beneficiary who was a descendant of the transferor's parents to pass to

the descendants of the deceased alternate beneficiary, or (2) to have the share of any deceased alternate beneficiary pass to the other alternate beneficiaries.

- And if none of them are alive, then the deed is considered cancelled.

SB 2150 was signed by the Governor on June 15th and is effective September 1st.

12.4 Beneficiary Designation for Motor Vehicles (Ch. 115 & Trans. Code Sec. 501.0315).

SB 869 (Huffman | Farrar, *et al.*) directs the creation of a motor vehicle title that includes a beneficiary designation in the event of the owner's death. The beneficiary's legal name must be on the title, and if the vehicle is owned by joint owners with right of survivorship, the designation must be made by all the owners. The beneficiary designation creates no interest in the vehicle during the lives of the owners and may be changed by submitting a new application for title. Following the death of the last owner, the beneficiary must apply for transfer of title to the beneficiary within 180 days.

SB 869 was signed by the Governor on June 9th and is effective September 1st.

13. The REPTL Digital Assets Bill.

13.1 The REPTL Digital Assets Bill (Est. Code Ch. 2001 (New), Secs. 752.051, 752.1145, 752.115, 1151.101, Prop. Code Sec. 113.031). The REPTL Digital Assets bill (**SB 1193** (Taylor, V.)) enacts the Texas Uniform Fiduciary Access to Digital Assets Act, based on RUFADAA.¹⁸

13.2 Background. Here's the background behind this uniform act. The growth of digital assets has been accompanied by the growth in the difficulties faced by fiduciaries trying to access a principal's digital assets. What are digital assets, you ask? Here are some examples:

- Airline Rewards
- Hotel Points
- Email Accounts
- Social Networking Accounts
- Voicemail Accounts
- Online Photographs and Videos
- Image Sharing Accounts
- iTunes
- Web pages
- Online Purchasing Accounts

¹⁸ Already, 35 states (including Texas) have enacted RUFADAA, and another 9 (including D.C.) have pending legislation.

- Bitcoins

Until recently, a fiduciary's access to these assets has been determined by individual service agreements (*i.e.*, the fine print we all agree to without reading) and a hodgepodge of federal and state laws. In 2014, the Uniform Laws Commission adopted the Uniform Fiduciary Access to Digital Assets Act (UFADAA, pronounced like "you father," except with a Brooklyn accent) to try to address this lack of uniformity.

13.3 The Revised Uniform Act. While UFADAA was introduced in numerous states, due to early industry opposition (think Google, Facebook, Yahoo, etc.), it only passed in Delaware, and that was a preliminary version before final adoption by the ULC. So the ULC went back to the drawing board and in 2015 adopted a **Revised** Uniform Fiduciary Access to Digital Assets Act (**RUFADAA**, pronounced like a Kangaroo's parent -- "Roo father," again with a Brooklyn accent) that was drafted with industry participation and blessing. RUFADAA addresses access by four common types of fiduciaries: (1) executors or administrators of decedents' estates; (2) court-appointed guardians or conservators of estates; (3) agents under financial powers of attorney; and (4) trustees.

13.4 ULC Description. Here's a description of what RUFADAA does from the ULC:

Revised UFADAA gives Internet users the power to plan for the management and disposition of their digital assets in a similar way as they can make plans for their tangible property. In case of conflicting instructions, the act provides a three-tiered system of priorities:

1. If the custodian provides an online tool, separate from the general terms of service, that allows the user to name another person to have access to the user's digital assets or to direct the custodian to delete the user's digital assets, Revised UFADAA makes the user's online instructions legally enforceable.
2. If the custodian does not provide an online planning option, or if the user declines to use the online tool provided, the user may give legally enforceable directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.
3. If the user has not provided any direction, either online or in a traditional estate plan, the terms of service for the user's account will determine whether a fiduciary may access the user's digital assets. If the terms of service do not address fiduciary access, the default rules of Revised UFADAA will apply.

Revised UFADAA's default rules attempt to balance the user's privacy interest with the fiduciary's need for access by making a distinction between the "content of electronic communications," the "catalogue of electronic communications", and other types of digital assets.

More information on RUFADAA can be found at:

[http://www.uniformlaws.org/Act.aspx?title=Fiduciary Access to Digital Assets Act, Revised \(2015\)](http://www.uniformlaws.org/Act.aspx?title=Fiduciary+Access+to+Digital+Assets+Act,+Revised+(2015))

SB 1193 was signed by the Governor on June 1st and is generally effective September 1st.

[Very Long] Drafting Tip

Let's be on the lookout for some bright attorney to present a paper with suggested language to include in traditional estate planning documents to deal with the disposition of, or access to, digital assets in light of TRUFADAA. ACTEC has a Digital Property Committee that is working on compiling suggested provisions for wills, trusts, and financial powers of attorney. In the meantime:

- Here is language for inclusion in a will provided by ACTEC Fellow James Lamm, a Minnesota attorney:

The personal representative may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (1) any kind of computing device of mine; (2) any kind of data storage device or medium of mine; (3) any electronically stored information of mine; (4) any user account of mine; and (5) any domain name of mine. The personal representative may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to the personal representative: (1) any electronically stored information of mine; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; (3) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. The personal representative may employ any consultants or agents to advise or assist the personal representative in decrypting any encrypted

electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize the personal representative to take any of these actions to access: (1) any kind of computing device of mine; (2) any kind of data storage device or medium of mine; (3) any electronically stored information of mine; and (4) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term "user account" includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

- Here is language for inclusion in a power of attorney suggested by Keith Huffman, an Indiana attorney:

Digital Assets. My Attorney-In-Fact shall have (i) the power to access, use, and control my digital device, including, but not limited to, desktops, laptops, peripherals, storage devices, mobile telephones, smart phones, and any similar device which currently exists or exists in the future as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets, and (ii) the power to access, modify, delete, control, and transfer my digital assets, including, but not limited to, any emails, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, web hosting accounts, tax preparation service accounts, on-line stores, affiliate programs, other on line programs, including frequent flyer and other bonus programs, and similar digital items which currently exist or exist in the future as technology develops.

- If that's a bit too cumbersome, here's language Texas attorney Michael Koenecke passed along to me (that he borrowed from someone else) for inclusion in the powers granted to an executor:

Digital Assets. My Executor shall have the power to access, handle, distribute, and dispose of my digital assets, and the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets.

To go along with this authority, he includes the following definition in the back of the will:

Digital Assets. The term "digital assets" includes the following:

(1) Files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops; and

(2) Emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, regardless of the ownership of the physical device upon which the digital item is stored.

- Also, with respect to definitions of digital assets, note that TRUFADAA Sec. 2001.002 contains the following definitions:

(8) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

* * *

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- **And**, in 2013, we amended the Trust Code definition of "property" found in Sec. 111.004 by adding the underlined language:

(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.

14. Exempt Property *[No bills in this area passed.]*

15. Jurisdiction and Venue.

15.1 **The REPTL Decedents' Estates Bill – Nearest or Next of Kin (Est. Code Sec. 33.001.** If a decedent isn't a Texas resident and didn't die here, venue is proper in any county where the decedent's nearest of kin resides The REPTL 2017 Decedents' Estates bill (**HB 2271** (Wray | Rodriguez)) define nearest or next of kin as the spouse, or if none, other relatives in order of descent within the third degree by consanguinity (including a person legally adopted by the decedent and that person's descendants).

HB 2271 was signed by the Governor on June 15th and is generally effective September 1, 2017. (See note following Sec. 7.1 for more details.)

15.2 **The REPTL Guardianship Bill – Transfer of Guardianship (Sec. 1023.003-1023.005).** SB 38 (Zaffirini, *et al.* | Murr), a non-REPTL bill, would have authorized a court, on its own motion, to transfer a guardianship proceeding to another county if the ward is residing in that other county. SB 39 (Zaffirini | Farrar), the REPTL Guardianship bill, was amended on the House floor to include the substance of SB 38.

SB 39 was signed by the Governor on June 9th and is generally effective September 1st.

15.3 **The REPTL Trusts Bill – Venue Clarification – Again (Trust Code Sec. 115.002).** The 2013 REPTL Trusts bill was designed to clarify proper venue where there are multiple noncorporate trustees, and no corporate trustee. But the language that was introduced didn't quite accomplish that. The REPTL Trusts bill (SB 617 (Rodríguez | Wray)) re-clarifies it. 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 trustees, **none of whom is a corporate trustee**, 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 trustees, **none of whom is a corporate trustee**, 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. (No change.)

SB 617 was signed by the Governor on May 22nd and is generally effective September 1st.

16. Court Administration.

16.1 **Sunset Review of State Bar and Board of Law Examiners.** I'm sure that there will be many other resources that will inform you about these changes in more depth, but this is the year for sunset review of both the State Bar of Texas and the Texas Board of Law Examiners.

(a) **State Bar. SB 302** (Watson, *et al.* | Thompson, S.) reauthorizes the State Bar. Changes (description courtesy of REPTL's research assistant, Barbara Klitch) include increasing SBOT board of director training; allowing Supreme Court to change membership fees without membership vote; requiring fingerprinting and criminal history checks for all members; permitting voluntary mediation and dispute resolution for "minor grievances" referred for mediation; authorizing subpoenas for investigation of grievances; mandating guidelines for self-reporting by attorneys of a criminal offense or a disciplinary action by another state bar; mandating a new grievance tracking system and a process for regular online searches by the SBOT for members' disciplinary actions in other states; revamping the disciplinary rule proposal process; creating an ombudsman for attorney discipline; requiring attorney's profile to include link to text of any disciplinary judgments; and permitting access by the SBOT to criminal history records obtained by Board of Law Examiners.

SB 302 was signed by the Governor on June 9th and is effective September 1st.

(b) **Board of Directors.** Related bills, SB 416 (Watson, *et al.* | Smithee) revises the composition of the State Bar's Board of Directors to replace the current four "minority member" directors to four "outreach" directors, meaning "directors who demonstrate the sensitivity and knowledge gained from experiences in the legal profession and community necessary to ensure the board represents the interests of attorneys from the varied backgrounds that compose the membership of the state bar, including members of historically underrepresented groups."

SB 416 was filed by the Governor without signature on June 15th and is effective immediately.

(c) **Board of Law Examiners. SB 303** (Watson, *et al.* | Thompson, S.) reauthorizes the Board of Law Examiners. Changes include allowing the board to delegate routine decisions to the executive director; increasing board training; revising notification dates for decisions on declarations of intent to study law; permitting an increase of late fee amounts; revising procedure for professional evaluation of an applicant whom the board has determined may suffer from a chemical dependency; and mandating development of licensing guidelines related to applicants' moral character and fitness.

SB 303 was signed by the Governor on June 9th and is effective September 1st.

16.2 **Deposit of Wills with Clerk and Fees for Probate Matters (Est. Code Ch. 252).** HB 2207

(Kuempel | Zaffirini) authorizes an attorney, business, or other person in possession of a testator's will to deposit the will with the clerk of the county of the testator's last known residence if unable to maintain custody or locate the testator (for a \$5 fee). Certain notices to be sent by the clerk in connection with a will deposit no longer need be sent by certified mail.

HB 2207 was signed by the Governor on June 12th and is generally effective September 1st.

16.3 Notice of Self-Help Resources (Gov't. Code Sec. 51.808). SB 1911 (Zaffirini, *et al.* | Farrar) requires the clerk of each court to post on its website a link to the self-help resources website designated by the OCA in consultation with the Texas Access to Justice Commission, and a link to the State Law Library. The designated website must contain information about lawyer referral services, local Legal Aid offices, and court affiliated self-help centers serving the county. The main difference is that the Senate version does not require the OCA to establish its own self-help website. For example, TexasLawHelp.org, which is a program of the Texas Legal Services Center that is also supported by the Texas Access to Justice Foundation, the Travis County Law Library, and [Pro Bono Net](http://ProBonoNet.org), might suffice.

SB 1911 was signed by the Governor on June 12th and is effective September 1st.

16.4 Judges' Bond (Gov't. Code Secs. 25.006 & 26.001). SB 40 (Zaffirini) sets uniform bond requirements for constitutional and statutory county judges that vary only by the size of the county, overriding any specific provision for a particular court or county. The bond requirements are increased for judges presiding over guardianship or probate proceedings. The bill does not apply to statutory probate judges who provide their bond under Gov't. Code Sec. 25.00231.

SB 40 was signed by the Governor on June 9th and is generally effective September 1st.

17. Selected Marital Issues.

17.1 Rules Relating to Application of Foreign Law to Marriages and Parent-Child Relationships (Gov'd. Code Secs. 22.0041 & 22.022). HB 45 (Flynn) directs the Supreme Court to adopt rules to limit the recognition of foreign judgments or arbitration awards involving a marriage or parent-child relationship that violate constitutional rights or public policy. In addition, the court is to provide a course of instruction relating to these issues for judges involved in those actions.

HB 45 was signed by the Governor on June 14th and is generally effective September 1st.

17.2 Marriage by Minors. SB 1705 (Taylor, V. | Thompson, S.) eliminates parental consent or dissolution of a prior marriage as grounds for authorizing the marriage of a person under 18. Instead, anyone under 18 must have their disabilities of minority removed for general purposes by a court in Texas or elsewhere.

SB 1705 was signed by the Governor on June 15th and is generally effective September 1st.

17.3 Clerk's Name on Marriage Licences. SB 911 (Huffman, *et al.* | Springer) would have required a marriage license to identify the county in which it is issued, but would have prohibited specifying the name of the county clerk. (I assume this is related to objections of some clerks issuing marriage licenses to same-sex couples.) That bill didn't pass. However, on the next to last day of the session, both chambers adopted a conference committee report on **HB 555** (Springer, *et al.* | Hughes), a bill that originally set an additional fee for marriage licenses to nonresident licenses. That report added much of the language of **SB 911**, except that it allows, but may not require, specifying the clerk's name.

HB 555 was signed by the Governor on June 12th and is effective immediately.

18. Stuff That Doesn't Fit Elsewhere.

18.1 Diacritical Marks (Health & Saf. Code Sec. 191.009; Trans. Code Secs. 521.127 and 522.030). HB 1823 (Canales) directs the state registrar in the vital statistics unit of the Department of State Health Services and the Department of Transportation to ensure that vital statistics records, driver's licenses, and personal identification certificates include appropriate diacritical marks (accents, tildes, graves, umlauts, and cedillas, such as á, é, í, ó, ú, ü, and ñ). A conference committee report made these requirements to documents issued or renewed **beginning January 1, 2019.**

HB 1823 was signed by the Governor on June 15th and is effective September 1st.

Drafting Tip

If you want to start including them yourself, you can do so by holding down the Alt key while typing a specific number combination. For example, here are the "Alt-key" codes for common Spanish characters (and one German character) with diacritical marks:

á	[Alt] + 0225	ü	[Alt] + 0252
é	[Alt] + 0223	ñ	[Alt] + 0241

í	[Alt] + 0237		
ó	[Alt] + 0243	;	[Alt] + 0161
ú	[Alt] + 0250	¿	[Alt] + 0191

18.2 Online Notarizations (Civ. Prac. & Rem. Code Secs. 121.006 & 121.016; Gov’t. Code Secs. 406.101-111). First, some background. The Texas Uniform Electronic Transactions Act (Bus. & Comm. Code Ch. 322) in effect provides that certain documents signed through electronic means may also be notarized electronically. But the Secretary of State’s office makes clear that the person signing the document electronically must still appear in person before the notary. **HB 1217** (Parker) provides that a person may “personally appear” before an officer authorized to take acknowledgments by **either** “physically appearing before the officer” **or** “appearing by an interactive two-way audio and video communication that meets the online notarization requirements” of new Subchapter C to Chapter 406 of the Government Code. The details remain to be worked out because the Secretary of State is directed to develop standard for electronic notarizations. Online notaries could perform all acts of traditional notaries under Sec. 406.016, *i.e.*, authority to:

1. take acknowledgments or proofs of written instruments;
2. protest instruments permitted by law to be protested;
3. administer oaths;
4. take depositions; and
5. certify copies of documents not recordable in the public records.

HB 1217 was signed by the Governor on June 1st and is generally effective July 1, 2018.

Drafting Tip

It is unclear whether online notarizations would be available for typical estate planning documents. But keep in mind that even if online notarizations were available for self-proving affidavits to wills, that does not eliminate the requirement that the **witnesses** be physically present.

19. Special Supplement No. 1 – The Missing Delaware Tax Trap Provision.

19.1 Original Proposal. As introduced, the REPTL Trust bill added new Subsections (c) and (d) to Prop. Code Sec. 181.083. Those provisions would allow an instrument granting a power of appointment to specify that an interest created through the exercise of that power is deemed to be created when exercised, not when the power was originally granted, **if** the instrument exercising the power specifically

(1) referred to Sec. 181.083(c), (2) asserted an intent to create another power of appointment described in IRC Secs. 2041(a)(3) or 2514(d), or asserted an intent to postpone the vesting of an interest for a period ascertainable without regard to the date of the creation of the donee’s power. Why? This was an attempt to allow triggering the “Delaware tax trap” to cause inclusion of trust assets in the donee’s estate for estate tax purposes if that would be desirable to obtain a new basis for the trust assets at the donee’s death. This proposal was also in the 2015 REPTL Trust bill that didn’t pass. But REPTL pulled this proposal from the 2017 bill in mid-session. Why?

19.2 What is the Delaware Tax Trap? Under traditional common law applicable to powers of appointment, any interest in property created through the exercise of a power is considered created when the original power being exercised was created. The measuring period for determining the maximum length of time an interest could remain in trust without violating the rule against perpetuities was always measured from the creation of the original power. However, in 1933, Delaware amended its rule against perpetuities to provide that each time a power of appointment was exercised, the new interest created as a result of the exercise would be considered created at the time of the exercise, restarting the maximum time period under the rule against perpetuities. You could effectively get around the rule through successive exercises of powers of appointment. Since the trust assets could remain in trust practically forever, they would be forever removed from the transfer tax system.

In response (a mere 18 years later), Congress amended our estate and gift tax provisions to provide that if someone exercised a power of appointment to postpone the vesting of an interest for a period ascertainable without regard to the date of creation of the power of appointment, the assets would be included in the powerholder’s estate for estate or gift tax purposes. So much for avoiding estate taxes by keeping assets in trust! These provisions are now found in IRC Secs. 2041(a)(3) and 2514(d).

19.3 Why Can Estate Inclusion Be a Good Thing? Just as compressed trust income tax rates in 1986 caused people to “rethink” the advantages of a “defective” grantor trust, the increased tax-free amounts for transfer tax purposes (\$5.49 million in 2017) have caused people to rethink the advantages of the Delaware Tax Trap. IRC Sec. 1014 provides that the basis of property acquired from a decedent is the fair market value of the property at the decedent’s death. The general rule is that property is only “acquired from a decedent” if it was taxable for estate tax purposes at the decedent’s death. If a trust

beneficiary wouldn't be subject to estate taxes anyway, why not try to cause trust assets to be included in the beneficiary's estate for estate tax purposes so that the assets would receive a new basis for income tax purposes at the beneficiary's death?

19.4 The 2015 and 2017 REPTL Proposal.

Prop. Code Ch. 181, which is not officially part of the Texas Trust Code, deals solely with powers of appointment. The REPTL Trust bills in 2015 and 2017 originally proposed adding the following to Sec. 181.083 (emphasis added):

(c) To the extent specified in an instrument in which a donee exercises a power, *any estate or interest* in real or personal property *created through the exercise of the power by the donee is considered to have been created at the time of the exercise of the donee's power and not at the time of the creation of the donee's power*, provided that in the instrument the donee:

(1) specifically refers to Section 181.083(c), Property Code;

(2) specifically asserts an intention to exercise a power of appointment by creating another power of appointment described by Section 2041(a)(3) or 2514(d), Internal Revenue Code of 1986; or

(3) specifically asserts an intention to postpone the vesting of any estate or interest in the property that is subject to the power, or suspend the absolute ownership or power of alienation of that property, for a period ascertainable without regard to the date of the creation of the donee's power.

(d) Subsection (c) applies regardless of whether the donee's power may be exercised in favor of the donee, the donee's creditors, the donee's estate, or the creditors of the donee's estate.

19.5 Perpetuities Objections Are Raised.

Everyone thought this beneficiary income tax provision was very helpful until some people actually focused on its implications in mid-April of 2017. The reader should know that REPTL has remained steadfastly neutral on any changes to our rule against perpetuities because the REPTL leadership believes there is significant (reasonable) disagreement among its membership as to whether it should remain the same or be amended. But some people who had previously skimmed the Delaware Tax Trap provision took a closer look at it. It expressly does the same thing that the Delaware amendment did over 80 years ago – it allows the perpetuities provision to be restarted (multiple times) through successive exercises of powers of appointment, without the interest ever vesting. This

would violate the traditional formulation of the rule against perpetuities.

19.6 Argument in Favor of Constitutionality. Our Texas constitutional prohibition of perpetuities¹⁹ is remarkably vague:

Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

An almost identically worded provision has been contained in every previous version of the Texas Constitution going back to a proposed 1833 "Constitution or Form of Government of the State of Texas." Nowhere does this constitutional provision say anything about vesting, restraints on alienation, lives in being plus 21 years, etc. When our Trust Code was enacted effective January 1, 1984, Sec. 112.036 contained our first **statutory** rule against perpetuities:

Sec. 112.036. **RULE AGAINST PERPETUITIES.** The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and as provided by Section 5.043.

Since our constitutional prohibition doesn't contain any of the details of the rule against perpetuities, why couldn't the legislature "implement" the rule by defining "vesting" to include having a right to income combined with a broad special power of appointment? Therefore, the interest of the first beneficiary could be considered to have "vested," thus satisfying our perpetuities prohibition.

19.7 Two Problems. There are two potential problems with that argument.

(a) Is the Interest Vested, or Has Vesting Been Postponed? You might argue that first donee's interest has essentially vested under state law in order to avoid our rule against perpetuities. But the federal tax provision causing inclusion of the interest for estate tax purposes **requires** that under **local** law, the power must be validly exercisable to **postpone vesting** for a period ascertainable without regard to the date of the creation of the power. So it seems one would have to argue that an interest has vested for state law purposes but not for federal purposes, even though the latter looks back to state law.

¹⁹ Texas Constitution, Art. 1, Sec. 26.

(b) Cases Interpreting Our Constitutional Prohibition. The argument that the legislature could redefine vesting might be fine in a vacuum, but we didn't have a statutory prohibition until 1984, and there were many years of case law interpreting the constitutional prohibition prior to then. The courts had fairly well defined the parameters of our constitutional rule against perpetuities in its traditional sense by 1984, including traditional concepts of vesting. I will not go into the details of these cases, but for anyone who cares to review them on his or her own, here's a partial list:

- *Anderson v. Menefee*, 174 S.W. 904 (Tex.Civ.App - Ft. Worth 1915)
- *Neely v. Brogden*, 239 S.W. 192 (Tex.Comm.App. 1922)
- *Clarke v. Clarke*, 121 Tex. 165, 46 S.W.2d 658 (Tex.Comm.App. 1932)
- *Norman v. Jenkins*, 73 S.W.2d 1051 (Tex.Civ.App. 1934)
- *Brooker v. Brooker*, 130 Tex. 27, 106 S.W.2d 247 (Tex. 1937)
- *Hunt v. Carroll*, 157 S.W.2d 429 (Tex.Civ.App--Beaumont 1941)

19.8 **Conclusion.** The aggregation of the cases interpreting our constitutional rule likely constrain the legislature's ability to redefine "vesting." Whether you agree with the arguments outlined above or not, it appears that our little Delaware Tax Trap provision, while extremely handy, might not have been as "uncontroversial" as REPTL has thought. That alone makes it a questionable provision for REPTL to propose, so it was withdrawn.

20. *Special Supplement No. 2 – The University vs. the Golf Course.*

20.1 **Austin's Muni Golf Course. SB 822** (*Estes, et al. | Larson, et al.*) would have required the UT System to transfer the property described in the bill (known to Austinites as the Muni Golf Course) to the Parks and Wildlife Department.²⁰ As consideration, the Parks and Wildlife Department must use the property for a public golf course. If it ever fails to do so, the property will revert back to the UT System. Apparently a committee substitute for the Senate bill in the House may amend this to keep the property with UT, but require the University to maintain it as a golf course. Why is this bill mentioned here? Because I feel like writing about it. But also because it raises interesting questions about charitable gifts, donor

²⁰ A proposed committee substitute would have left the property with UT so long as it operated the property as a golf course. If it failed to do so, the property would have been transferred to Parks & Wildlife.

intent, and the ability (or lack thereof) of a legislature to change that intent.²¹

20.2 **Current Suggested Donation Language.**

If you go to the University of Texas' website, you can find its planned giving page with suggested language for making gifts to the university. Part of that suggested language reads:

Such endowment shall never become a part of the Permanent University Fund, the Available University Fund, or the General Fund of the State of Texas, and shall never be subject to appropriation by the Legislature of the State of Texas. These funds and all future gift additions to the endowment, reinvestments, and required matching funds referenced in this agreement, including those made by the Board of Regents or University administration, shall be subject to the provisions of this agreement and shall be classified as permanent endowment funds. (emphasis added)

However, UT didn't have that suggested language posted on its website back in 1910. Hence the reason for the rest of this Part 20.

20.3 **Acquisition of the Brackenridge Tract.**

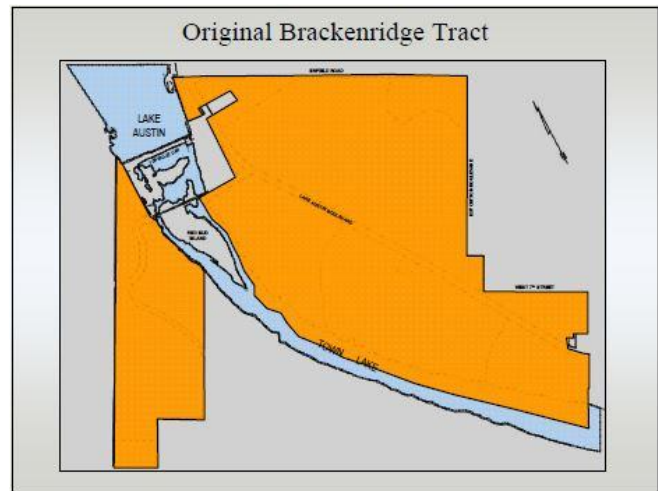
(a) Col. Brackenridge. Col. George W. Brackenridge (1832-1920) made his initial wealth as a profiteer during the Civil War. He organized two banks in San Antonio and was president of the San Antonio Water Works Company. He lived in Alamo Heights (which he named), and he donated the land where Brackenridge Park, the San Antonio Japanese Tea Garden, and Mahncke Park now sit.

(b) Regent Brackenridge. Col. Brackenridge also served on The University of Texas System Board of Regents for over 25 years (before and after the turn of the last century), longer than any other individual. He devoted much of his personal fortune towards creating the Constitutionally mandated "University of the first class," including personally pledging (along with Maj. George Littlefield) to fund the University's budget when the Governor attempted to veto the University's entire appropriation. (The veto was ruled unconstitutional so the pledges were never needed.)

²¹ Sources for this discussion include the original gift deed from Col. Brackenridge to UT recorded at Book 244, Page 77, Deed Records of Travis County; the Wikipedia entry for Col. Brackenridge; Regent Frank Ewin's 1973 Review of the History of the Brackenridge Tract prepared for the Board of Regents; a 2005 History of the Brackenridge Tract Presentation to the Board; the UT System Real Estate Office's 2006 Brackenridge Tract FAQ; and the UT System's 2007 Brackenridge Tract Task Force Report.

(c) **Col. Brackenridge's Dream.** By 1900, the Regents realized that the original "forty acres" would not be large enough to meet the University's future needs. In response, Brackenridge acquired over 500 acres west of Austin to be used as a future home for the University. The heirs of Gov. Pease owned more than 1,000 acres between the Pease Mansion on the east and Col. Brackenridge's tract on the west. It was Col. Brackenridge's dream that he and the Pease heirs would each give 500 acres to the University and that the new 1,000 acre campus would be connected to the original "forty acres" by a 400-foot wide boulevard running down the current route of 24th Street from the Pease Mansion to Guadalupe Street. He even offered to purchase the Pease house and land donate them to the university in Gov. Pease's name. However, the heirs ultimately concluded that they could not afford to donate 500 acres, and their pride would not permit them to let Col. Brackenridge purchase the property and donate it in their ancestor's name.

(d) **Plan B.** Col. Brackenridge decided to proceed alone and wrote University President Mezes of his willingness to donate his 500 acres if "it could be occupied for University purposes advantageously." However, he was "unwilling to give it to [the University] to be sold or exchanged for other property. Soon afterward, in 1910, "for the purpose of advancing and promoting University education," he deeded his 500 acres "in trust for the benefit of the University of Texas ... to the State of Texas for the benefit of the University of Texas ... with the request merely on my part that it be never disposed of but be held permanently for such educational purposes" for generations of future students. The deed included a possible reversion to Jackson County in the event the property was not used for educational purposes, but that reversion appeared to expire upon the death of the last survivor of six named persons between the ages of one and nine years.



Brackenridge left the Board the following year, and the new Board, especially Maj. Littlefield, was reluctant to move the main campus. While the Board considered the move, Maj. Littlefield rented the larger tract on the east side of the Colorado River for \$500, and the smaller tract on the west side for \$10.

(e) **Attempted Move to the Brackenridge Tract.** In 1920, Brackenridge and Littlefield died within a month of each other.²² The following year, the Regents sought permission to move the campus to the Brackenridge Tract. This set off an unexpected tumult in the Legislature, including one proposal to move the main campus from Austin. A compromise had the University remaining on the original campus, with a \$1.35 million appropriation to acquire 135 acres east of the campus. The University never again proposed moving the main campus. Col. Brackenridge's original dream of moving the campus died forever three months after he died.

20.4 **Clearing Title to the Brackenridge Tract.** Col. Brackenridge's deed of gift was not a model of clear draftsmanship. Because of language creating a possible reversionary interest in Jackson County and a mention of the permanent university fund, it was virtually impossible to issue bonds secured by the tract to build student housing and other facilities on the tract. The Regents and, the Attorney General filed an action in Travis County resulting in a 1964 judgment that the Brackenridge Tract was not (and never had been) part of the Permanent University Fund," allowing use of the tract to secure revenue bonds. The following year, the legislature authorized the Board to acquire any interests claimed by others in

²² Col. Brackenridge's will gave the bulk of his estate to the George W. Brackenridge Foundation for educational purposes, but not before a will contest involving a purported holographic will that revoked prior wills, the remaining contents of which were unknown. See *Brackenridge v. Roberts*, 114 Tex. 418, 267 S.W. 244 (Tex. 1924).

the Brackenridge Tract, and in 1966, the University paid Jackson County \$50,000 in exchange for its possible reversionary interest. A 1967 Travis County judgment confirmed that the Board of Regents held fee simple title to the Brackenridge Tract, including the contingent reversion previously held by Jackson County. That year, the legislature also authorized the Board to sell or lease any portion of the Brackenridge Tract in order to generate funds used for the purpose of acquiring lands for expansion of the main campus. The legislature also authorized the acquisition of additional land adjacent to the main campus, resulting in an almost 400-acre campus by 1973.

20.5 Uses of the Brackenridge Tract.

(a) University Uses of the Brackenridge Tract.

Over the years, the University has used portions of the tract for married student housing, the Brackenridge Field Laboratory, and the U.T. Rowing Center.

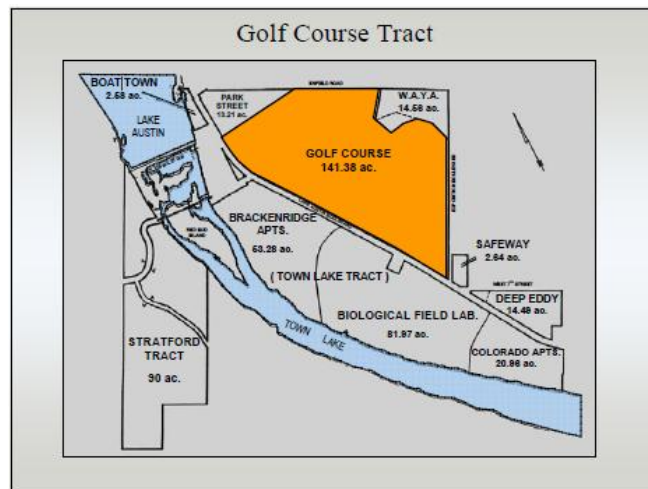
(b) Commercial Uses of the Brackenridge Tract.

In 1939, the University leased waterfront property for a marina. That property is now the site of a commercial development most famous for the Hula Hut restaurant. Another portion is leased as the site of a grocery store. Other leases include sites for a small strip center, a convenience store, a drug store, and apartments. In the 1990s, the Board determined that the 90 acres west of the river (known as the Stratford Tract) should be sold, and the Board eventually received over \$6 million in proceeds.

(c) Governmental and Civic Uses of the Brackenridge Tract. Beginning in 1953, portions of the tract were leased to the Lower Colorado River Authority. The agency's headquarters is now located on that site. In 1961, at the Board's request, the city released 11.6 acres of the golf course site (see the following paragraph) so the regents could use it as a site for a residence for the U.T. President. However, that project was later abandoned, and in 1980, about 15 acres (including the 11.6-acre site) at the northeast corner of the tract was leased to the West Austin Youth Association for the development of neighborhood youth sports activities.

(d) Muny. But the most visible use of any portion of the Brackenridge Tract is the golf course. In 1924, the Board leased about 140 acres to the Austin Municipal Golf and Amusement Association, an affiliate of the Lions Club, for the creation of a golf course. The University received \$60/year in rent and had the right to terminate the lease upon a year's written notice if they desired to devote the tract to some direct University activity. In 1937, the lease was assigned to the City of Austin, and the term was

extended for 50 years. In the interim, the city renegotiated the lease for a term running to 2019, with extensions that may be cancelled by either party.



(e) Civil Rights Significance. The future of Muny is further complicated by the fact that it's not just a green space that perhaps could generate more revenue for UT. In June of 1950, in the case of *Sweatt v. Painter*, the U.S. Supreme Court held that the separate law school created by UT for blacks was not sufficient, and ordered the university to admit Heman Sweatt to the main UT law school. Less than a year later, in March of 1951, the Austin Statesman reported that African Americans had been playing at Muny for several months. The desegregation occurred peacefully and quietly when two black youths walked onto the course to play golf, and no one stopped them. The following month, Austin Councilwoman Emma Long objected to a plan to build a separate course in East Austin for African Americans and the plan was dropped. In a public hearing on SB 822 on March 21st, Volma Overton, Jr., the son of an Austin civil rights icon, recalled going to the course with his father as a child when a large number of other African Americans showed up. He asked his father who these people were, and his father replied that he guessed word had gotten out about desegregation of the course. These people were from Houston, Dallas, and other cities around the state.

Four years after Muny's desegregation, the U.S. Supreme Court ordered desegregation of all public golf courses. It is widely believed that Muny was the first public golf course in the South to be desegregated.

(f) Austin Grew Out to the Brack Tract.

While the Brackenridge Tract was "out in the boonies" when it was acquired over 100 years ago, as anyone familiar with Austin can clearly see, it is now situated smack dab in the middle of some high-dollar real estate.

(g) The Development Agreement. In 1989, the Board and the City of Austin executed the Brackenridge Development Agreement establishing rights for the non-university development of portions of the tract. The Board has since indicated its desire to redevelop portions of the tract in ways that generate higher revenue. One of those redevelopment proposals would involve eliminating Muny, raising the hackles of many in Austin – especially West Austin.

20.6 Dwindling State Educational Funding. In the mid-1980s, UT Austin had a budget of about 500 million. Almost half of that was funded by general state revenue; only 5% by tuition and fees. By 2015, that annual budget had increased 5½ times to \$2.8 billion. The portion of that budget funded by general revenue had dropped to 13%, while the portion funded by tuition and fees had increased to 21%. The trend is likely to continue. While UT remains a premier state institution, to a large extent, it is no longer a state-funded institution. And the Regents have a fiduciary duty to look out for the best interests of the University.

20.7 Possible Development of the Golf Course Land. One of the resources that the Regents have looked to in order to generate the revenue necessary to fund a “university of the first class” is the Brackenridge Tract. Personally, I would prefer the tract to stay largely as it is. However, no one claims that the golf course is generating “fair market rental value” for the University. Is it appropriate for the University to continue subsidizing Austin’s use of a large part of the tract as a golf course when the terms of the original gift deed provided that the land be used “for the purpose of advancing and promoting University education,” on the condition that the land be held “in trust for the benefit of the University of Texas” to be used “for educational purposes” for generations of future students.

20.8 The Legislature’s Authority. More interestingly (to me, at least) is whether the legislature may legally take away property given to the University without any financial compensation in contravention of the terms of the deed originally giving the property to the University.

(a) Supporters’ Argument. In a [March 13, 2017 article](#) by Austin American-Statesman reporter [Ralph K.M. Haurwitz](#), Sen. Craig Estes (R-Wichita Falls), the author of the bill, believes that “the Legislature has a perfect right to transfer one asset from one state agency to another. ... I don’t know that any compensation is needed or justified. I think people that bequeath things to institutions of higher education can rest easy. I don’t think this would be a trend at all.” The article points out the previous disposition of

portions of the tract by the Board of Regents as evidence that even UT has not upheld the donor’s intent.

(b) Back to Donor Intent. But do those previous dispositions really support the proposed legislation? Let’s look at Col. Brackenridge’s intent, as expressed in the original gift deed:

- The purpose of the gift was “advancing and promoting University education.”
- While he deeded the property to the State of Texas, it was deeded “in trust for the benefit of the University of Texas”
- He made a “request merely ... that it be never disposed of but be held permanently for such educational purposes.”
- But while the educational use of the land was a merely a request, there is nothing optional about the land being held for the benefit of UT.

(c) Prior Dispositions. And when we look at the prior dispositions of portions of the tract by sale or lease, all of them were for valuable consideration (presumably at market value). The proceeds of those sales were added to the University’s permanent endowment that continue to benefit the University. There is no consideration that would benefit UT in the proposed legislation.

20.9 Compare “The Spirit of the Alamo Lives On.” [HB 1644](#) (Springer | Birdwell) is a one-sentence bill that directs the Texas Veterans Commission to transfer the painting “The Spirit of the Alamo Lives On” by artist George Skypeck to the General Land Office by December 1st. Why this transfer requires actual legislation is unclear to me, but the background behind the bill is provided by [a March 13th column](#) by Austin American-Statesman reporter and columnist [Ken Herman](#). According to the column, Mr. Skypeck “is a noted military artist [who] has dedicated his life and his art to helping and honoring vets.” He donated the painting, which depicts Texas military history, to the State of Texas in 2009, admittedly without restrictions. The painting ended up in an eighth floor office of the Texas Veterans Board where there’s little opportunity for the public to see it. The plan behind the bill is to transfer control of the painting to the General Land Office. The GLO would lend the painting to the State Preservation Board, which could hand the painting in the publicly-accessible Medal of Honor hallway in the Capitol. In addition, the GLO hopes to sell print editions of the painting in the Capitol Gift Shop with proceeds benefiting the Texas Veterans Land Board. The artist/donor thinks this is a grand idea!

[HB 1644 was signed by the Governor on June 1st and is generally effective September 1st.](#)

20.10 And What About the French Legation.

The French Legation in Austin (which actually never served as a French legation) is currently under the control and custody of the Daughters of the Republic of Texas. However, **HB 3810** (Cyrier, *et al.* | Watson) transfers jurisdiction over the French Legation, along with responsibility for its preservation, maintenance, restoration, and protection, to the Texas Historical Commission. The Commission **may** enter into an agreement with the DRT regarding management, staffing, operation, and financial support of the French Legation. How can the Legislature do this? It turns out that current Gov't. Code Sec. 2165.257 already makes clear that the French Legation (called the French Embassy in the existing statute) is the property of the state, and title remains in the commission's custody. It just gives the Daughters the use of the French Legation for its purposes. The Legislature giveth, and the Legislature taketh away.²³ There's no "donor intent" involved in this bill, one way or the other.

HB 3810 was signed by the Governor on June 12th and is effective September 1st.

20.11 Conclusion? We'll have to wait to see how this discussion plays out. **SB 822** died when it failed to emerge from a House committee on time, but it is clear that it could be back in 2019. Clearly, Munny is a valuable asset that could be exploited in a manner that would provide more financial benefit for higher education. But it also plays a significant historical role in the history of civil rights not just in Texas, but the nation. Hopefully, an appropriate balance of those competing interests can be found.

21. A Little Lagniappe.

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

21.1 Remember the Alamo (Again)! We all remember last session's unsuccessful **SB 191** (Campbell) that would have prohibited the General Land Office from entering into an agreement transferring any ownership, control, or management of the Alamo to an entity formed under the laws of another country. (Okay, so maybe I'm the only one who remembers it.) This session, **HB 724** (Villalba) and **SB 759** (Menéndez) would have added March 6th to the list of official state holidays as "'Remember the Alamo Day' in honor of Davy Crockett,

²³ The property was purchased by Dr. Joseph Robertson in 1848 and served as the home for him, his wife, eleven children, and nine slaves. One of those children, Lillie Robertson, lived in the home her entire life (almost 84 years), and following her death, the property was sold to the state. The state, in turn, appointed the Daughters of the Republic of Texas as custodian of the property.

Gregorio Esparza, James Bowie, Toribio Losoya, William B. Travis, and all who fought and died at the battle of the Alamo for the independence of the great State of Texas." Note that if March 2nd (Texas Independence Day) falls on a Monday, we'd have had two state holidays in the same work week! (**SR 340** (Bettencourt | Rodríguez) merely commemorates Texas Independence Day without making it a state holiday.)

21.2 Ban on Texting While Driving Watching a Movie on a Date. Okay, this isn't really a legislative item. It's probably suited more for Prof. Gerry Beyer's case law update. But I wanted to include it in this paper, and tying it to **HB 62** (Craddick, *et al.* | Zaffirini),²⁴ which bans most uses of wireless communication devices while operating a motor vehicle, is as close as I could get to a legislative item.

In its May 17th print edition, the Austin American-Statesman reported on a case filed the previous Thursday. A 37-year-old Austin man (whose name is being withheld from this description in order to avoid providing him with additional publicity) met a 35-year-old Round Rock woman online. They went to see "Guardians of the Galaxy, Vol. 2" (in 3D, no less) on their first date on May 6th. (Author's first note: I've been out of the dating scene for over a quarter century, but is it really appropriate to take a woman to "Guardians of the Galaxy, Vol. 2" in 3D on a first date?) The man filed a claim against her in small claims court for \$17.31 (the price of the movie ticket) because she allegedly pulled out her phone about 15 minutes after the movie began and started texting. She "activated her phone at least 10-20 times in 15 minutes to read and send text messages." He says he asked her to stop. When she refused, he suggested that maybe she could go outside to continue texting. She took him up on that offer, leaving the theater and never returning. By the way, did I mention that they came to the theater in her car, so he was left without a ride? The man says he texted her a few days later asking her to reimburse him for the ticket. She refused.

The Statesman reporter contacted the woman (who asked that her name not be used in the original article) on May 16th. She hadn't heard about the claim. Her response: "Oh my God, this is crazy!" She said she was texting a friend who was in the middle of a fight with her boyfriend, and only texted two or three times. (Author's second note: Her claim that she only texted two or three times is not inconsistent with the man's claim that she "activated" her phone 10-20 times to read and send texts.) "I had my phone low and I wasn't

²⁴ **HB 62 was signed by the Governor on June 6th and is generally effective September 1st.**

bothering anybody, ... "It wasn't like constant texting." She admitted refusing to repay the price of the ticket because "he took me out on a date." She also planned to file for a protective order because the man had contacted her little sister to try to get paid.

Meanwhile, the petition claimed that the woman's behavior violated the theater's policy and adversely affected the man's viewing experience and that of other patrons. "While damages sought are modest, the principle is important as defendant's behavior is a threat to civilized society." I think that just about sums it up.

Update: When Alamo Drafthouse founder and CEO Tim League learned about the lawsuit later on the day the story was published, he was conflicted. He emailed the newspaper: "On one hand, I am concerned about our courts being clogged with superfluous lawsuits, but as [the plaintiff] states, 'this is a threat to civilized society,'" League said that if the plaintiff would drop the case Alamo Drafthouse would provide him a gift certificate for the \$17.31 cost of his movie ticket.

The next day, the plaintiff said he would drop the lawsuit because his erstwhile date paid him back for the ticket. She did so after the producers of Inside Edition asked her to meet him outside the theater. This wasn't "the outcome he hoped for. ... I felt ambushed because Inside Edition put me in a spot where I was forced to let the media steal the narrative as opposed to making the decision in my own time."

21.3 **BBQ, Beer, Wine, and Other**

Certificates. I'm always searching for BBQ bills. Last session, the only one I came across was **HB 302** (Vo). This bill would have directed the Department of Transportation to create a "travel certificate program" to issue to visitors to various locations certificates such as "BBQ Boss," "Beer Hall Visitor," "Historic Courthouse Visitor," "Vineyard/Winery Visitor," "Beachcomber," "Traveler," "Museum Visitor," and "Rodeo Visitor." A "Basic" certificate would be issued for visiting locations in at least three regions of the state, an "Advanced" certificate for visiting five regions, and a "Master" certificate for visiting seven regions. The bill made it through the House but reached the Senate too late in the session for any action. This session, it was back for another try in the form of **HB 1447** (Wu). It didn't make it out of the House.

21.4 **Fort Knox, Redux.** Last session, **HB 483** (Capriglione) established the Texas Bullion Depository to hold precious metals acquired by Texas, its agencies, political subdivisions, etc., to "bring Texas' gold back home" (from New York). In 2013, when the proposal was first introduced, the University of Texas

Investment Management Company²⁵ (the only state entity with a significant amount of gold) paid to store its 6,643 gold bars – worth around \$1 billion at the time – in a New York bank. (Since then, the gold holdings have apparently decreased significantly.) Reportedly, UTIMCO pays an annual storage fee of one-tenth of 1%. As Gov. Abbott stated when he signed the bill, we need to keep this taxpayer money in Texas. A UTIMCO spokesperson has indicated that moving the gold to Texas would be seriously considered if it were cheaper (the bill does not **require** any state agency to move its gold back to Texas). Apparently, another UTIMCO requirement is that the depository be a member of COMEX (Commodities Exchange, Inc.). Currently, all COMEX rated facilities are located within 150 miles of New York City and earning a COMEX membership out of this region may be difficult.

No ground has yet been broken on the depository. Nevertheless, this session, **HB 3169** (Capriglione | Kolkhorst) changes the Texas Bullion Depository from **an agency** in the comptroller's office to **a program** in the comptroller's office. **HJR 113** (Capriglione, *et al.* | Kolkhorst) is an accompanying constitutional amendment to exempt precious metal held in the Depository from property taxes. Neither of them made it.

Despite this setback, on June 14th, the Comptroller's office announced the selection of Lone Star Tangible Assets as the winning bidder to build and operate the Texas Bullion Depository. LSTA plans to upgrade its existing vault for use as a temporary depository by January 2018, with a new, purpose-built depository completed by December 2018.

21.5 **A Rose by Any Other Name** This is not a legislative matter, but interesting to some readers nonetheless. Last June, in an effort to "bring increased awareness to the law school's distinctive location in downtown Houston and better represent the law school's diversity and global impact, thereby bolstering our regional and national profile," South Texas College of Law changed its name to Houston College of Law. Its brand went from this:



²⁵ Which voted on April 20th to change its name to the University of Texas/*Texas A&M* Investment Management Company, but kept the same acronym.

To this:



Well, the University of Houston Law Center wasn't too happy about this. Less than a week later, the University of Houston System filed a trademark infringement suit claiming that the new name and the logo's use of UH's red and white color scheme infringed on UH's intellectual property. Its logo:



In September, UH successfully convinced the U.S. Patent and Trademark Office to officially suspend STCL's application for its new logo and name, and the following month, UH obtained an injunction preventing STCL to use the new name or logo. At the end of October, STCL agreed to change its name back, except that it would add the word "Houston" to the end of its name, *i.e.*, South Texas College of Law Houston, and in early November, STCLH agreed to use navy rather than red in its marketing efforts (although its official colors since the 1960s had been and would remain crimson and gold):



It still wasn't over. In February, a preliminary settlement of all issues fell apart, and the parties asked the federal judge to send them to mediation. On March 2nd (Texas Independence Day, by the way), the parties announced they had reached an undisclosed settlement subject to approval by the UH Chancellor and the STCLH Board. On March 10th, the parties announce that the necessary approvals had been obtained. South Texas will be allowed to use the word "Houston" in its name, "while ensuring its use of 'Houston' will not cause confusion between the two schools." UH agreed to dismiss its lawsuit, and STCLH agreed not to challenge UH's trademark application for the use of "Houston" related to education services and related goods and services.

So after all this, I expect we'll still refer to the downtown law school as "South Texas."

21.6 **It's All in the [Name] Caption.** Some interesting bill captions:

- **HB 812** (Wu) – “An Act relating to standing in a roadway ...” watchin’ all the girls go by. (Okay, so I added that last part.)
- **HB 888** (Raymond) – “An Act relating to honesty in state taxation.” Who could oppose that? (Identical to last session’s **HB 436** (Raymond).) And to make sure it sticks, **HJR 22** (Raymond) – “Proposing a constitutional amendment providing honesty in state taxation.” Neither passed.
- **HB 1087** (Alvarado) – “An Act relating to the creation of the offense of bestiality.” No further comment. (Although many comments, some humorous, some not, and all in poor taste, come to mind.) While this didn’t pass, **SB 1232** (Huffman, *et al.* | Alvarado) – “An Act relating to inappropriate conduct between a person and an animal; creating a criminal offense” did.
- **HB 1350** (Cain, *et al.*) – “An Act relating to pedestrian use of a sidewalk.” Isn’t that what its for? (Actually, the bill repeals Trans. Code Sec. 552.006(b). Subsection (a) says a pedestrian may not walk along and on a roadway if an accessible sidewalk is provided. Subsection (c) says drivers emerging from or entering an alley, private road, driveway, etc., must yield to a pedestrian. The portion repealed by the bill says that if there isn’t a sidewalk, the pedestrian should walk on the left side of the roadway or the shoulder of the highway facing oncoming traffic.) Didn’t pass.
- **HB 3061** (Alvarado) – “An Act relating to operating a motor vehicle while another person is occupying the trunk; creating a criminal offense.” But what if there are seatbelts in the trunk? Didn’t pass.
- **HB 3392** (Keough) – “An Act relating to the taking of certain feral hogs using a hot air balloon.” Apparently, hogs weren’t enough, so we subsequently got **HB 3535** (Keough) – “An act relating to the taking of certain feral hogs and coyotes using a hot air balloon.” I’m sure all those feral hogs and coyotes will appreciate taking a pleasant hot air balloon ride. (The latter bill passed.)
- **HB 4260** (Farrar) – This is the bill discussed at Section 21.14 below. Out of modesty, I really don’t want to reproduce the entire caption here, but you can click on the link if you want to read it. (It never got a hearing.)
- **HCR 75** (Oliveron | Raymond) – “A Resolution urging Texans not to use the flag emoji of the

Republic of Chile when referring to the Texas flag.” Here are the two flags side-by-side:



(I don't use emojis, but I've been told there isn't one for the Texas flag.) The resolution got out of the House but not the Senate.

- **SB 1372** (Menéndez) – “An Act relating to the operation of an electric unicycle.” Didn't pass.
- **SB 1620** (Taylor, V.) – “An Act relating to the regulation of raising or keeping six or fewer chickens by a political subdivision.” Didn't pass, so I guess political subdivisions may continue raising six or fewer chickens. (Or perhaps they'll remain subject to regulation?)
- **SCR 16** (Menéndez) – “A Resolution encouraging the President of the United States to refrain from threatening elected officials.” Who thought this might ever be needed? Didn't pass.

Most, if not all, of these bills and resolutions were included on former Rep. Corbin Van Arsdale's biennial list of the 50 best captions. This year, he had two winners. The winner of the *popular vote* was **HB 4260** (Farrar), discussed at Section 21.14 below. The winner of the *electoral college* vote was **HB 3535** (Keough), discussed above.

21.7 Did You Hear that Big “Woo Hoo!”

Coming Out of the Treasury Operations Division?

SR 432 (Kolkhorst) was filed, adopted, and enrolled on March 15th. The Senate resolution commends all associated with the Treasury Operations division of the Comptroller's Office (the separate Texas State Treasury Department prior to September 1, 1996) and extends to them the Senate's best wishes for the years ahead. I'm sure the app. 50 full-time employees of the division were thrilled with the recognition.

21.8 When an Insurance Building Isn't an Insurance Building. **HCR 141** (Murphy) recognizes the accomplishments of former Pres. George H. W. Bush and directs the Texas Facilities Commission to rename the State Insurance Building in the Capitol Complex (at the corner of San Jacinto St. and 11th St.) as the George H. W. Bush State Office Building in his honor. Nothing unusual in that, except to note that the Texas Department of Insurance is located nowhere near the State Insurance Building. The department is located in the William P. Hobby Building at 333

Guadalupe St., about a mile away. (The Governor's staff uses the State Insurance Building.) This resolution was signed by the Governor on May 18th.

21.9 The Texas Balance of Powers Act.

HB 74 (Flynn) seeks to deny the federal government the power to take any action that violates the U.S. Constitution, specifically including those that undermine the balance of powers between the states and the federal government. The federal government is put on notice from Texas to cease and desist any of those unconstitutional activities, and calls on all state and local officials to honor their oath to preserve, protect, and defend the Constitution and to stop unconstitutional federal actions. So there! Didn't pass.

21.10 The Texas Sovereignty Act. HB 2338

(Bell) and **SB 2015** (Creighton) are another attempt to resist Article VI, Clause 2, of the U.S. Constitution (what is commonly known as the “Supremacy Clause”). It is, to put it mildly, “interesting.” The bill creates the Joint Legislative Committee on Constitutional Enforcement, made up of six members from the House and six from the Senate. No more than four members of each group of six may be from the same party. The committee may review any federal action (whether law, rule, executive order, court decision, or treaty) to determine whether it is unconstitutional based on “the plain reading and reasoning of the text of the United States Constitution and the understood definitions at the time of the framing and construction of the Constitution by our forefathers.” If it makes that determination, it's submitted to a vote of each chamber, and then sent to the Governor. Once the determination successfully makes it through these steps, it is sent to the President, the Speaker of the House, the President of the Senate (*i.e.*, the Vice President), and all members of the Texas delegation to Congress with the request that the declaration be entered in the Congressional Record.

But wait, there's more! A federal action declared unconstitutional has no legal effect in Texas and may not be recognized by the state or any of its political subdivisions. No one may spend public money to enforce it. A law enforcement officer may enforce these laws against anyone attempting to implement the offending federal action (this includes authorizing the Attorney General to prosecute the implementer). **Any** Texas court has original jurisdiction over a declaratory judgment to declare that a federal action is unconstitutional. (I'm looking at you, Mr. Justice of the Peace!) That court must rely on the plain meaning of the text of the U.S. Constitution, and **may not** rely solely on the decisions of other courts interpreting the Constitution. And to clarify, public officials who have sworn an oath to defend the U.S. Constitution may

interpose themselves to stop federal actions which, “in the officer’s best understanding and judgment, violate the United States Constitution.” Neither passed.

21.11 **The State Flag.** **SB 1968** (Zaffirini | Gutierrez) deals with appropriate behavior around our state flag. Did you know we have a [state flag code](#)? No, not the [Pledge to the Texas Flag](#), the state flag code. (I was clueless about this code until I ran across this bill.) We apparently have an entire chapter of the Gov’t. Code (ch. 3100) dealing with proper procedures for displaying our state flag, carrying it, hoisting and lowering it, pledging allegiance to it, retiring it, and so on. The bill grants permission to members of the military (including veterans) who are present but not in uniform to make the military salute, rather than placing their right hand over their heart, which is the general rule for persons not in uniform, in the following situations:

- When the flag is hoisted or lowered, or when the flag is passing in a parade or review (Sec. 3100.068(b)(3)).
- When the pledge to the flag is recited (Sec. 3100.104(2)).
- During a flag retirement ceremony (Sec. 3100.152(b)(3)).
- When the flag is hoisted or lowered, or when the flag is passing in a parade or review (Sec. 3100.068(b)).
- During the performance of the state song (Sec. 3101.006(a)(1)(C)). (This last one is actually in a separate chapter devoted to state symbols, including [our state song](#), *Texas, Our Texas*.)

In addition, the bill corrects the 410-word first-person statement recited on the flag’s behalf at the retirement ceremony to state that “I am **at the Johnson Space Center** in Houston (rather than **in the space station** at Houston) and atop the oil wells of West Texas.”

SB 1968 was signed by the Governor on June 15th and is effective immediately.

21.12 **Abolition of the Federal Income Tax.** **HCR 38** (Stephenson, *et al.*) notes that income taxes give government too much power over citizens, are unfair and inequitable, unnecessarily intrude on privacy and civil rights, hinder economic growth, lower productivity, penalizes marriage and upward social mobility, and more. Payroll taxes destroy jobs and have a disproportionately adverse impact on lower-income Americans. Estate and gift taxes impose unacceptably high tax-planning costs on family-owned business and farms, forcing families to sell their holdings and discouraging capital formation and

entrepreneurship, favoring large enterprises over small. Meanwhile, in all respects, a national retail sales tax is more equitable and advantageous than the current income tax system. Therefore, the 84th [sic] Legislature of the State of Texas urges the U.S. Congress to abolish the income tax (no mention of payroll, estate, or gift taxes here), enact a national retail sales tax, and propose an amendment repealing the Sixteenth Amendment to the Constitution (which authorizes income taxes). Interesting thing about that. We’re currently in the middle of the 85th Legislative session. Doesn’t matter. It didn’t pass.

21.13 **“Gentlemen, [Don’t Re-] Set Your Watches!.** **HB 95** (Flynn), **HB 2400** (Isaac), and **SB 238** (Menéndez) would exempt Texas from the provisions of federal law establishing daylight savings time, effective this November 5th, when daylight savings time is otherwise scheduled to end this year.²⁶ None passed.

21.14 **The Man’s Right to Know Act.** **HB 4260** (Farrar) is a response to a state law that requires doctors to a booklet titled “A Woman’s Right to Know” to women considering an abortion. Women must wait at least 24 hours after receiving the booklet and must undergo an ultrasound before the procedure. It adds new Ch. 173 to the Health & Safety Code:

Sec. 173.002. PURPOSE. The purpose of this chapter is to express the state’s interest in promoting men’s health; ensure Texas men experience safe and healthy elective vasectomies, Viagra utilizations, colonoscopies procedures, and men’s health experiences; ensure a doctor’s right to invoke their personal, moralistic, or religious beliefs in refusing to perform an elective vasectomy or prescribe Viagra; and promote fully abstinent sexual relations or occasional masturbatory emissions inside health care and medical facilities, as a means of the healthiest way to ensure men’s health.

I believe I’ve written enough, so I’ll let you read the rest of the bill, including its caption, in the comfort of your own home should you want.

²⁶ This is not an end run around the Supremacy Clause. The Uniform Time Act of 1966 (15 U.S.C. Section 260a(a)) sets daylight savings time as running from 2 a.m. on the second Sunday of March until 2 a.m. on the first Sunday of November. However, it expressly allows any state lying entirely within one time zone to exempt the entire state (but not just part of the state) from the advancement of time, and any state with parts in more than one time zone to exempt either the entire state, or the entire area of the state lying within any time zone. HB 2400 would exempt both the majority of the state lying in the central time zone and the portion around El Paso lying in the mountain time zone from DST.

21.15 **Just Add Water!** **HB 133** (Alvarado) designates powdered alcohol as an alcoholic beverage. I didn't even know there was such a thing! Didn't pass.

21.16 **Symbols.** Here are some official designations of state symbols:

- **Official State Knife.** **HCR 32** (Springer) designates the Bowie knife as the official State Knife of Texas. (You mean it wasn't already?) Didn't pass.
- **Official State Gun.** **SCR 8** (Huffines) designates the cannon as the official State Gun of Texas. Didn't pass.
- **Official State Handgun.** **HCR 51** (Lang | *et al.*) designates the 1847 Colt Walker pistol as the official State *Handgun* of Texas. Didn't pass.
- **Official State Breakfast Item.** **HCR 92** (Klick) designates the breakfast taco as the official State Breakfast Item of Texas. Didn't pass.
- **Official State Food.** **HCR 110** (Hinojosa, G.) designates tacos as the official State **Food** of Texas. (My understanding is that this might tick off aficionados of chili, the official State **Dish** of Texas. See **HCR 18** of the 65th Legislature 40 years ago.) This year's bill didn't pass.

21.17 **Places.** Here are some official place designations:

- **Knife Capital.** **HCR 27** (White) designates Spurger as the Knife Capital of Texas (for 10 years).
- **Live Music Capital of [North] Texas.** **HCR 42** (Holland) and **SCR 5** (Hall) designate Rockwall as the Live Music Capital of **North** Texas (for 10 years). The House version was signed by the Governor on June 15th.
- **Wedding Capital of Texas.** **HCR 70** (Isaac | Campbell) designates Dripping Springs as the Wedding Capital of Texas (for 10 years).

- **Lighted Poinsettia Capital of Texas.** **HCR 72** (Darby | Seliger) designates Big Spring as the Lighted Poinsettia Capital of Texas.
- **Western Art Show Capital of Texas.** **HCR 83** (Lambert | Perry) designates Stamford as the Western Art Show Capital of Texas (for 10 years).
- **Wine Capital of Texas.** **HCR 123** (Biedermann) designates Fredericksburg as the Wine Capital of Texas. Didn't pass.

21.18 **Dates.** Here are some official date designations:

- **Oyster Day.** **SR 36** (Taylor, L.) recognizes January 24th as Oyster Day.
- **Homemade Pie Day.** **HR 374** (Cain) commemorates February 16th as Texas Homemade Pie day (designated as such by the legislature in 2013). Not to be confused with **Pi Day** on March 14th.
- **Space Day.** **SR 36** (Taylor, L. | Garcia) recognizes March 7th as Space Day.
- **Moonlight Tower Day.** **HR 1183** (Howard) and **SR 407** (Watson) declare May 3rd Moonlight Tower Day. (Trust me – it's an Austin thing.)
- **Absolutely Incredible Kid Day.** **SR 412** (Estes) celebrates March 16th as Absolutely Incredible Kid Day. (This is a Camp Fire Council event.)

21.19 **Mascots.** **HR 1620** (Geren) elects the children of House members to the office of mascot, and **HR 1621** (Geren) designates the grandchildren of House members as honorary mascots. (Each of the children and grandchildren is named in the respective resolution, and an official copy of the resolution is to be delivered to them.) The kids got their title. The grandkids didn't get their designation.

22. Conclusion.

See ya next time. Unless I win the lottery!

Attachment 2 – Changes to the Self-Proving Affidavit
(Enacted by H.B. 2271. Deletions are indicated in red strikethrough.)

Form of Self-Proving Affidavit Under Section 251.104 (Two-Step Method of Execution)

THE STATE OF TEXAS

COUNTY OF _____

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

Testator

Witness

Witness

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

(SEAL)

(Signed) _____
(Official Capacity of Officer)

Drafting Tip: This is the exact language of the statutory form. In order to eliminate all bracketed language and gender-specific references in your forms, I would suggest replacing the [his/her] and [he/she] references with respect to the testator with “the testator’s” and “the testator,” respectively. You can also change the single gender-specific reference to the witnesses by changing “the said witnesses, each on [his/her] oath stated to me” to “the witnesses, each on oath, stated to me.”

(Note that the one-step form for simultaneous execution, attestation, and self-proving under Section 251.1045 already referred just to a “well” when enacted in 2011.)

Attachment 3 – New Optional Certification of Power of Attorney Form

(Enacted by H.B. 1974.)

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____.

Date: _____, 20__.

_____ (signature of agent)

Attachment 4 – Changes to Statutory Power of Attorney Form

(Enacted by H.B. 1974, S.B. 39, and S.B. 1193. Additions are indicated in *green italics*, and deletions are indicated in ~~red strikethrough~~.)

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. *IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.*

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, *is removed by court order*, 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. *(YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)*

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) [~~(N)~~] AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N) [~~(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.

- ___ (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) Digital assets and the content of an electronic communication;*

___ (O) [~~(N)~~] ALL OF THE POWERS LISTED IN (A) THROUGH (N) [~~(M)~~]. YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O) [~~(N)~~].

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

___ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

___ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

___ Each of my co-agents may act independently for me.

___ My co-agents may act for me only if the co-agents act jointly.

___ My co-agents may act for me only if a majority of the co-agents act jointly.

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.

[The following provisions are **not** part of the statutory form itself, but are a permissible modification to the statutory form under Sec. 752.052 to grant specific authority described by Sec. 751.031(b).]

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent **MAY NOT** do any of the following specific acts for me **UNLESS I have INITIALED** the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

___ Create, amend, revoke, or terminate an inter vivos trust

___ Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney

___ Create or change rights of survivorship

___ Create or change a beneficiary designation

___ Authorize another person to exercise the authority granted under this power of attorney.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

Decedents' Estates, Guardianships, Trusts, Powers of Attorney, Etc.

UNLESS YOU DIRECT OTHERWISE *BELOW* [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT *TERMINATES* [~~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. *Termination* [~~Revocation~~] of *this* [~~the~~] durable power of attorney is not effective as to a third party until the third party *has actual knowledge* [~~receives actual notice~~] of the *termination* [~~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. *The meaning and effect of this durable power of attorney is determined by Texas law.*

If any agent named by me dies, becomes *incapacitated* [~~legally disabled~~], resigns, or refuses to act, *or is removed by court order, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney)*, 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, *suspended*, 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 *or suspends* 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 *a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney*;
- (5) the appointment and qualification of a permanent guardian of the principal's estate *unless a court order provides otherwise*; or
- (6) *if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise* [~~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.

Attachment 5 – Changes to Medical Power of Attorney Form

(Enacted by H.B. 995. Additions are indicated in *green italics*, and deletions are indicated in ~~red strikethrough~~.)

[Note that there is no longer a separate disclosure statement.]

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, *annulled, or declared void unless this document provides otherwise.*)

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.

THIS MEDICAL POWER OF ATTORNEY 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 unable to make the decisions for 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 is effective 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 if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure 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 facility, or residential care facility, 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 allow a person to serve as 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 that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, 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 in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

Decedents' Estates, Guardianships, Trusts, Powers of Attorney, Etc.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent 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 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 medical power of attorney is executed, has a claim against any part of your estate after your death.*

*By signing below, I acknowledge that [~~I have been provided with a disclosure statement explaining the effect of this document.~~] I have read and understand **the** [that] information contained in the *above* 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: _____

Attachment 6 – Changes to Statutory Declaration of Guardian in the Event of Later Incapacity or Need of Guardian Form

(Enacted by S.B. 511. Additions are indicated in *green italics*.)

[Note that there are no changes to the form for Declaration of Guardian in the Event of Later Incapacity or Need of Guardian set forth in Sec. 1104.204. Rather, Sec. 1104.203 is amended so that, if the declaration is not being used to disqualify anyone, then it need not be witnessed, and will be considered self-proved if the following acknowledgement by the Declarant is attached rather than a self-proving affidavit.]

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the ___ day of _____, 20____, by _____ (Declarant).

Notary Public, in and for the State of Texas

Notary's printed name:

My commission expires:

Attachment 7 – Changes to Statutory Declaration for Mental Health Treatment Form

(Enacted by **H.B. 1787**. Additions are indicated in *green italics*.)

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, wilfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____ I do not consent to the administration of the following medications:

_____ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

Conditions or limitations: _____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment.

_____ I do not consent to the administration of convulsive treatment.

Conditions or limitations: _____

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment **FIRST** (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment **SECOND** (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment **THIRD** (circle one) Restraint/Seclusion/Medication.

_____ I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications:

Conditions or limitations: _____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

Conditions or limitations: _____

Signature of Principal/Date: _____

SIGNATURE ACKNOWLEDGED BEFORE NOTARY PUBLIC

State of Texas

County of _____

This instrument was acknowledged before me on _____(date) by _____(name of notary public).

Notary Public, State of Texas

Printed name of Notary Public:

My commission expires:

SIGNATURE IN PRESENCE OF TWO WITNESSES

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is *either acknowledged before a notary public or* signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Attachment 8 – Selected Bills that *DID NOT* Pass7. Decedents' Estates.¹

7.1 Limit on Increase in Life Insurance Premiums and Other Costs (Ins. Code Sec. 1101.157). **HB 3370** (Craddick | Hancock) would have prohibited an insurer from increasing any premium or other costs associated with a life insurance policy by more than 10% in any year unless the schedule and amount of the increase is disclosed at the time the policy is issued.

8. Guardianships and Persons With Disabilities.

8.1 Attorney Certification in Guardianship Proceedings (Sec. 1154.201). Last session, **HB 39** (Smithee) required the applicant's attorney to successfully complete the ad litem certification course. **SB 37** (Zaffirini | Gutierrez) would have extended that requirement to any attorney representing any person's interests in a guardianship proceeding.

8.2 Parental Administration. (Secs. 1002.0015, 1002.002, 1002.004, Ch. 1359; Pen. Code Sec. 25.10). **HB 3901** (Metcalf) and **SB 2016** (Creighton) would have added new Ch. 1359 which creates a new alternative to guardianship called "parental administration." A parental administration may be only between a parent and an adult child who has been incapacitated since the child was a minor. The procedure for appointment as a parental administrator is similar to the appointment of a guardian, and the rights and duties of the parental administrator are similar to a guardian of the person, with similar reporting requirements. An existing guardianship may be converted to a parental administration, and vice versa.

8.3 Using Person First Respectful Language (Secs. 22.033, 1001.004, and 1002.026; Gov't. Code Secs. 155.001, 411.114; & Prop. Code Sec. 240.002). **SB 498** (Zaffirini | Neave) would have directed the legislature, Leg. Council, and other state agencies to avoid using the term "ward" in any new law and to replace it in existing law as the law is otherwise amended with the preferred phrases "person," "incapacitated person," or "person with a guardian." A reference in Estates Code Sec. 1002.026 to a "proposed ward" adds "alleged incapacitated person" as an alternative term. References in several other statutes to a "ward" add the alternative term "person with a guardian."

The bill failed to pass to third reading in the House by a 72-73 vote.

Drafting Tip

Even though the bill didn't pass, there's nothing preventing you from reducing or eliminating the use of the term "ward" in your guardianship pleadings.

8.4 Duration of Attorney Ad Litem's Appointment in DFPS Case (Fam. Code Sec. 107.016). **HB 596** (Johnson, J.), **HB 3109** (Giddings) and **SB 469** (West) would have required an order appointing the Department of Family and Protective Services as a child's *permanent* managing conservator to provide the continuation of the attorney ad litem's appointment for the duration of that conservatorship.

8.5 Rotational Appointment of Guardians Ad Litem and Guardians (Gov't. Code Sec. 37.004). **HB 596** (Johnson, J.), **HB 3109** (Giddings) and **SB 469** (West) would have required an order appointing the Department of Family and Protective Services as a child's *permanent* managing conservator to provide the continuation of the attorney ad litem's appointment for the duration of that conservatorship.

8.6 Financial Elder Abuse and Exploitation. Several bills would have dealt with financial abuse or exploitation of an elderly person.

(a) Reporting Financial Abuse of Elderly Persons (Fin. Code Ch. 280, Hum. Res. Code Ch. 48). **HB 916** (Thierry) and **SB 792** (Miles) require an employee of a financial institution who has a good faith believe that financial abuse of an elderly person has occurred or is occurring, the institution must submit a report notifying Adult Protective Services and the appropriate local law enforcement agency. The institution is not required to investigate an allegation of financial abuse made by an elderly person. Failure to comply subjects the institution to a penalty of up to \$1,000, or up to \$5,000 if the court finds the violation to be willful. **HB 959** (Thierry) and **SB 791** (Miles) create a criminal penalty for the person engaging in financial abuse, ranging from a Class A misdemeanor to a 1st degree felony depending on the value of property involved.

(b) Reporting Financial Exploitation of Elderly Person (Securities Act, VTCS Art. 581-1, Sec. 45; Hum. Res. Code Ch. 48). **HB 3972** (Johnson, E.) requires an agent, investment adviser representative, or person serving in a supervisory, compliance, or legal capacity for a dealer or investment adviser (a "qualified individual") to report any suspected financial exploitation of an elderly person who is an account holder to the State Securities Board. The qualified

¹ Section references are to the Texas Estates Code unless otherwise noted.

individual may also notify a third-party reasonably associated with the elderly person, unless the third party is suspected of the financial exploitation, and may place a hold on disbursements from the account.

(c) Investigation of Exploitation of Elderly Person or Person With Disability (Hum. Res. Code Sec. 48.1512). **HB 4184** (Perez) authorizes an agency that receives a report of exploitation of an elderly person or a person with a disability by a person who does **not** have an ongoing relationship with the alleged victim to investigate the allegations and, if applicable, send a report to appropriate entities and agencies.

(d) Financial Elder Abuse and Exploitation Prevention Act (Penal Code Pen. Code Sec. 32.55). **HB 3503** (Thierry) creates a criminal offense (that can be either a misdemeanor or a felony) for financial abuse or exploitation of an elderly person. "Financial abuse" is the wrongful or negligent taking or appropriation of money or other property of another person by any means, including by exerting undue influence. The term includes financial exploitation. "Financial exploitation" means the wrongful or negligent taking or appropriation of money or other property of another person by a person who has a relationship of confidence or trust with the other person. Financial exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or the exerting of undue influence. The term includes:

- the breach of a fiduciary relationship, including the misuse of a durable power of attorney or the abuse of guardianship powers, that results in the unauthorized appropriation of another person's property;
- the unauthorized taking of personal assets;
- the misappropriation, misuse, or unauthorized transfer of another person's money from a personal or a joint account; and
- the negligent or intentional failure to effectively use another person's income and assets for the necessities required for the person's support and maintenance.

A person has a relationship of confidence or trust with another person if the person:

- is a parent, spouse, adult child, or other relative by blood or marriage of the other person;
- is a joint tenant or tenant-in-common with the other person;
- has a legal or fiduciary relationship with the other person;
- is a financial planner or investment professional who provides services to the other person; or
- is a paid or unpaid caregiver of the other person.

8.7 Office of Public Guardian (Secs. 1002.0215, 1002.0265, 1104.251, 1104.326-1104.338, 1104.402, 1104.409, 1155.151, & 1163.101; Gov't Code Sec. 155.001, 155.101, 155.102, 155.105, & 411.1386, Hum. Res. Code Sec. 161.103). **SB 1325** (Zaffirini | Thompson, S.) would have authorized a commissioners court to establish an "office of public guardian." The position may be full or part-time, may be shared with another county, and may be filled through an agreement with a nonprofit guardianship program or private professional guardian in that county or an adjacent county. The term of the public guardian is five years, and the public guardian may employ personnel to facilitate carrying out the duties of the office. The public guardian is compensated by the commissioners court, and is not entitled to standard guardian commissions, which makes sense since the office may be appointed to serve in cases where there are not enough assets or resources to pay a private professional guardian. A public guardian may also be appointed where no family member, friend, or other suitable person is willing to act, or where the appointment of a public guardian is in the ward's best interest. No single person in the office of public guardian may be appointed as guardian in more than 35 cases.

(a) Guardian Court Pilot Program (Gov't Code Ch. 111). **SB 963** (Zaffirini) would have directed the Supreme Court to establish a guardianship court pilot program in at least one administrative region to facilitate the adjudication of guardianship matters. The court should consider where the appointment of an associate judge for guardianship proceedings would reduce caseload in the region. The presiding judge of the selected administrative region would then determine which courts in the region require the appointment of a full- or part-time associate judge, and appoint each associate judge from a list of qualified applicants (a judge could be appointed to serve more than one court). Then, all guardianship proceedings in the county served by the associate judge shall be referred to that judge. The host county must provide an adequate courtroom, furniture, equipment, and personnel. The associate judge's salary may not exceed 90% of a district judge's salary, and is paid by the county. The associate judge's authority includes the ability to:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;

- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing;
- (12) render and sign a pretrial order;
- (13) order the attachment of a witness or party who fails to obey a subpoena;
- (14) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and
- (15) take action as necessary and proper for efficient performance of the associate judge's duties.

Following issuance of an order by the associate judge, any party may request a *de novo* hearing before the referring court. The pilot program ends at the end of 2019, by which time the OCA must submit a report with recommendations.

8.8 Funding Guardianship Programs and Money Management Services. **HB 3970** (Rose) would have appropriated the first \$750,000 of the general revenue fund Medicaid account (funds recovered under the Medicaid estate recovery program) are to be appropriated each year to provide grants for the development, expansion, and operation of local guardianship programs and money management services.

8.9 Electronic Filings in Mental Health Proceedings (Health & Saf. Code Sec. 571.014). Instead of requiring that originals of signed papers be delivered to the clerk within 72 hours of an initial e-filing in a mental health proceeding, **SB 1039** (Uresti) would have directed the filer to maintain those originals and filed them only on request of a party or the court.

8.10 Non-Physician Mental Health Professional (Health & Saf. Code Sec. 571.003). **HB 1977** (Sheffield) and **SB 1624** (Uresti) would have added a licensed physician assistant to the list of persons considered a non-physician mental health professional. **HB 2502** (Coleman) also would have added a licensed occupational therapist whose practice does not include diagnosis or psychological services typically performed by a psychologist, an RN with a graduate degree in psychiatric nursing, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist.

8.11 Unlawful Possession of Firearms (Penal Code Sec. 46.04). **HB 2543** (Nevárez) would have made it a Class A misdemeanor for certain persons, including an incapacitated adult for whom a guardian of the person has been appointed based on a lack of mental capacity, to possess a firearm (unless certain defenses apply).

8.12 Handguns in State Hospitals (Gov't. Code Sec. 411.209; Health & Saf. Code Sec. 552.002). **HB 14** (Murr) and **SB 1146** (Nichols) would have authorized any of the ten state hospitals to prohibit a license holder from carrying a handgun on the hospital property. A license holder carrying a handgun on hospital property in violation of the prohibition is subject to a civil penalty.

8.13 Temporary and Emergency Detention (Health & Saf. Code Secs. 573.001, 573.002, 573.005, 573.012, 573.013, 573.021, & 573.022). Instead of transporting a person subject to temporary detention to a mental health facility, **HB 1289** (Murr) would have expanded the persons to whom the detainee may be transferred to include anyone listed in Health & Saf. Code Sec. 574.015. **HB 71** (Martinez) would have authorized a judge or magistrate "in a county located on the Texas-Mexico border that has a population of 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more"² to authorize certain persons in a specified order of priority to transport a detainee. **HB 2913** (Miller) would have provided that when a person who has been detained in one facility is transported to a mental health facility, a copy of the detention notice form must accompany the detained person.

8.14 Notice to Peace Officer of Communication Impediment (Trans. Code Secs. 502.061 & 521.142). **HB 2978** (Klick) would have allowed the owner of a vehicle to voluntarily list any health condition that may impede communication with a peace officer. A physical condition must be evidenced by a physician's statement, while a mental condition must be evidenced by a statement from a physician, psychologist, or non-physician mental health professional. This information is then shared with the DPS, which shall include the information in the Texas Law Enforcement Telecommunication System for the purpose of alerting a peace officer who may make a traffic stop of that vehicle. The DMV **may not** issue a license plate with any visible marking indicating the health condition to the public.

8.15 Notice of Right to Use Public Transportation (Trans. Code Sec. 461.009). **HB 837** (Allen) would have required a public transportation provider that provides public transportation services designed for people with disabilities who are unable to use the provider's bus or rail services to notify each of those eligible individuals residing in its service area of the rights of visitors with disabilities to complementary paratransit services.

² Rep. Martinez represents part of Hidalgo County.

9. Trusts.

9.1 Rule Against Perpetuities (Prop. Code Sec. 112.036). **HB 2842** (Burrows) would have extend the rule against perpetuities to 300 years for trusts with an effective date (*i.e.*, when the trust becomes irrevocable) of September 1, 2017, or later. Trusts with an earlier effective date may also use the extended perpetuities period if the trust provides that interests must vest under the provisions of Sec. 112.036 applicable to trusts on the date the interest vests (a bit circular, wouldn't you say?). See Part 19's discussion of the Delaware Tax Trap for thoughts on whether this change, if passed, would have been constitutional.

11. Other Bills Relating to Disability Documents.

11.1 The REPTL Anatomical Gift and Disposition of Remains Bill (Health & Saf. Code Secs. 692A.004-007 & 711.002). **HB 994** (Wray) and **SB 513** (Rodríguez) were REPTL bills that would have authorized the use of one notary in lieu of two witnesses on anatomical gift forms. They also revoked the authority of a spouse under a disposition of remains form if the marriage is dissolved before the decedent's death.

HB 994 was not brought up on the House floor out of fear that some unwanted amendments might be added, and SB 513 did not emerge from committee (since HB 994 was thought to be the primary vehicle).

Drafting Tip

Rather than using anatomical gift forms, I recommend clients register at:

<https://www.donatelifetexas.org/>

to increase the likelihood of medical providers finding out about a donor's wishes in an emergency.

11.2 Accounting Demand by Principal's Guardian (Secs. 751.104-751.105, & 752.051). In the event a principal is unable to demand an accounting from the agent under a financial power of attorney because of a mental or physical condition, **SB 41** (Zaffirini | Thompson, S.) would have given the following persons the right to demand one: a guardian or spouse, a person named as a successor agent in the power of attorney, an agent under a medical power, an attorney representing the principal, or any other family member who the court finds has shown good cause to have standing to make the demand (so a court proceeding would be necessary in that event).

11.3 Advance Directives. Several bills have been filed changing rules for advance directives.

(a) Disclosure of Policy Regarding Life-Sustaining Treatment; Withholding Treatment

from Minor (Health & Saf. Code Secs. 166.012 & 166.013). **SB 883** (Perry) would have required a health care facility or treating physician to disclose in writing any policy it may have relating to the provision of life-sustaining treatment. Further, neither the facility nor treating physician may withhold or withdraw life-sustaining treatment from a minor unless authorized by a directive executed by the minor's adult spouse, parents, or guardian, or by an out-of-hospital DNR order executed by the minor's parents, legal guardian, or managing conservator. Even then, the facility or physician may not follow the authorization unless it has complied with a request of the minor's parent, legal guardian, or managing conservator to obtain another medical opinion; or cooperated with any attempt by the minor's parent, legal guardian, or managing conservator to transfer the minor to another facility selected by the parent, guardian, or conservator. The facility **may** withhold or withdraw life-sustaining treatment without the authorization if, after a reasonably diligent effort, the facility is unable to locate the parent, legal guardian, or managing conservator within 72 hours after the attending physician determines life-sustaining treatment to be medically inappropriate. Finally, the desire of a competent minor to receive life-sustaining treatment supersedes the effect of any other authorization or determination.

(b) Effect of Pregnancy (Health & Saf. Code Secs. 166.033, 166.049, & 166.098). **HB 439** (Collier) would have deleted the statement "I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant." from the statutory form of directive to physicians. It also repeals the provisions that prohibit pregnant patients from withdrawing or withholding life-sustaining treatment or CPR.

(c) Advance Directive and DNR of Pregnant Patient (Health & Saf. Code Secs. 166.033, 166.049, 166.083, & 166.098). **HB 4223** (Farrar) would have allowed a woman of child-bearing age to make her own decision regarding the effect of pregnancy on a decision regarding life-sustaining treatment, and makes conforming amendments to the statutory forms. On the other hand, **HB 3542** (Cain) would have prohibited anyone from withholding life-sustaining treatment (including CPR) from a pregnant patient, **even if there is irreversible cessation of all spontaneous brain function**, if the life-sustaining treatment is enabling the "unborn child" to mature.

(d) The Texas Patient Autonomy Restoration Act of 2017 (Health & Saf. Code Secs. 166.045, 166.046, 166.051, & 166.052; Gov't Code Sec. 25.021). When an attending physician is refuses to comply with a patient's advance directive or a patient's or family's decision to choose treatment

necessary to prevent the patient's death, **HB 4090** (Klick) and **SB 1213** (Hughes, *et al.*) would have required that life-sustaining treatment continue to be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision. (rather than going through the procedure currently set forth in Sec. 166.146). The provisions making the patient responsible for the costs of transfer, and limiting the physician's and health care facility's obligation to provide treatment for only ten days, are repealed. Because there is no time limit on the obligation to continue to provide life-sustaining treatment, the statutory statement advising the patient or decision maker of their options is repealed.

11.4 **Anatomical Gifts.** Several bills were filed relating to anatomical gifts.

(a) Default Inclusion on Donor Registry (Trans. Code Secs. 502.189 & 502.401; Health & Saf. Code Secs. 692A.006 & 692A.007). **HB 1938** (Villalba) automatically indicates on each adult driver's license or personal identification certificate applicant the person's willingness to make an anatomical gift, and automatically includes the person in the Glenda Dawson Donate Life-Texas Registry, unless the person affirmatively refuses to authorize the indication or join the registry.

(b) Brain Donation (Health & Saf. Code Sec. 692A.002). **HB 2406** (Price) redefines a "part" of the donor's body to include the donor's brain.

(c) No Anatomical Gifts by Certain Persons (Health & Saf. Code Secs. 692A.002 & 692A.009). **HB 1092** (Oliverson) and **SB 1074** (Hancock) deal with who may **not** make anatomical gifts. A "guardian" appointed by a court to make decisions regarding an individual's support, care, health or welfare currently does not include procurement organizations or anyone associated with the hospital in possession of the decedent's body (other than someone who is already a relative of the decedent). An adult exhibiting special care or concern for the decedent is currently the 8th person in line of priority to authorize an anatomical gift. That person is disqualified if they're associated with the hospital. In addition, the hospital administrator and any other person having authority to dispose of the decedent's body are removed as the final two persons in line of priority to authorize an anatomical gift. Finally, procurement organizations are prohibited from petitioning a court to become the decedent's guardian or to otherwise be authorized to make an anatomical gift.

(d) Anatomical Gifts by HIV-Positive Patients (Health & Saf. Code Sec. 692A.0155).

HB 227 (Howard) authorizes anatomical gifts by HIV-positive donors if the donee is also HIV-positive.

11.5 **General Procedures for DNR Orders (Health & Saf. Code Sec. 166.012).** **HB 2063** (Bonnen, G.) would have outlined the conditions required to make a DNR order in-facility valid, expressly excluding application to out-of-hospital DNRs. The DNR order must be:

3. Issued in compliance with:
 - a. written directions of a patient made while competent;
 - b. oral directions of a competent patient delivered to or observed by two witnesses;
 - c. directions in an advance directive;
 - d. directions of the patient's guardian or agent under a medical power; or
 - e. a treatment decision made under Sec. 166.039 for an incompetent or noncommunicative person without an advanced directive; or
4. Is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions, and in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent within 24 hours regardless of the provision of CPR or other life-sustaining treatment, and the DNR order is medically appropriate.

If a spouse, adult child, or parent notifies the facility of his or her arrival after a DNR order is issued, the order must be disclosed to the individual.

12. Nontestamentary Transfers.

12.1 **Elimination of Convenience and Trust Accounts (Ch. 113).** No, **HB 1954** (Murr | Nichols) **would not have** eliminated the ability to have a convenience signer on an account or open an account for a trustee of an actual trust. This is an IBAT bill, and they believe that these account types are confusing to both bankers and customers. You can have a convenience signer on all of the various account types listed in Ch. 113. They believe it's therefore confusing to have a separate account type called "convenience account." Similarly, "trust accounts" under Ch. 113 are not accounts of trustees of express trusts. Rather, they're another way to establish a POD beneficiary without any actual trust agreement. This bill is designed to eliminate both of those types of accounts since the same result can be achieved with other types of accounts. It clarifies that a convenience signer is not an owner of the account, but may make deposits or withdrawals from the account during the lifetime of the parties, and may be designated as a P.O.D. payee of the account. The bill also includes a complete release of a financial institution that makes a payment from an account (1) before it receives written notice from a

party not to make the payment, (2) to a convenience signer after the death of all parties before it receives notice of the last party's death, or (3) to the personal representative of the last surviving party's estate before a court order prohibiting the payment is served on the institution. Transitional language is also included so that current law continues to apply to existing convenience and trust accounts.

14. Exempt Property

14.1 **Insurance Proceeds of Certain Criminal Defendants (Code Crim. Proc. Art. 21.32; Ins. Code Sec. 1108.053).** **HB 4030** (Phillips) would have required a court to determine if a defendant indicted for criminal homicide, sexual abuse of a young child, indecency with a child, improper relationship between an educator and student, or aggravated sexual assault is covered by a life insurance policy. If so, the court must notify the insurer and the alleged victim. If the defendant dies before disposition of the charge, the insurer must pay the proceeds to a court-appointed trustee to be held until the expiration of the statute of limitations on a civil action for damages incurred by the alleged victim. The trustee must pay any judgment rendered against the defendant's estate. Within a reasonable time after the statute of limitations expires, the trustee must pay any remaining proceeds to the beneficiaries of the policy.

To get around the fact that insurance proceeds are exempt from creditors of the insured, the Insurance Code is amended to except a court order described in the previous paragraph from the general insurance exemption.

15. Jurisdiction and Venue.

15.1 **Venue for Probate of Wills (Sec. 33.1011).** As filed, **SB 1056** (Perry) would have amended Sec. 33.001 to expand proper venue for probate of the will of a Texas-resident decedent if no immediate family member (parent, spouse, child, or sibling) lives in the same county in which the decedent resided. In that case, venue would be permissible in **either** the county of the decedent's residence **or** the county of the applicant's residence. However, with REPTL input, after it emerged from State Affairs, the bill instead would have added a new section authorizing transfer of a probate proceeding to the county of the executor's residence after issuance of letters if no immediate family member resides in the county of the decedent's residence. (This is in addition to the current grounds for transfer for the convenience of the estate under Sec. 33.103.)

While SB 1056 passed in the House on May 24th (with the Senate amendments), the Senate failed to concur in

the House amendments. (See Secs. 15.2 and 16.4 below.)

15.2 "Venue" for Recording Adverse Possession Affidavit of Cotenant Heir

(Sec. 33.1011). Two amendments were added to **SB 1056** on the House floor. One added another new subsection that's unrelated to the rest of new Sec. 33.1011. It provided that nothing in "this chapter" (meaning Ch. 33 where all the venue provisions are located) requires that an affidavit under "SECTION 203 Estates Code" (I think [s]he meant **Chapter 203**, which contains the form of what we commonly refer to as an affidavit of heirship) "filed to establish adverse possession by a co-tenant" be filed in the county of the executor's residence.

This appears to me to be an unnecessary amendment. We won't even have any affidavit to establish adverse possession by a cotenant until September 1st, when **SB 1249** goes into effect (see Sec. 7.7). That bill (adding new Sec. 16.0265 of the Civil Practice & Remedies Code) requires a cotenant heir to file an affidavit of heirship "in the form prescribed by Section 203.002, Estates Code," along with an affidavit of adverse possession in the county where the property is located. That's two affidavits. The one filed under Ch. 203 (assuming that's what the floor amendment to **SB 1056** meant) isn't the one filed to establish adverse possession. It's the second affidavit filed under Sec. 16.0265 that's filed to establish adverse possession.

Further, Ch. 33 of the Estates Code establishes venue for judicial proceedings that are probate-related. Filing an affidavit in deed records isn't a judicial proceeding, so saying Ch. 33 doesn't apply to the filing of a particular type of affidavit in the deed records is unnecessary. It doesn't apply to the filing of any affidavit in the deed records. For example, Sec. 203.001(a)(2) requires that an affidavit of heirship be filed in the deed records of the county where the property is located.

I would also note that this floor amendment is not germane to the caption of the bill – "An act relating to the transfer of certain probate proceedings to the county in which the executor or administrator of a decedent's estate resides."

See Sec. 16.4 below for a discussion of the other floor amendment.

While SB 1056 passed in the House on May 24th (with the Senate amendments – see Sec. 15.1 above and Sec. 16.4 below), the Senate failed to concur in the House amendments.

15.3 **Jurisdictional \$\$ Limits (Gov't. Code Secs. 26.042 & 27.031).** **SB 409** (Huffines) would have increased the jurisdiction of justice courts (and concurrent jurisdiction with county courts) to matters in controversy with a value of \$20,000 (from \$10,000).

15.4 **Review of Travis County Venue Requirements.** **SB 525** (Birdwell) would have directed the Sunset Commission to identify each statute and agency rule requiring an action to be brought in Travis County and make recommendations on whether that location serves a legitimate state purpose other than the convenience of a state agency that supersedes the interests of persons required to travel to Travis County to participate, or whether the statute or rule should be revised to allow the action to be brought in another county.

16. Court Administration.

16.1 **Electronic Display of Clerk's Notices (Gov't. Code Sec. 51.3032).** **HB 624** (Leach) and **SB 414** (Taylor) would have authorized district clerks to post official and legal notices by electronic display, instead of posting physical documents, in the manner already provided for county clerks in Loc. Gov't. Code Sec. 82.051. (That section allows a county clerk to post notices using an electronic kiosk, electronic bulletin board, or other similar device, or on the county's public website.)

16.2 **The Uniform Electronic Legal Material Act (Gov't. Code Ch. 2051).** **HB 1032** (Thompson, S.) would have adopted the Uniform Electronic Legal Material Act. It designates Leg. Council as the official publisher of the Texas Constitution and statutes, and the Secretary of State as the official publisher of session laws and agency rules. Either may publish legal materials in electronic form that is reasonably available for public use and designate the electronic version as the official version, even if the material is also published in printed form. Copies of legal material published in electronic form that is authenticated in the manner provided by the act are presumed to be accurate copies of the original legal material. It also contains a reciprocity provision for states with similar provisions.

16.3 **Amendment to 2011 "Loser Pays" Bill (Gov't. Code Sec. 22.004).** The 2011 legislature passed what became known as the "Loser Pays" bill – **H.B. 274** (Creighton, *et al.*). In a nutshell, that bill directed the Supreme Court to adopt rules to streamline civil actions involving \$100,000 or less, although the directive did not include cases arising out of the Family or Property Codes. (Further description of that legislation can be found in [my 2011 update.](#)) **HB 2574** (Murr) changes that direction to apply to actions involving \$200,000 or less, and excluding attorney's

fees from the determination of the amount in controversy.

16.4 **Payment of Costs Associated with Assigned Statutory Probate Judge (Gov't. Code Sec. 25.0022).** **SB 1056** (Perry | Murr) (see Secs. 15.1 and 15.2) was amended on the floor of the House to add the substance of **HB 1744** (Murr | Perry), a bill that had previously died in a Senate committee. That bill provided that if a party to a contested probate proceeding in a county without a statutory county court or statutory probate court requests the assignment of a statutory probate judge under Est. Code Sec. 32.003(1)(1), the court, on its own motion, or on the motion of the party requesting the assignment, may order that the county be reimbursed for the costs of the assignment out of the estate. The county may seek reimbursement from one or more of the parties as apportioned by the judge. If the judge does not order that the county be reimbursed from the estate, the county can seek reimbursement from the party requesting the assignment. If more than one party requested the assignment, then the judge must apportion the costs among those parties.

Setting aside situations where parties agree to hire a "private judge," I am not aware of any other situation under Texas law where a party is required to pay for a judge.

I would also note that this floor amendment is not germane to the caption of the bill – "An act relating to the transfer of certain probate proceedings to the county in which the executor or administrator of a decedent's estate resides."

While SB 1056 passed in the House on May 24th (with the Senate amendments) (see Secs. 15.1 and 15.2 above), the Senate failed to concur in the House amendments.)

16.5 **Judicial Term Limits (Gov't. Code Sec. 22.021).** **SB 109** (Huffines) would have directed the Supreme Court to establish term limits by rule on the number of terms a judge may be elected to any court established by the Texas Constitution, state statute, or municipal ordinance. The term limits may not allow a judge to serve more than 18 years on any one court, although a judge who has maxed out on one court may begin anew on another court. (Wouldn't this require a constitutional amendment?)

16.6 **Assignment Eligibility of Retired Judges (Gov't. Code Secs. 74.041 & 74.055).** **HB 650** (White) would have reduced the length of time a retired or former judge must have served as an active judge from 96 to 48 months. Meanwhile, **HB 1172** (Nevárez) **eliminates** the requirement that a retired or former

judge certify under oath that the judge has never been publicly reprimanded or censured, nor did the judge resign or retire while an investigation was pending.

16.7 Records Accepted by District Clerk (Gov't. Code Sec. 51.303). [HB 1393](#) (Reynolds)

would have authorized a district clerk to accept a record filed electronically, either directly with the court or through the statewide electronic filing system; or physically by an individual. It also prohibits a person, including a governmental entity, from selling a record filed with the district clerk without the clerk's written permission.

16.8 **New 15th Court of Appeals (Gov't. Code Chs. 22 and 101).** [HB 474](#) (Stephenson) would have moved Cameron, Hidalgo, and Willacy Counties from the current 13th Court of Appeals to a newly-created 15th Court of Appeals.

17. Selected Marital Issues.

17.1 **Divorce.** [HB 65](#) (Krause) would have extended the waiting period for a divorce on grounds of insupportability to 180 days if the household of one of the spouses is the primary residence for a minor child, an adult child attending high school, or an adult disabled child. [HB 93](#) (Krause) would have flat out repealed insupportability as a ground for divorce.

17.2 **Application of Foreign Law to Marital Relationship and SAPCRs.** [HB 498](#) (Fallon) is similar to bills filed in several prior sessions. New Family Code Chapters 1A and 112 would have prohibited basing a Texas ruling under the Family Code on a foreign law if application of that law would violate a right guaranteed by the U.S. Constitution or the Texas Constitution, violate good morals or natural justice; or be prejudicial to the general interests of the citizens of this state.

17.3 **Forcing Minor to Marry.** [SB 1706](#) (Taylor, V.) would have added forcing or coercing a child to marry as an act of abuse under Family Code Sec. 261.001.

17.4 **Same-Sex Marriages and Conduct.** Here are some bills that would have affected this area:

- [SB 522](#) (Birdwell) allows a county clerk to notify the commissioners court that he or she has a sincerely held religious belief that conflicts with issuing a marriage license, in which case the clerk may not be required to issue the license. Upon receipt of that notice, the court must ensure that a deputy clerk or other certifying official is available to carry out those functions.
- [HB 573](#) (Thompson, S.) amends numerous provisions of the Family Code to acknowledge that

a marriage may not be between a man and a woman. It also amends the Health & Safety Code to eliminate the requirement that sex education classes state that homosexual conduct is unacceptable and criminal.

- [SB 157](#) (Hinojosa | Rodríguez) and [SB 251](#) (Rodríguez) contain similar amendments to Family Code provisions.
- [HB 1663](#) (Dutton) amends the Family Code to provide that gender-specific terminology be construed in a neutral manner to refer to a person of either gender if necessary to implement the rights of spouses or parents in a same-sex marriage. It also makes a number of specific gender-neutral amendments.
- [SJR 16](#) (Rodríguez) proposes a constitutional amendment to repeal the constitutional ban on same-sex marriages and the prohibition against creating or recognizing any legal status identical or similar to marriage.
- [SB 136](#) (Rodríguez) and [SB 236](#) (Menéndez) all contain similar amendments to the Health & Safety Code.
- [HB 96](#) (Moody), [HB 1848](#) (Coleman) and [SB 166](#) (Rodríguez) eliminate a requirement that sex education materials state that homosexual conduct is unacceptable and criminal.
- [HB 1849](#) (Coleman) adds “gender identity or expression to the list of protected categories of hate crimes. (Current categories are race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.)
- [HB 2860](#) (Coleman) directs a court to order a change of name if the petition is accompanied by a sworn affidavit of a licensed physician to the effect that the petitioner identifies as a gender other than that indicated on a driver's license, birth certificate, or other official document. That court shall simultaneously order DPS and the vital statistics unit of DSHS to change the petitioner's name and gender on the petitioner's driver's license, other identification documents, and birth certificate.
- [HB 4101](#) (Lucio III) and [SB 1341](#) (Garcia | Rodríguez) provides a nonjudicial process for applying for a new birth certificate reflecting a new name and different gender if accompanied by a physician's affidavit that includes a verification that the applicant has undergone a clinically appropriate treatment to transition to another sex.

- **HB 1923** (Krause) and **SB 893** (Hughes) prohibits any governmental entity from taking any adverse action against any person based wholly **or partly** on the person's belief or action based on a sincerely held religious belief or moral conviction that marriage involves one man or one woman, or that sexual relationships are properly reserved to such a marriage.
- **HB 2795** (Lang) authorizes a deputy county clerk (not just the county clerk) to issue a marriage license.
- **HB 2876** (Sanford) prohibits requiring a wedding industry professional or one of its employees to sell, rent, or provide goods, services, accommodations, or facilities in connection with any marriage that would cause the professional or employee to violate a sincerely held religious belief.

17.5 Persons Conducting Marriage

Ceremonies. **HB 974** (Cortez) would have authorized the county clerk or any deputy clerk in a county with a population of at least 1.7 million that contains a municipality in which at least 75% of the population resides to conduct a marriage ceremony. Hmm... Rep. Cortez is from Bexar County... **HB 2310** (Muñoz) isn't geographically limited. It would have authorized a county clerk or any deputy clerk to conduct a marriage ceremony and collect a \$25 fee that must be deposited into the county treasury to be used by the county only to provide assistance to local charities.

18. Stuff That Doesn't Fit Elsewhere.

18.1 **New "Chancery" Court (Gov't Code Ch. 24A).** Last session, **HB 1603** (Villalba) would have created a new "chancery court" that has concurrent jurisdiction with district courts in certain actions pertaining to business organizations. A new chancery court of appeals would also have been created to hear appeals from orders of the chancery court. The proposal was back this session in the form of **HB 2594** (Villaba). Note that this court must sever any claim in which a party seeks recovery of damages for personal injury or death, or arising under the DTPA, **the Estates Code**, the Family Code, **or the Trust Code** unless all parties and the chancery court judge agree that the claim may proceed in the chancery court.

18.2 **Compliance With Ethical and Statutory Requirements by Out-of-State Attorneys (Gov't Code Ch. 85).** **HB 3627** (Shaheen) would have prohibited any out-of-state attorney who is not a member of the SBOT from entering into a legal services contract to represent clients in Texas or appear

in any Texas court or arbitration proceeding on their behalf unless the attorney complies with all state laws and ethical duties imposed by Texas disciplinary rules and codes of ethics applicable to attorneys licensed in Texas.

18.3 **Voting of Jointly Held Interests (Bus. Org. Code Sec. 6.157).** **HB 2827** (Oliveira) is an act "Relating to corporations, associations, real estate investment trusts, and related entities." In other words, it would have made a number of changes. One of interest (to me, at least) is a new provision dealing specifically with how jointly-held interests in domestic entities are voted. A "jointly held ownership interest" is an ownership interest held in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, or otherwise. It also includes an ownership interest for which two or more persons have the right to vote the interest under Sec. 6.154 (which allows an administrator, executor, guardian, or conservator of an estate to vote the interest of the estate without transferring the interest into the person's name). Any one of the holders of the jointly held interests has the right to vote the interest. If more than one holders vote, the act of a majority of holders binds all owners. If the votes are evenly split, then each "faction" may vote the interest proportionately. None of these rules apply if the person tabulating the votes has a good faith belief based on written information that reliance on these rules is unwarranted.

18.4 **Availability of Financial Records of Nonprofit Corporations (Bus. Org. Code Secs. 22.353 & 22.354).** Nonprofit corporations are required to keep records, books, and annual reports for at least three years following the close of a fiscal year, and to make them available for public inspection during regular business hours. **SB 2180** (Menéndez) would have exempted nonprofits from the obligation to make all of the documents available if a CPA has audited any of the previous three fiscal years. In that case, the nonprofit need only make available a copy of the audit letter and its most recent three annual reports.

18.5 **Perpetual Duration of Old Corporations (Bus. Org. Code Sec. 402.015).** Apparently, notwithstanding provisions in the articles of incorporation of a for-profit corporation formed before September 6, 1955, or a nonprofit corporation formed before August 10, 1959, the duration of these corporations became perpetual on May 2, 1979, if they were still in existence at that time. **HB 2827** (Oliveira) would have clarified that these corporations may amend their articles (or certificate of formation) to limit the period of duration after May 2, 1979.

18.6 Notary Fee Schedules (Gov't. Code Secs. 406.024 & 406.027). **HB 2254** (Gutierrez) would have repealed the current statutory fee schedule for notaries and authorizes the Secretary of State to adopt a fair and reasonable fee schedule that assures the public's access to notary services. The Secretary of State may adjust the fee schedule each year to reflect inflation.

18.7 Recording Signer's Address in Notary's Record Book (Gov't. Code Sec. 406.014). **HB 2018** (Anderson, R.) would have substituted a signer's, grantor's, or maker's address for residence or alleged residence as an item to be recorded in the notary's record book.

Attachment 9 – 2017 Amendments to the Texas Estates Code (General Provisions)

[The following excerpts reflect amendments made by HB 2271.]

Sec. 22.004. CHILD.

(a) "Child" includes an adopted child, regardless of whether the adoption occurred through:

(1) an existing or former statutory procedure;

or

(2) an equitable adoption or acts of estoppel.

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION.

(a) Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

(1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or

(2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:

(A) if the decedent died in this state, in the county in which:

(i) the decedent's principal estate was located at the time of the decedent's death; or

(ii) the decedent died; or

(B) if the decedent died outside of this state:

(i) in any county in this state in which the decedent's nearest of kin reside; or

(ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

(b) For purposes of this section:

(1) the decedent's next of kin:

(A) is the decedent's surviving spouse, or if there is no surviving spouse, other relatives of the decedent within the third degree by consanguinity; and

(B) includes a person who legally adopted the decedent or has been legally adopted by the decedent and that person's descendants; and

(2) the decedent's nearest of kin is determined in accordance with order of descent, with the decedent's next of kin who is nearest in order of descent first, and so on.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 39 of HB 2271 provides: "Section 33.001, Estates Code, as amended by this Act, applies only to an application for the probate of a will or for the granting of letters testamentary or of administration of a decedent's estate that is filed on or after the effective date of this Act. An application for the probate of a will or the granting of letters 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."

Attachment 10 – 2017 Amendments to the Texas Estates Code (Decedents' Estates)

[The following excerpts reflect amendments made by HB 1814, HB 1877, HB 2207, HB 2271, HB 2425, SB 39, SB 714, SB 869, and SB 2150.]

Sec. 112.103. METHOD OF PROOF OF SIGNATURES.

(a) The deceased spouse's signature to an agreement that is the subject of an application under Section 112.101 may be proved by:

- (1) the sworn testimony of one witness taken in open court;
(2) the affidavit of one witness; or
(3) the written or oral deposition of one witness taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [the same manner and under the same rules as depositions in other civil actions].

(b) If the surviving spouse is competent to make an oath, the surviving spouse's signature to the agreement may be proved by:

- (1) the sworn testimony of the surviving spouse taken in open court;
(2) the surviving spouse's affidavit; or
(3) the written or oral deposition of the surviving spouse taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [the same manner and under the same rules as depositions in other civil actions].

(c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 40 of HB 2271 provides: "Section 112.103, Estates Code, as amended by this Act, applies only to a proceeding under Subchapter C, Chapter 112, Estates Code, commenced on or after the effective date of this Act. A proceeding under that subchapter 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. 113.052. FORM.

A financial institution may use the following form to establish the type of account selected by a party:

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION FORM NOTICE: The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one

or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a P.O.D. payee or trust account beneficiary.

Select one of the following accounts by placing your initials next to the account selected:

(1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the name of the party:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

(2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

Enter the name of the party:

Enter the name or names of the P.O.D. beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

(3) MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP. The parties

to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (4) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (5) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

Enter the names of the parties:

Enter the name or names of the P.O.D. beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (6) CONVENIENCE ACCOUNT. The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s):

___ (7) TRUST ACCOUNT. The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Enter the name or names of the trustees:

Enter the name or names of the beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

ACKNOWLEDGMENT: I acknowledge that I have read each paragraph of this form and have received disclosure of the ownership rights to the accounts listed above. I have placed my initials next to the type of account I want.

Signature

Amended by Acts 2017, 85th Legislature, Ch. 304 (SB 714), effective September 1, 2017. Sec. 3 of SB 714 provides: "This Act applies only to a financial institution account opened or modified on or after the effective date of this Act. A financial institution account opened or modified before the effective date of this Act is governed by the law in effect on the date the account was opened or modified, and the former law is continued in effect for that purpose."

Sec. 113.053. REQUIRED DISCLOSURE; USE OF FORM.

(a) Except as provided by Subsection (d), a [A] financial institution shall disclose the information provided in this subchapter to a customer before [~~at the time~~] the customer selects or modifies an account.

(a-1) A financial institution is considered to have disclosed the information provided in this subchapter if:

(1) the financial institution uses the form provided by Section 113.052; and

(2) the customer signs the acknowledgment provided at the end [~~places the customer's initials to the right of each paragraph~~] of the form.

(b) If a financial institution varies the format of the form provided by Section 113.052, the financial institution shall disclose [~~may make disclosures in the account agreement or in any other form that discloses~~] the information provided by this subchapter [~~Disclosures under this subsection must:~~

~~[(1) be given]~~ separately from other account information except that the financial institution may disclose that information as part of other account documentation if the disclosures are the first items of the documentation;

~~[(2) be provided before account selection or modification;~~

~~[(3) be printed in 14 point boldfaced type; and~~

~~[(4) if the discussions that precede the account opening or modification are conducted primarily in a language other than English, be in that language].~~

(c) The financial institution shall notify the customer of the type of account the customer selected.

This requirement is satisfied by providing the customer with a copy of the account opening or modification documentation, as appropriate, in paper or electronic format.

(d) If a type of multiple-party account is not available from a financial institution, the financial institution is not required to make a disclosure about that type of account.

(e) This section does not apply to:

(1) a credit union; or

(2) an account that is opened or modified by a customer who:

(A) is a legal entity, including a governmental entity; or

(B) is acting as a legal representative for another person.

Amended by Acts 2017, 85th Legislature, Ch. 304 (SB 714), effective September 1, 2017. See transitional note following Sec. 113.052.

Sec. 113.252. RIGHTS OF CREDITORS.

(a) A multiple-party account is not effective against:

(1) an estate of a deceased party to transfer to a survivor;

(A) amounts equal to the amounts of estate taxes and expenses charged under Subchapter A, Chapter 124, to the deceased party, P.O.D. payee, or beneficiary of the account; or

(B) if other assets of the estate are insufficient, amounts needed to pay debts, other taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children[; if other assets of the estate are insufficient]; or

(2) the claim of a secured creditor who has a lien on the account.

(b) A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account or causes a payment to be made to another person from a multiple-party account after the death of a deceased party is liable to account to the deceased party's personal representative for amounts the deceased party owned beneficially immediately before the party's death to the extent necessary to discharge the claims, expenses, and charges described by Subsection (a) [that remain unpaid after application of the deceased party's estate]. The party, P.O.D. payee, or beneficiary is not liable in an amount greater than the amount the party, P.O.D. payee, or beneficiary received or caused to be

paid to another person from the multiple-party account after the deceased party's death.

(c) Any [A] proceeding by the personal representative of a deceased party to assert liability under Subsection (b)[~~;~~];

~~[(1) may only be commenced if the personal representative receives a written demand by a surviving spouse, a creditor, or one acting for a minor child of the deceased party; and~~

~~[(2)]~~ must be commenced on or before the second anniversary of the death of the deceased party.

(d) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 41 of HB 2271 provides: "Section 113.252(c), Estates Code, as amended by this Act, applies to a proceeding commenced before, on, or after the effective date of this Act, regardless of the date of the decedent's death."

Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.

(a) Except as otherwise provided in the transfer on death deed, this section, or any other statute or the common law of this state governing a decedent's estate, on the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) if the designated beneficiary survives the transferor by 120 hours, the interest in the real property is transferred to the designated beneficiary in accordance with the deed;

(2) the share [interest] of any [a] designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the transfer on death deed were a devise made in a will; and

(3) subject to Subdivision (2) [~~(4)~~], concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship[~~; and~~

~~[(4) notwithstanding Subdivision (2), if the transferor has identified two or more designated beneficiaries to receive concurrent interests in the real property, the share of a designated beneficiary who predeceases the transferor lapses and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the transfer on death deed were a devise made in a will].~~

Amended by Acts 2017, 85th Legislature, Ch. 971 (SB 2150), effective September 1, 2017. Sec. 3 of

SB 2150 provides: "The changes in law made by this Act apply to a transfer on death deed executed and acknowledged on or after the effective date of this Act. A transfer on death deed executed and acknowledged before the effective date of this Act is governed by the law in effect on the date the transfer on death deed was executed and acknowledged, and the former law is continued in effect for that purpose."

Sec. 114.151. OPTIONAL FORM FOR TRANSFER ON DEATH DEED.

The following form may be used to create a transfer on death deed.

REVOCABLE TRANSFER ON DEATH DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

IMPORTANT NOTICE TO OWNER: You should carefully read all the information included in the instructions to this form. You may want to consult a lawyer before using this form.

MUST RECORD DEED: Before your death, this deed must be recorded with the county clerk where the property is located, or it will not be effective.

MARRIED PERSONS: If you are married and want your spouse to own the property on your death, you must name your spouse as the primary beneficiary. If your spouse does not survive you, the property will transfer to any listed alternate beneficiary or beneficiaries on your death.

1. Owner (Transferor) Making this Deed:

Printed name Mailing address

2. Legal Description of the Property:

3. Address of the Property (if any) (include county):

4. Primary Beneficiary (Transferee) or Beneficiaries (Transferees)

I designate the following beneficiary or beneficiaries, if the beneficiary survives me:

Printed name Mailing address

5. Alternate Beneficiary or Beneficiaries (Optional)

[If no primary beneficiary survives me,] I designate the following alternate beneficiary or beneficiaries, if the alternate beneficiary survives me:

Printed name Mailing address

6. Transfer on Death: (Choose an option under both A and B below, and if you have designated any alternate beneficiaries, choose an option under C.)

At my death, I grant and convey to the primary beneficiary or beneficiaries my interest in the property, to have and hold forever. [~~If at my death I am not survived by any primary beneficiary, I grant and convey to the alternate beneficiary or beneficiaries, if designated, my interest in the property, to have and hold forever. If the primary and alternate beneficiaries do not survive me, this transfer on death deed shall be deemed canceled by me.~~]

A. IF AT LEAST ONE PRIMARY BENEFICIARY SURVIVES ME

(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If at least one primary beneficiary survives me, I grant and convey the primary beneficiaries' share or shares of the property, to have and hold forever, as follows:

_____ (1) Anti-Lapse Election. To the surviving primary beneficiary or beneficiaries, but if a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, that deceased primary beneficiary's share will pass to the surviving children or other descendants of that deceased primary beneficiary.

_____ (2) Surviving Primary Beneficiaries Election. To the surviving primary beneficiary or beneficiaries only. If a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

B. IF NO PRIMARY BENEFICIARY SURVIVES ME

(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If no primary beneficiary survives me, I grant and convey the share of the property that would have transferred to a deceased primary beneficiary, to have and hold forever, as follows:

_____ (1) Anti-Lapse Election. To the surviving children or other descendants of the deceased primary beneficiary, if the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents.

_____ (2) Surviving Alternate Beneficiaries Election. To the alternate beneficiary or beneficiaries designated above. If the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

If no primary beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but a deceased primary beneficiary is not a child or other descendant of mine or of one or both of my parents, I grant and convey to the alternate beneficiary or beneficiaries my share in the property that otherwise would have transferred to the deceased primary beneficiary, to have and hold forever. If I have not designated alternate beneficiaries, this transfer on death deed shall be considered cancelled by me.

C. IF AN ALTERNATE BENEFICIARY DOES NOT SURVIVE ME

(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If an alternate beneficiary does not survive me, I grant and convey that alternate beneficiary's share of the property as follows:

_____ (1) Anti-Lapse Election. To the surviving alternate beneficiary or beneficiaries, but if the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, that deceased alternate beneficiary's share will pass to the surviving children or other descendants of that deceased alternate beneficiary.

_____ (2) Surviving Alternate Beneficiaries Election. To the surviving alternate beneficiary or beneficiaries only. If the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased alternate beneficiary's share to pass to the children or other descendants of that deceased alternate beneficiary.

If no alternate beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but no deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, this transfer on death deed shall be considered cancelled by me.

7. Printed Name and Signature of Owner Making this Deed:

Printed name Date

Signature

BELOW LINE FOR NOTARY ONLY

Acknowledgment

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____,

by _____.

Notary Public, State of

After recording, return to:

(insert name and mailing address)

INSTRUCTIONS FOR TRANSFER ON DEATH DEED

DO NOT RECORD THESE INSTRUCTIONS

Instructions for Completing the Form

1. Owner (Transferor) Making this Deed: Enter your first, middle (if any), and last name here, along with your mailing address.

2. Legal Description of the Property: Enter the formal legal description of the property. This information is different from the mailing and physical address for the property and is necessary to complete the form. To find this information, look on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. Do NOT use your tax bill to find this information. If you are not absolutely sure, consult a lawyer.

3. Address of the Property: Enter the physical address of the property.

4. Primary Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property when you die. If you are married and want your spouse to get the property when you die, enter your spouse's first and last name (even if you and your spouse own the property together).

5. Alternate Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property if no primary beneficiary survives you.

6. Transfer on Death: You should carefully read the language describing the options and choose an option under both A and B of Paragraph 6, and if you have listed any alternate beneficiaries, choose an option under C of Paragraph 6 [No action needed].

7. Printed Name and Signature of Owner: Do not sign your name or enter the date until you are before a notary. Include your printed name.

8. Acknowledgment: This deed must be signed before a notary. The notary will fill out this section of the deed.

Amended by Acts 2017, 85th Legislature, Ch. 971 (SB 2150), effective September 1, 2017. See transitional note following Sec. 114.103.

CHAPTER 115. BENEFICIARY DESIGNATION FOR MOTOR VEHICLES

Sec. 115.001. DEFINITIONS.

In this chapter:

(1) "Beneficiary designation" means the designation by an owner of a motor vehicle of a beneficiary of the vehicle as provided by Section 501.0315, Transportation Code.

(2) "Designated beneficiary" means a person designated as a beneficiary of an owner's interest in a motor vehicle under Section 501.0315, Transportation Code.

(3) "Joint owner with right of survivorship" or "joint owner" means a person who owns a motor vehicle concurrently with one or more other persons with a right of survivorship. The term does not include an owner of community property with or without a right of survivorship.

(4) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(5) "Person" has the meaning assigned by Section 311.005, Government Code.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 115.002. BENEFICIARY DESIGNATION AUTHORIZED.

(a) An owner of a motor vehicle may transfer the owner's interest in the motor vehicle to a sole beneficiary effective on the owner's death by designating a beneficiary as provided by Section 501.0315, Transportation Code.

(b) A beneficiary designation is:

(1) subject to Section 115.003(b), revocable and may be changed at any time without the consent of the designated beneficiary as provided by Section 501.0315, Transportation Code;

(2) a nontestamentary instrument; and

(3) effective without:

(A) notice or delivery to or acceptance by the designated beneficiary during the owner's life; or

(B) consideration.

(c) A will may not revoke or supersede a beneficiary designation, regardless of when the will is made.

(d) A designated beneficiary may disclaim the designated beneficiary's interest in the motor vehicle as provided by Chapter 240, Property Code.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 115.003. JOINT OWNERSHIP.

(a) If a motor vehicle that is the subject of a beneficiary designation is owned by joint owners with right of survivorship, the beneficiary designation must be made by all of the joint owners.

(b) A beneficiary designation made by joint owners with right of survivorship:

(1) may be revoked or changed as provided by Section 501.0315, Transportation Code, only if it is revoked or changed by all of the joint owners; and

(2) may be revoked or changed by the last surviving joint owner as provided by Section 501.0315, Transportation Code.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 115.004. EFFECT OF BENEFICIARY DESIGNATION DURING OWNER'S LIFE.

During a motor vehicle owner's life, a beneficiary designation does not:

(1) affect an interest or right of the owner or owners making the designation, including the right to

transfer or encumber the motor vehicle that is the subject of the designation;

(2) create a legal or equitable interest in favor of the designated beneficiary in the motor vehicle that is the subject of the designation, even if the beneficiary has actual or constructive notice of the designation;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the owner or owners making the designation, even if the creditor has actual or constructive notice of the designation; or

(4) affect an owner's or the designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 115.005. EFFECT OF BENEFICIARY DESIGNATION AT OWNER'S OR LAST SURVIVING OWNER'S DEATH.

(a) On the death of the owner of a motor vehicle that is the subject of a beneficiary designation, the following rules apply to an interest in the motor vehicle:

(1) if the designated beneficiary survives the owner making the designation by 120 hours, the interest in the motor vehicle is transferred to the designated beneficiary; and

(2) if the designated beneficiary fails to survive the owner making the designation by 120 hours, the share of the designated beneficiary lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the beneficiary designation were a devise made in a will.

(b) If an owner is a joint owner with right of survivorship who is survived by one or more other joint owners, the motor vehicle that is the subject of the beneficiary designation belongs to the surviving joint owner or owners. If an owner is a joint owner with right of survivorship who is the last surviving joint owner, the beneficiary designation is effective.

(c) A designated beneficiary takes the motor vehicle subject to all encumbrances, assignments, contracts, liens, and other interests to which the vehicle is subject at the owner's or last surviving owner's death, as applicable. The transfer to the designated beneficiary does not affect the ability of a lienholder to pursue an existing means of debt collection permitted under the laws of this state.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 115.006. CREDITOR CLAIMS; ALLOWANCES IN LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES.

Sections 114.104(b), (c), and (d) and Section 114.106 apply to a transfer of an owner's interest in a motor vehicle by a beneficiary designation in the same manner and to the same extent as a transfer of real property under a transfer on death deed under Chapter 114.

Added by Acts 2017, 85th Legislature, Ch. 586 (SB 869), effective September 1, 2017.

Sec. 122.001. DEFINITIONS.

(1) "Beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement;

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual; [ø]

(H) by a transfer on death deed; or

(I) by a beneficiary designation as defined by Section 115.001.

(2) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 586 (SB 869), effective September 1, 2017.

Sec. 123.052. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS; TREATMENT OF FORMER SPOUSE AS BENEFICIARY UNDER CERTAIN POLICIES OR PLANS.

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a

divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) – (c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS.

(a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section 123.052(a).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Added by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 42 of HB 2271 provides: "Section 123.056, Estates Code, as added by this Act, applies to a trust created before, on, or after the effective date of this Act with respect to which the marriage of the settlors is dissolved on or after that date."

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS.

(a) In this section:

(1) "Beneficiary," "multiple-party account," "party," "P.O.D. account," and "P.O.D. payee" have the meanings assigned by Chapter 113.

(2) "Public retirement system" has the meaning assigned by Section 802.001, Government Code.

(3) "Relative" has the meaning assigned by Section 123.051.

(4) "Survivorship agreement" means an agreement described by Section 113.151.

(b) If ~~[, after]~~ a decedent ~~established [designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on]~~ a P.O.D. account or other multiple-party account and~~[,]~~ the decedent's marriage was later [is] dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death [the] designation provision or provision of a survivorship agreement with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent [on the account] is not effective as to that [the former] spouse or ~~[the former spouse's]~~ relative unless:

(1) the court decree dissolving the marriage;

(A) designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary; or

(B) reaffirms the survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse's relative;

(2) after the marriage was dissolved, the decedent:

(A) redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary; or

(B) reaffirmed the survivorship agreement in writing [after the marriage was dissolved]; or

(3) the former spouse or the former spouse's relative is designated to receive, or under the survivorship agreement would receive, the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c-1) If the provision of a survivorship agreement is not effective under Subsection (b), for purposes of determining the disposition of the decedent's interest in the account, the former spouse or former spouse's relative who would have received the decedent's interest if the provision were effective is treated as if that spouse or relative predeceased the decedent.

(d-1) A financial institution is not liable for payment of an account to a former spouse or the former spouse's relative as a party to the account, notwithstanding the fact that a designation or provision of a survivorship agreement

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 43 of HB 2271 provides: "Sections 123.151(a) and (b), Estates Code, as amended by this Act, and Section 123.151(c-1), as added by this Act, apply only to a multiple-party account for which the marriage of a party to the account is dissolved on or after the effective date of this Act." Sec. 44 of HB 2271 provides: "Section 123.151(d-1), Estates Code, as added by this Act, and Section 456.0045, Estates Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Sec. 124.001. DEFINITIONS.

(1) – (2) [No change.]

(3) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate because of the death of a person and

imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by former Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2601 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2601 or 2701(d)).

(4) – (6) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 201.054. ADOPTED CHILD.

(a) – (d) [No change.]

(e) For purposes of this section, "adopted child" means a child:

(1) adopted through an existing or former statutory procedure; or

(2) considered by a court to be equitably adopted or adopted by acts of estoppel.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 202.052. SERVICE OF CITATION BY PUBLICATION [~~WHEN RECIPIENT'S NAME OR ADDRESS IS NOT ASCERTAINABLE~~].

[No change to text of statute.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

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) if service of citation is waived under Section 202.056:

(i) the name of each person who waived citation under that section; and

(ii) if citation is waived under Section 202.056(b)(1), the name of the distributee and the

representative capacity of the person who waived citation required to be served on the distributee [Section 202.056].

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 45 of HB 2271 provides: "Section 202.057, Estates Code, as amended by this Act, applies only to an application for a proceeding to declare heirship that is filed on or after the effective date of this Act. An application for a proceeding to declare heirship 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."

Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF PERSONAL REPRESENTATIVE.

The distributees of the estate of a decedent who dies intestate are entitled to the decedent's estate without waiting for the appointment of a personal representative of the estate to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property, if:

(1) 30 days have elapsed since the date of the decedent's death;

(2) no petition for the appointment of a personal representative is pending or has been granted;

(3) the value of the estate assets on the date of the affidavit described by Subdivision (4), excluding homestead and exempt property, does not exceed \$75,000 [~~\$50,000~~];

(4) an affidavit that meets the requirements of Section 205.002 is filed with the clerk of the court that has jurisdiction and venue of the estate;

(5) the judge approves the affidavit as provided by Section 205.003; and

(6) the distributees comply with Section 205.004.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 46 of HB 2271 provides: "Section 205.001, Estates Code, as amended by this Act, applies to a small estate administration commenced on or after the effective date of this Act, regardless of the date of the decedent's death."

Sec. 251.001. WHO MAY EXECUTE WILL.

Under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a [last] will [~~and testament~~] if, at the time the will is made, the person:

- (1) is 18 years of age or older;
- (2) is or has been married; or
- (3) is 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 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 251.002. INTERESTS THAT MAY PASS BY WILL; DISINHERITANCE.

(a) Subject to limitations prescribed by law, a person competent to make a [last] will [~~and testament~~] may devise under the will [~~and testament~~] all the estate, right, title, and interest in property the person has at the time of the person's death.

(b) A person who makes a [last] will [~~and testament~~] may:

- (1) disinherit an heir; and
- (2) direct the disposition of property or an interest passing under the will or by intestacy.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED.

Except as otherwise provided by law, a [last] will [~~and testament~~] must be:

- (1) in writing;
- (2) signed by:
 - (A) the testator in person; or
 - (B) another person on behalf of the testator:
 - (i) in the testator's presence; and
 - (ii) under the testator's direction; and

(3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator's presence.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED.

A will [~~or testament~~] that meets the requirements of Section 251.051 may be made self-proved at:

- (1) the time of the execution of the will [~~or testament~~]; or
- (2) a later date during the lifetime of the testator and the witnesses.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 251.104. REQUIREMENTS FOR SELF-PROVING AFFIDAVIT.

(a) – (b) [No change.]

(c) The self-proving affidavit shall be attached or annexed to the will [~~or testament~~].

(d) An affidavit that is in substantial compliance with the form of the affidavit provided by Subsection (e), that is subscribed and acknowledged by the testator, and that is subscribed and sworn to by the attesting witnesses is sufficient to self-prove the will. No other affidavit or certificate of a testator is required to self-prove a will [~~or testament~~] other than the affidavit provided by Subsection (e).

(e) The form and content of the self-proving affidavit must be substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

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

forces of the United States, or the United States Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Testator

Witness

Witness

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

(SEAL)

(Signed) _____
(Official Capacity of Officer)

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL.

Notwithstanding any other provision of this subchapter, a will written wholly in the testator's handwriting may be made self-proved at any time during the testator's lifetime by the attachment or annexation to the will of an affidavit by the testator to the effect that:

- (1) the instrument is the testator's [~~last~~] will;
- (2) the testator was 18 years of age or older at the time the will was executed or, if the testator was younger than 18 years of age, that the testator:
 - (A) was or had been married; or
 - (B) was 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 at the time the will was executed;
- (3) the testator was of sound mind; and
- (4) the testator has not revoked the will.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 252.001. WILL DEPOSIT; CERTIFICATE.

(a) [No change.]

(a-1) An attorney, business entity, or other person in possession of a testator's will may deposit the will with the county clerk of the county of the testator's last

known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is not able to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(1) the name and last known address of the testator; and

(2) if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

(b) The county clerk shall receive and keep a ~~the~~ will deposited under this section on the payment of a \$5 fee.

(c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017. Sec. 14 of HB 2207 provides: "Sections 252.001 and 252.201, Estates Code, as amended by this Act, and Section 252.2015, Estates Code, as added by this Act, apply to a will deposited with or delivered to a clerk described by those sections on or after the effective date of this Act. A will deposited with or delivered to a clerk described by those sections before the effective date of this Act is governed by the law in effect on the date the will was deposited or delivered, and the former law is continued in effect for that purpose."

Sec. 252.002. SEALED WRAPPER REQUIRED.

(a) [No change.]

(b) The wrapper of a will deposited under Section 252.001(a) must be endorsed with:

(1) "Will of," followed by the name, address, and signature of the testator; and

(2) the name and current address of each person who is to be notified of the deposit of the will after the testator's death.

(c) The wrapper of a will deposited under Section 252.001(a-1) must be endorsed with:

(1) "Will of," followed by the name and last known address of the testator; and

(2) if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 252.101. NOTIFICATION BY COUNTY CLERK.

A county clerk shall notify~~[, by registered mail, return receipt requested,]~~ each person named on the endorsement of the will wrapper that the will is on deposit in the clerk's office if:

- (1) an affidavit is submitted to the clerk stating that the testator has died; or
- (2) the clerk receives other notice or proof of the testator's death sufficient to convince the clerk that the testator has died.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 252.104. NOTICE AND DELIVERY OF WILL TO EXECUTOR.

If a county clerk inspects a will under Section 252.103 and the will names an executor, the clerk shall:

- (1) notify the person named as executor~~[, by registered mail, return receipt requested,]~~ that the will is on deposit with the clerk; and
- (2) deliver, on request, the will to the person named as executor.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 252.105. NOTICE AND DELIVERY OF WILL TO DEVISEES.

(a) If a county clerk inspects a will under Section 252.103, the clerk shall notify ~~[by registered mail, return receipt requested,]~~ the devisees named in the will that the will is on deposit with the clerk if:

- (1) the will does not name an executor;
- (2) the person named as executor in the will:
 - (A) has died; or

(B) fails to take the will before the 31st day after the date the notice required by Section 252.104 is mailed to the person; or

(3) the notice mailed to the person named as executor is returned as undelivered.

(b) [No change.]

Sec. 252.151. DEPOSIT HAS NO LEGAL SIGNIFICANCE.

The provisions of Subchapter A providing for the deposit of a will with a county clerk ~~[during the lifetime of a testator]~~ are solely for the purpose of providing a safe and convenient repository for a will. For purposes of probate, a will deposited as

provided by Subchapter A may not be treated differently than a will that has not been deposited.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER WILL.

A will that is not deposited as provided by Subchapter A shall be admitted to probate on proof that the will is the last will ~~[and testament]~~ of the testator, notwithstanding the fact that the testator has a prior will that has been deposited in accordance with Subchapter A.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 252.201. WILL DELIVERY.

(a) On receiving notice of a testator's death, the person who has custody of the testator's will shall deliver the will to the clerk of the court that has jurisdiction of the testator's estate.

(b) The clerk of the court shall handle the will in the same manner prescribed by Subchapter A for a will deposited under Section 252.001 other than collection of a fee under Section 252.001(b).

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017. See transitional note following Sec. 252.001.

Sec. 252.2015. NOTICE AND DELIVERY OF WILL TO EXECUTOR OR DEVISEES.

(a) On the deposit of a will under Section 252.201 that names an executor, the clerk of the court shall:

- (1) notify the person named as executor in the manner prescribed by Section 252.104; and
- (2) deliver, on request, the will to the person named as executor.

(b) On the deposit of a will under Section 252.201, the clerk of the court shall notify the devisees named in the will in the manner prescribed by Section 252.105(a) if:

- (1) the will does not name an executor;
- (2) the person named as executor in the will:
 - (A) has died; or

(B) fails to take the will before the 31st day after the date the notice required by Subsection (a) is mailed to the person; or

(3) the notice mailed to the person named as executor is returned as undelivered.

(c) On request, the clerk of the court shall deliver the will to any or all of the devisees notified under Subsection (b).

Added by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017. See transitional note following Sec. 252.001.

Sec. 255.151. APPLICABILITY OF SUBCHAPTER.

This subchapter applies unless the testator's ~~[last]~~ will ~~[and testament]~~ provides otherwise. For example, a devise in the testator's will stating "to my surviving children" or "to such of my children as shall survive me" prevents the application of Sections 255.153 and 255.154.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 255.401. POSTHUMOUS CLASS GIFT MEMBERSHIP.

(a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of ~~[the testator's]~~ death of the person by which the class is measured and survives that person by ~~[for]~~ at least 120 hours.

(a-1) For purposes of this section, a ~~[A]~~ person is:

(1) considered to be in gestation ~~[at the time of the testator's death]~~ if insemination or implantation occurs at or before the time of ~~[the testator's]~~ death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured ~~[the testator's death]~~ if the person was born before the 301st day after the date of the person's ~~[testator's]~~ death.

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 47 of HB 2271 provides: "Section 255.401, Estates Code, as amended by this Act, and Section 112.011, Property Code, as added by this Act, apply to the estate of a decedent who dies before, on, or after the effective date of this Act."

Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED.

(a) Subject to the requirements of this section, on ~~[On]~~ the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or that the

personal representative be prohibited from performing acts that are required by the terms of the will, if:

(1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;

(2) the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or

(3) the order is necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent.

(a-1) A personal representative seeking to modify or reform a will under this section must file a petition on or before the fourth anniversary of the date the will was admitted to probate.

(b) [No change.]

(c) Chapter 123, Property Code, applies to a proceeding under Subsection (a) that involves a charitable trust.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 48 of HB 2271 provides: "Section 255.451, Estates Code, as amended by this Act, applies only to a petition filed on or after the effective date of this Act. A petition filed before that date is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose."

Sec. 256.003. PERIOD FOR ADMITTING WILL TO PROBATE; PROTECTION FOR CERTAIN PURCHASERS.

(a) [No change.]

(b) Except as provided by Section 501.006 with respect to a foreign will, letters testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death unless it is shown that the application for probate was filed on or before the fourth anniversary of the testator's death.

(c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 49 of HB 2271 provides: "Sections 256.003(b), 257.051(a), and 257.054, Estates Code, as amended by this Act, apply only to an application for the probate of a will or administration of a decedent's estate that is filed on or after the effective date of this Act. An application for the probate of a will or 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."

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF WILL.

(a) An application for the probate of a 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;

(1-a) the last three numbers of each applicant's driver's license number and social security number, if applicable;

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

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

(3) the fact, date, 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 of the executor named in the will or other person to whom the applicant desires that letters be issued;

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

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

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

(12) 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 2017, 85th Legislature, Ch. 1039 (HB 1814), effective September 1, 2017. Sec. 4 of

HB 1814 provides: "Sections 256.052(a), 257.051(a), and 301.052, Estates Code, as amended by this Act, apply only to an application for the probate of a will or for letters of administration that is filed on or after the effective date of this Act. An application for the probate of a will or for letters of administration 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."

Sec. 257.051. CONTENTS OF APPLICATION GENERALLY.

(a) An application for the probate of a will as a muniment of title 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;

(1-a) the last three numbers of each applicant's driver's license number and social security number, if applicable;

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

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

(3) the fact, date, 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 of the executor named in the will;

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

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

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

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

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. See transitional note following Sec. 256.003.

Amended by Acts 2017, 85th Legislature, Ch. 1039 (HB 1814), effective September 1, 2017. See transitional note following Sec. 256.052.

Sec. 257.054. PROOF REQUIRED.

An applicant for the probate of a will as a muniment of title must prove to the court's satisfaction that:

- (1) the testator is dead;
- (2) four years have not elapsed since the date of the testator's death and before the application;
- (3) the court has jurisdiction and venue over the estate;
- (4) citation has been served and returned in the manner and for the period required by this title;
- (5) the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;
- (6) the testator did not revoke the will; and
- (7) if the will is not self-proved in the manner provided by this title, the testator:
 - (A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and
 - (B) at the time of executing the will was of sound mind and:
 - (i) was 18 years of age or older;
 - (ii) was or had been married; or
 - (iii) was 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 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. See transitional note following Sec. 256.003.

Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION.

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

(1) the applicant's name, domicile, and, if any, relationship to the decedent;

(1-a) the last three numbers of:

(A) the applicant's driver's license number, if applicable; and

(B) the applicant's social security number, if applicable;

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

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

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

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

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

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

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

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

(9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and

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

(b) If an applicant does not state the last three numbers of the decedent's driver's license number or social security number under Subsection (a)(2-a), the application must state the reason the numbers are not stated.

Amended by Acts 2017, 85th Legislature, Ch. 1039 (HB 1814), effective September 1, 2017. See transitional note following Sec. 256.052.

~~[Sec. 303.003. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE.] [Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), Sec. 38, effective September 1, 2017.

Sec. 305.108. FORM OF BOND.

The following form, or a form with the same substance, may be used for the bond of a personal representative:

The State of Texas

County of _____

Know all persons by these presents that we, _____ (insert name of each principal), as principal, and _____ (insert name of each surety), as sureties, are held and firmly bound unto the judge of _____ (insert reference to appropriate judge), and that judge's successors in office, in the sum of _____ dollars, conditioned that the above bound principal or principals, appointed as _____ (insert "executor of the [last] will [and testament]," "administrator with the will annexed of the estate," "administrator of the estate," or "temporary administrator of the estate," as applicable) of _____ (insert name of decedent), deceased, shall well and truly perform all of the duties required of the principal or principals by law under that appointment.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 308.051. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL.

(a) Within one month after receiving letters testamentary or of administration, a personal representative of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law by:

(1) having the notice published in a newspaper of general circulation ~~[printed]~~ in the county in which the letters were issued; and

(2) if the decedent remitted or should have remitted taxes administered by the comptroller, sending the notice to the comptroller by certified or registered mail.

(b) [No change.]

(c) If there is no [a] newspaper of general circulation ~~[is not printed]~~ in the county in which the letters testamentary or of administration were issued, the notice must be posted and the return made and filed as otherwise required by this title.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 309.0575. PENALTY FOR MISREPRESENTATION IN AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

(a) The court, on its own motion or on motion of any person interested in the estate, and after an independent executor has been cited to answer at a time and place fixed in the notice, may fine an independent executor in an amount not to exceed \$1,000 if the court finds that the executor misrepresented in an affidavit in lieu of the inventory, appraisal, and list of claims filed by the executor that all beneficiaries, other than those described by Section 309.056(b-1), received a verified, full, and detailed inventory and appraisal as required by Section 309.056(b).

(b) The independent executor and the executor's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the executor's misrepresentation. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

Amended by Acts 2017, 85th Legislature, Ch. 1043 (HB 1877), effective September 1, 2017. Sec. 2 of HB 1877 provides: "Section 309.0575, Estates Code, as added by this Act, applies 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. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS IN CERTAIN ESTATE ASSETS.

Except as required by Sections 2055 and 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and 2056), the frequency and method of determining the distributees' ~~[beneficiaries']~~ respective interests in the undistributed assets of an estate are in the sole and absolute discretion of the executor of the estate. The executor may consider all relevant factors, including administrative convenience and expense and the interests of the various distributees ~~[beneficiaries]~~ of the estate, to reach a fair and equitable result among distributees ~~[beneficiaries]~~.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 359.001. ACCOUNT OF ESTATE REQUIRED.

(a) Not later than the 60th day after ~~[On]~~ the first anniversary of ~~[expiration of 12 months from]~~ the date a personal representative qualifies and receives letters testamentary or of administration to administer a decedent's estate under court order, unless the court authorizes an extension, the representative shall file with the court an account consisting of a written exhibit made under oath that lists all claims against the estate presented to the representative during the 12-month period following the representative's qualification and receipt of letters ~~[covered by the account]~~. The exhibit must specify:

- (1) the claims allowed by the representative;
- (2) the claims paid by the representative;
- (3) the claims rejected by the representative and the date the claims were rejected; and
- (4) the claims for which a lawsuit has been filed and the status of that lawsuit.

(b) – (c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 50 of HB 2271 provides: "Sections 359.001(a) and 359.002(a), Estates Code, as amended by this Act, apply to an account filed on or after the effective date of this Act, regardless of whether the personal representative was appointed before, on, or after that date."

Sec. 359.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.

(a) Not later than the 60th day after each anniversary of the date a personal representative of the estate of a decedent qualifies and receives letters testamentary or of administration to administer the decedent's estate under court order, unless the court authorizes an extension, the ~~[Each personal]~~ representative ~~[of the estate of a decedent]~~ shall ~~[continue to]~~ file an annual account conforming to the essential requirements of Section 359.001 regarding changes in the estate assets occurring during the 12-month period after ~~[since]~~ the date the most recent previous account was filed.

(b) – (c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. See transitional note following Sec. 359.001.

Sec. 361.052. REMOVAL WITH NOTICE.

(a) The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set ~~[fixed]~~ in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

(4) the representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the representative's duties;

(5) the representative:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the representative's trust; or

(6) the representative, as executor or administrator, fails to:

~~[(A)]~~ make a final settlement by the third anniversary of the date letters testamentary or of administration are granted, unless that period is extended by the court on a showing of sufficient cause supported by oath~~[-or]~~

~~[(B) timely file the affidavit or certificate required by Section 308.004].~~

(b) If a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004, the court, on the court's own motion, may remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by certified mail, return receipt requested, to:

(1) the representative's last known address;
and

(2) the last known address of the representative's attorney of record.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 1(g) of SB 39 provides: "Sections 361.052 and 404.0035, Estates Code, as amended by this section, apply to the estate of a decedent who dies before, on, or after the effective date of this Act."

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT.

- (a) [No change.]
- (b) Citation issued under Subsection (a) must:
 - (1) contain:

(A) a statement that an account for final settlement has been presented;

(B) the time and place the court will consider the account; and

(C) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given to each heir or distributee [~~beneficiary~~] of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service to be given.

- (c) – (f) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

~~**[Sec. 362.010. PAYMENT OF INHERITANCE TAXES REQUIRED.]**~~ [*Repealed*]

Repealed by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), Sec. 38, effective September 1, 2017.

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 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 any general or specific authority regarding the power of the independent executor to sell property that may be consented to by the distributees [~~beneficiaries~~] who are to receive any interest in the property in the application for independent administration or for the appointment of an independent executor or in their consents to the independent administration or to the appointment of an independent executor. The independent executor, in such event, may sell the property under the authority granted in the court order without the further consent of those distributees [~~beneficiaries~~].

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

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 intention to the independent executor, requiring answering at a time and place set in the 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, appraisal, and list of claims, unless that deadline is extended by court order; or

(3) fails to timely file the affidavit or certificate required by Section 308.004.

(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 set [~~fixed~~] in the notice, may remove an independent executor when:

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

(2) [~~the independent executor fails to timely file the affidavit or certificate required by Section 308.004;~~

[~~3~~] the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(3) [~~4~~] 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

(4) [~~5~~] the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 361.052.

Sec. 405.0015. DISTRIBUTIONS GENERALLY.

Unless the will, if any, or a court order provides otherwise, an independent executor may, in distributing property not specifically devised that the independent executor is authorized to sell:

(1) make distributions in divided or undivided interests;

(2) allocate particular assets in proportionate or disproportionate shares;

(3) value the estate property for the purposes of acting under Subdivision (1) or (2); and

(4) adjust the distribution, division, or termination for resulting differences in valuation.

Added by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017. Sec. 51 of HB 2271 provides: "Section 405.0015, Estates Code, as added by this Act, applies to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act."

Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR.

(a) [No change.]

(b) On the filing of an action under this section, each distributee [~~beneficiary~~] of the estate shall be personally served with citation, except for a distributee [~~beneficiary~~] who has waived the issuance and service of citation.

(c) [No change.]

(d) On or before filing an action under this section, the independent executor must distribute to the distributees [~~beneficiaries~~] of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS.

Not later than the seventh business day [~~Within a reasonable time~~] after the date an eligible institution receives [~~receiving~~] a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, the [~~an~~] eligible institution shall disburse the funds and close the account in compliance with the instructions.

Amended by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 456.0045. PRIVATE CAUSE OF ACTION.

(a) If an eligible institution violates Section 456.003, a person aggrieved by the violation may bring an action against the eligible institution to:

(1) obtain declaratory or injunctive relief to enforce the section; and

(2) recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer's death.

(b) A person who prevails in an action under this section may recover court costs and reasonable attorney's fees.

Added by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Attachment 11 – 2017 Amendments to the Texas Estates Code (Powers of Attorney)

[The following excerpts reflect amendments made by HB 1974, SB 39, and SB 1193.]

Sec. 751.0015. APPLICABILITY OF SUBTITLE.

This subtitle applies to all durable powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. Sec. 16 of HB 1974 provides:

“(a) Except as otherwise provided by this Act, this Act applies to:

“(1) a durable power of attorney, including a statutory durable power of attorney, created before, on, or after the effective date of this Act; and

“(2) a judicial proceeding concerning a durable power of attorney pending on, or commenced on or after, the effective date of this Act.

“(b) The following provisions apply only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act:

“(1) Section 751.024, Estates Code, as added by this Act;

“(2) Subchapter A-2, Chapter 751, Estates Code, as added by this Act;

“(3) Subchapters B, C, and D, Chapter 751, Estates Code, as amended by this Act; and

“(4) Chapter 752, Estates Code, as amended by this Act.

“(c) A durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the provisions specified in Subsections (b)(3) and (4) of this section as those provisions existed on the date the

durable power of attorney was executed, and the former law is continued in effect for that purpose.

“(d) If the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before the effective date of this Act or would prejudice the rights of a party to the proceeding, the provision of this Act does not apply and the former law continues in effect for that purpose and applies in those circumstances.

“(e) An act performed by a principal or agent with respect to a durable power of attorney before the effective date of this Act is not affected by this Act.”

Sec. 751.002. DEFINITIONS [DEFINITION OF DURABLE POWER OF ATTORNEY].

In this subtitle:

(1) "Actual knowledge" means the knowledge of a person without that person making any due inquiry, and without any imputed knowledge, except as expressly set forth in Section 751.211(c).

(2) "Affiliate" means a business entity that directly or indirectly controls, is controlled by, or is under common control with another business entity.

(3) "Agent" includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(4) "Durable power of attorney" means a writing or other record that complies with the requirements of Section 751.0021(a) or is described by Section 751.0021(b).

(5) "Principal" means an adult person who signs or directs the signing of the person's name on a power of attorney that designates an agent to act on the person's behalf.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR PURPOSES OF DURABLE POWER OF ATTORNEY.

Unless otherwise defined by a durable power of attorney, a person is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the person, the person is determined to be mentally incapable of managing the person's financial affairs.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY.

(a) An instrument is a durable power of attorney for purposes of this subtitle if the [A "durable power of attorney" means a written] instrument [that]:

(1) is a writing or other record that designates another person as [attorney in fact or] agent and grants authority to that agent to act in the place of the principal, regardless of whether the term "power of attorney" is used;

(2) is signed by an adult principal or in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument;

(3) contains:

(A) the words:

(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or

(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that clearly indicate [show the principal's intent] that the authority conferred on the [attorney in fact or] agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths.

(b) If the law of a jurisdiction other than this state determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term "power of attorney" is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under this subtitle.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE.

A signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal as authorized by Section 751.0021(a)(2) is presumed to be genuine, and the durable power of attorney is presumed to have been executed under Section 751.0021(a) if the officer taking the acknowledgment has complied with the requirements of Section 121.004(b), Civil Practice and Remedies Code.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.0023. VALIDITY OF POWER OF ATTORNEY.

(a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.0021(a).

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.0024; or

(2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY.

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by:

(1) the law of the jurisdiction of the principal's domicile, if the principal's domicile is indicated in the power of attorney; or

(2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal's domicile is not indicated in the power of attorney.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform to the fullest extent possible the law with respect to the subject of this subtitle among states enacting these provisions.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

[Sec. 751.004. DURATION OF DURABLE POWER OF ATTORNEY.] [Repealed]

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.006. REMEDIES UNDER OTHER LAW [RIGHTS CUMULATIVE].

The remedies [~~rights set out~~] under this chapter [~~subtitle~~] are not exclusive and do not abrogate any right or remedy under any law of this state other than this chapter [~~cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and are not in derogation of those rights~~].

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.007. CONFLICT WITH OR EFFECT ON OTHER LAW.

This subtitle does not:

(1) supersede any other law applicable to financial institutions or other entities, and to the extent

of any conflict between this subtitle and another law applicable to an entity, the other law controls; or

(2) have the effect of validating a conveyance of an interest in real property executed by an agent under a durable power of attorney if the conveyance is determined under a statute or common law to be void but not voidable.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

SUBCHAPTER A-1. APPOINTMENT OF AGENTS

Sec. 751.021. CO-AGENTS.

A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT.

Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.023. SUCCESSOR AGENTS.

(a) A principal may designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve.

(b) A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

(c) Unless the durable power of attorney otherwise provides, a successor agent:

(1) has the same authority as the authority granted to the predecessor agent; and

(2) is not considered an agent under this subtitle and may not act until all predecessor agents, including co-agents, to the successor agent have

resigned, died, or become incapacitated, are not qualified to serve, or have declined to serve.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT.

Unless the durable power of attorney otherwise provides, an agent is entitled to:

(1) reimbursement of reasonable expenses incurred on the principal's behalf; and

(2) compensation that is reasonable under the circumstances.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN LIMITATIONS.

(a) Subject to Subsections (b), (c), and (d) and Section 751.032, if a durable power of attorney grants to an agent the authority to perform all acts that the principal could perform, the agent has the general authority conferred by Subchapter C, Chapter 752.

(b) An agent may take the following actions on the principal's behalf or with respect to the principal's property only if the durable power of attorney designating the agent expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) create, amend, revoke, or terminate an inter vivos trust;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation;

or

(5) delegate authority granted under the power of attorney.

(c) Notwithstanding a grant of authority to perform an act described by Subsection (b), unless the durable power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise authority under the power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of

survivorship, beneficiary designation, disclaimer, or otherwise.

(d) Subject to Subsections (b) and (c) and Section 751.032, if the subjects over which authority is granted in a durable power of attorney are similar or overlap, the broadest authority controls.

(e) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether:

(1) the property is located in this state; and

(2) the authority is exercised in this state or the power of attorney is executed in this state.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.032. GIFT AUTHORITY.

(a) In this section, a gift for the benefit of a person includes a gift to:

(1) a trust;

(2) an account under the Texas Uniform Transfers to Minors Act (Chapter 141, Property Code) or a similar law of another state; and

(3) a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) Unless the durable power of attorney otherwise provides, a grant of authority to make a gift is subject to the limitations prescribed by this section.

(c) Language in a durable power of attorney granting general authority with respect to gifts authorizes the agent to only:

(1) make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed:

(A) the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code of 1986, regardless of whether the federal gift tax exclusion applies to the gift; or

(B) if the principal's spouse agrees to consent to a split gift as provided by Section 2513, Internal Revenue Code of 1986, twice the annual federal gift tax exclusion limit; and

(2) consent, as provided by Section 2513, Internal Revenue Code of 1986, to the splitting of a gift made by the principal's spouse in an amount per donee

not to exceed the aggregate annual federal gift tax exclusions for both spouses.

(d) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if the agent actually knows those objectives. If the agent does not know the principal's objectives, the agent may make a gift of the principal's property only as the agent determines is consistent with the principal's best interest based on all relevant factors, including the factors listed in Section 751.122 and the principal's personal history of making or joining in making gifts.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN BENEFICIARY DESIGNATIONS.

(a) Unless the durable power of attorney otherwise provides, and except as provided by Section 751.031(c), authority granted to an agent under Section 751.031(b)(4) empowers the agent to:

(1) create or change a beneficiary designation under an account, contract, or another arrangement that authorizes the principal to designate a beneficiary, including an insurance or annuity contract, a qualified or nonqualified retirement plan, including a retirement plan as defined by Section 752.113, an employment agreement, including a deferred compensation agreement, and a residency agreement;

(2) enter into or change a P.O.D. account or trust account under Chapter 113; or

(3) create or change a nontestamentary payment or transfer under Chapter 111.

(b) If an agent is granted authority under Section 751.031(b)(4) and the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

(c) If an agent is not granted authority under Section 751.031(b)(4) but the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides and notwithstanding Section 751.031, the agent's authority to designate the agent as a beneficiary is subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.034. INCORPORATION OF AUTHORITY.

(a) an agent has authority described in this chapter if the durable power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Chapter 752 or cites the section in which the authority is described.

(b) A reference in a durable power of attorney to general authority with respect to the descriptive term for a subject in Chapter 752 or a citation to one of those sections incorporates the entire section as if the section were set out in its entirety in the power of attorney.

(c) A principal may modify authority incorporated by reference.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.051. EFFECT OF ACTS PERFORMED BY ~~[ATTORNEY IN FACT OR] AGENT [DURING PRINCIPAL'S DISABILITY OR INCAPACITY].~~

An ~~[Each]~~ act performed by an ~~[attorney in fact or] agent~~ under a durable power of attorney ~~[during a period of the principal's disability or incapacity]~~ has the same effect~~[s]~~ and inures to the benefit of and binds the principal and the principal's successors in interest~~[s]~~ as if the principal had performed the act ~~[were not disabled or incapacitated].~~

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Amendment of Sec. 751.052 by SB 39:

Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE.

(a) If, after execution of a durable power of attorney, a court ~~[of the principal's domicile]~~ appoints a:

(1) permanent guardian of the estate for a ward who is ~~[of]~~ the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to ~~[of]~~ the attorney in fact or agent named in the power of attorney are automatically revoked; or

(2) temporary guardian of the estate for a ward who is the principal who executed the power of

attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:

(A) affirms and states the effectiveness of the power of attorney; and

(B) confirms the validity of the appointment of the named attorney in fact or agent [terminate on the qualification of the guardian of the estate].

(b) If the powers and authority of an [The] attorney in fact or agent are revoked as provided by Subsection (a), the attorney in fact or agent shall:

(1) deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the attorney in fact or agent; and

(2) account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.

~~[(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.]~~

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(a) of SB 39 provides: "Sections 751.052, 751.054(a), and 751.055(a), Estates Code, as amended by this Act, and Chapter 753, Estates Code, as added by this Act, apply to a durable power of attorney, including a statutory durable power of attorney, executed before, on, or after the effective date of this Act."

Sec. 751.052 was also amended by Sec. 6 of HB 1974 and moved to Sec. 751.133 (below).

~~**[Sec. 751.053. EFFECT OF PRINCIPAL'S DIVORCE OR MARRIAGE ANNULMENT IF FORMER SPOUSE IS ATTORNEY IN FACT OR AGENT.] [Repealed]**~~

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

Amendment of Sec. 751.054 by SB 39:

Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER; GOOD-FAITH ACTS.

(a) The revocation by, the death of, or the qualification of a temporary or permanent guardian of the estate of a principal who has executed a durable power of attorney or the removal of an attorney in fact or agent under Chapter 753 does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination or suspension, as applicable, of the power by:

(1) the revocation;

(2) the principal's death; [ø]

(3) the qualification of a temporary or permanent guardian of the estate of the principal; or

(4) the attorney in fact's or agent's removal.

(b) – (c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 751.052.

Repeal of Sec. 751.054 by HB 1974:

~~**[Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER; GOOD-FAITH ACTS.] [Repealed]**~~

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

Note that Gov't. Code Sec. 311.025(b) (part of the Code Construction Act) provides that if amendments to the same statute are enacted at the same session without referencing each other, they shall be harmonized, if possible, and if irreconcilable, the last enacted prevails. Sec. 311.025(d) provides that the date of enactment is the date of the last legislative vote on a bill. The last vote on SB 39, amending the section, was May 25th, while the last vote on HB 1974, repealing the section, was May 26th. If you believe the two provisions are irreconcilable, then the section is repealed.

Amendment of Sec. 751.055 by SB 39:

Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF TERMINATION OF POWER OR OF DISABILITY OR INCAPACITY; GOOD-FAITH RELIANCE.

(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power

of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination or suspension of the power, as applicable, by revocation, the principal's death, the principal's divorce or the annulment of the principal's marriage if the attorney in fact or agent was the principal's spouse, ~~[or]~~ the qualification of a temporary or permanent guardian of the estate of the principal, or the attorney in fact's or agent's removal, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation, nonsuspension, or nontermination of the power at that time.

(b) – (d) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 751.052.

Repeal of Sec. 751.055 by HB 1974:

~~[Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF TERMINATION OF POWER OR OF DISABILITY OR INCAPACITY; GOOD-FAITH RELIANCE.] [Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

See also transitional note following Sec. 751.054.

~~[Sec. 751.056. NONLIABILITY OF THIRD PARTY ON GOOD-FAITH RELIANCE.] [Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING.

(a) The filing of a voluntary or involuntary petition in bankruptcy in connection with the debts of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the principal's ~~[attorney in fact or]~~ agent.

(b) Any act the ~~[attorney in fact or]~~ agent may undertake with respect to the principal's property is subject to the limitations and requirements of the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) until a final determination is made in the bankruptcy proceeding.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

~~[Sec. 751.058. EFFECT OF REVOCATION OF DURABLE POWER OF ATTORNEY ON THIRD PARTY.] [Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), Sec. 15, effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.101. FIDUCIARY DUTIES.

A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 ~~[An attorney in fact or agent]~~ is a fiduciary as to the principal only when acting as an agent under the power of attorney and has a duty to inform and to account for actions taken under the power of attorney.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL.

(a) The ~~[attorney in fact or]~~ agent shall timely inform the principal of each action taken under a durable ~~[the]~~ power of attorney.

(b) Failure of an ~~[attorney in fact or]~~ agent to timely inform, as to third parties, does not invalidate any action of the ~~[attorney in fact or]~~ agent.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.103. MAINTENANCE OF RECORDS.

(a) The ~~[attorney in fact or]~~ agent shall maintain records of each action taken or decision made by the ~~[attorney in fact or]~~ agent.

(b) The ~~[attorney in fact or]~~ agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.104. ACCOUNTING.

(a) The principal may demand an accounting by the ~~[attorney in fact or]~~ agent.

(b) Unless otherwise directed by the principal, an accounting under Subsection (a) must include:

(1) the property belonging to the principal that has come to the ~~[attorney in fact's or]~~ agent's knowledge or into the ~~[attorney in fact's or]~~ agent's possession;

(2) each action taken or decision made by the ~~[attorney in fact or]~~ agent;

(3) a complete account of receipts, disbursements, and other actions of the ~~[attorney in fact or]~~ agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(4) a listing of all property over which the ~~[attorney in fact or]~~ agent has exercised control that includes:

(A) an adequate description of each asset; and

(B) the asset's current value, if the value is known to the ~~[attorney in fact or]~~ agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the ~~[attorney in fact or]~~ agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the ~~[attorney in fact or]~~ agent shall also provide to the principal all documentation regarding the principal's property.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT.

If the ~~[attorney in fact or]~~ agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the ~~[attorney in fact or]~~ agent to deliver the accounting or the assets; or

(2) terminate the durable power of attorney.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS.

This subchapter does not limit the right of the principal to terminate the durable power of attorney or

to make additional requirements of or to give additional instructions to the ~~[attorney in fact or]~~ agent.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

SUBCHAPTER C-1. OTHER DUTIES OF AGENT

Sec. 751.121. DUTY TO NOTIFY OF BREACH OF FIDUCIARY DUTY BY OTHER AGENT.

(a) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

(b) Except as otherwise provided by Subsection (a) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN.

An agent shall preserve to the extent reasonably possible the principal's estate plan to the extent the agent has actual knowledge of the plan if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(1) the value and nature of the principal's property;

(2) the principal's foreseeable obligations and need for maintenance;

(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(4) eligibility for a benefit, a program, or assistance under a statute or regulation.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

**SUBCHAPTER C-2. DURATION OF DURABLE
POWER OF ATTORNEY AND AGENT'S
AUTHORITY**

**Sec. 751.131. TERMINATION OF DURABLE
POWER OF ATTORNEY.**

A durable power of attorney terminates when:

- (1) the principal dies;
- (2) the principal revokes the power of attorney;
- (3) the power of attorney provides that it terminates;
- (4) the purpose of the power of attorney is accomplished;
- (5) one of the circumstances with respect to an agent described by Section 751.132(a)(1), (2), or (3) arises and the power of attorney does not provide for another agent to act under the power of attorney; or
- (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Section 751.133.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

**Sec. 751.132. TERMINATION OF AGENT'S
AUTHORITY.**

(a) An agent's authority under a durable power of attorney terminates when:

- (1) the principal revokes the authority;
- (2) the agent dies, becomes incapacitated, is no longer qualified, or resigns;
- (3) the agent's marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court, unless the power of attorney otherwise provides; or
- (4) the power of attorney terminates.

(b) Unless the durable power of attorney otherwise provides, an agent's authority may be exercised until the agent's authority terminates under Subsection (a), notwithstanding a lapse of time since the execution of the power of attorney.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.052 was amended by Sec. 6 of HB 1974 and moved to Sec. 751.133. Sec. 751.052 was also amended by SB 39. The following is the text as amended by both bills:

**Sec. 751.133 [751.052]. RELATION OF
[ATTORNEY IN FACT OR] AGENT TO COURT-
APPOINTED GUARDIAN OF ESTATE.**

(a) If, after execution of a durable power of attorney, a court [~~of the principal's domicile~~] appoints a:

(1) permanent guardian of the estate for a ward who is [~~of~~] the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to [~~of~~] the [~~attorney in fact or~~] agent named in the power of attorney are automatically revoked; or

(2) temporary guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:

(A) affirms and states the effectiveness of the power of attorney; and

(B) confirms the validity of the appointment of the named attorney in fact or agent [~~terminate on the qualification of the guardian of the estate~~].

(b) If the powers and authority of an [~~The~~] attorney in fact or agent are revoked as provided by Subsection (a), the attorney in fact or agent shall:

(1) deliver to the guardian of the estate all assets of the incapacitated person's [~~ward's~~] estate that are in the possession of the [~~attorney in fact or~~] agent; and

(2) account to the guardian of the estate as the [~~attorney in fact or~~] agent would account to the principal if the principal had terminated the powers of the [~~attorney in fact or~~] agent.

~~[(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.]~~

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional notes following Secs. 751.0015 and 751.052.

Sec. 751.134. EFFECT ON CERTAIN PERSONS OF TERMINATION OF DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY.

Termination of an agent's authority or of a durable power of attorney is not effective as to the agent or another person who, without actual knowledge of the termination, acts in good faith under or in reliance on the power of attorney. An act performed as described by this section, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.135. PREVIOUS DURABLE POWER OF ATTORNEY CONTINUES IN EFFECT UNTIL REVOKED.

The execution of a durable power of attorney does not revoke a durable power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other durable powers of attorney are revoked.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS.

A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, including a reverse mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, including a home equity lien, or other claim or right to real property, must be recorded in the office of the county clerk of the county in which the property is located not later than the 30th day after the date the instrument is filed for recording.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS.

(a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

(1) accept the power of attorney; or

(2) before accepting the power of attorney:

(A) request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented, except as provided by Subsection (c); or

(B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests:

(1) an agent's certification must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification; and

(2) an opinion of counsel must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested opinion.

(c) An agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED.

A person who is asked to accept a durable power of attorney under Section 751.201 may not require that:

(1) an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person; or

(2) the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by Section 751.151 or another law of this state.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.203. AGENT'S CERTIFICATION.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal, the person to whom the power of attorney is presented may request that the certification include a written statement from a physician attending the principal that states that the principal is presently disabled or incapacitated.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the

occurrence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____.

Date: _____, 20____.

(signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.204. OPINION OF COUNSEL.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the opinion later than the 10th business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.205. ENGLISH TRANSLATION.

(a) Before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an English translation of the power of attorney.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an English translation requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the translation later than the fifth business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not

required to, provide the translation, at the requestor's expense.

Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE.

A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) material loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act would violate the terms of:

(i) a business entity's governing documents; or

(ii) an agreement affecting a business entity, including how the entity's business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and

Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE REQUIRED.

(a) Except as provided by Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3):

(1) the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); and

(2) the person refusing to accept the power of attorney is not required to provide any additional explanation for refusing to accept the power of attorney.

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.208. DATE OF ACCEPTANCE.

A durable power of attorney is considered accepted by a person under Section 751.201 on the first day the person agrees to act at the agent's direction under the power of attorney.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.209. GOOD FAITH RELIANCE ON DURABLE POWER OF ATTORNEY.

(a) A person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal or of another adult directed by the principal to sign the principal's name as authorized by Section 751.0021 is not genuine may rely on the presumption under Section 751.0022 that the signature is genuine and that the power of attorney was properly executed.

(b) A person who in good faith accepts a durable power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the power of attorney as if:

(1) the power of attorney were genuine, valid, and still in effect;

(2) the agent's authority were genuine, valid, and still in effect; and

(3) the agent had not exceeded and had properly exercised the authority.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION.

A person may rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the person under this subchapter.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS CONDUCTED THROUGH EMPLOYEES.

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this chapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

(c) For purposes of this chapter, a person is considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney has actual knowledge of the fact.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE POWER OF ATTORNEY.

(a) The principal or an agent acting on the principal's behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court, as the exclusive remedy under this chapter:

(1) shall order the person to accept the power of attorney; and

(2) may award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and

necessary attorney's fees as the exclusive remedy under this chapter.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 751.213. LIABILITY OF PRINCIPAL.

(a) Subsection (b) applies to an action brought under Section 751.212 if:

(1) the court finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;

(2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under this chapter; or

(3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

(b) Under any of the circumstances described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action as the exclusive remedy under this chapter.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

SUBCHAPTER F. CIVIL REMEDIES

Sec. 751.251. JUDICIAL RELIEF.

(a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

(1) the principal or the agent;

(2) a guardian, conservator, or other fiduciary acting for the principal;

(3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;

(4) a governmental agency with regulatory authority to protect the principal's welfare; and

(5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.

(b) A person who is asked to accept a durable power of attorney may bring an action requesting a

court to construe, or determine the validity or enforceability of, the power of attorney.

(c) On the principal's motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

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. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

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, is removed by court order, 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. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) [~~(N)~~] AND IGNORE THE LINES IN FRONT OF THE

OTHER POWERS LISTED IN (A) THROUGH (N) [~~(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.

- ___ (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) Digital assets and the content of an electronic communication;

___ (O) [~~(N)~~] ALL OF THE POWERS LISTED IN (A) THROUGH (N) [~~(M)~~]. YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O) [~~(N)~~].

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

___ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

___ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

___ Each of my co-agents may act independently for me.

___ My co-agents may act for me only if the co-agents act jointly.

___ My co-agents may act for me only if a majority of the co-agents act jointly.

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 BELOW [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES [~~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. Termination [Revocation] of this [the] durable power of attorney is not effective as to a third party until the third party has actual knowledge [receives actual notice] of the termination [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. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated [legally disabled], resigns, [~~or~~] refuses to act, or is removed by court order, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), 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, suspended, 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 or suspends 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 or declaration that your marriage is void, unless otherwise provided in this power of attorney;

(5) the appointment and qualification of a permanent guardian of the principal's estate unless a court order provides otherwise; or

(6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise [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 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(b) of SB 39 provides: "Section 752.051, Estates Code, as amended by this Act, applies to a statutory durable power of attorney executed on or after the effective date of this Act. A statutory durable power of attorney executed before the effective date of this Act is governed by the law as it existed on the date the statutory durable power of attorney was executed, and the former law is continued in effect for that purpose."

Amended by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017.

Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC AUTHORITY.

The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.031(b) by including the following language:

"GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

_____ Create, amend, revoke, or terminate an inter vivos trust

Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney

Create or change rights of survivorship

Create or change a beneficiary designation

Authorize another person to exercise the authority granted under this power of attorney".

Added by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.102. REAL PROPERTY TRANSACTIONS.

(a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the ~~[attorney in fact or]~~ agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate~~[- by, for example:~~

~~[(i) entering into a lease for oil, gas, and mineral purposes;~~

~~[(ii) making contracts for development of the mineral estate; or~~

~~[(iii) making pooling and unitization agreements];~~

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; ~~and]~~

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(D) conducting or contracting for the conducting of seismic evaluation operations;

(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;

(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;

(I) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;

(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and

(L) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals; and

(10) designate the property that constitutes the principal's homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50,

Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.108. INSURANCE AND ANNUITY TRANSACTIONS.

(a) [No change.]

(b) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [An attorney in fact or] agent may be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the extent the [attorney in fact or] agent was named as a beneficiary [under a contract procured] by the principal [before executing the power of attorney].

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS.

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the [attorney in fact or] agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to:

(A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or

(B) remove, substitute, or surcharge a fiduciary;

(4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE.

The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the [~~attorney in fact or~~] agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:

(A) providing living quarters by purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1):

(A) normal domestic help;

(B) usual vacations and travel expenses;

and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the [~~attorney in fact or~~] agent considers desirable to accomplish a lawful purpose; ~~and~~

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations;

(7) perform all acts necessary in relation to the principal's mail, including:

(A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;

(B) forwarding the principal's mail to any address; and

(C) representing the principal before the United States Postal Service in all matters relating to mail service; and

(8) subject to the needs of the individuals described by Subdivision (1), provide for the reasonable care of the principal's pets.

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.113. RETIREMENT PLAN TRANSACTIONS.

(a) [No change.]

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the [~~attorney in fact or~~] agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

(1) apply for service or disability retirement benefits;

(2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);

(4) make voluntary contributions to retirement plans if authorized by the plan;

(5) exercise the investment powers available under any self-directed retirement plan;

(6) make rollovers of plan benefits into other retirement plans;

(7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;

(8) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan [~~a spouse who is not employed~~];

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [~~An attorney in fact or~~] agent may be named a beneficiary under a retirement plan only to the extent the [~~attorney in fact or~~] agent was a named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan [~~before the durable power of attorney was executed~~].

Amended by Acts 2017, 85th Legislature, Ch. 834 (HB 1974), effective September 1, 2017. See transitional note following Sec. 751.0015.

Sec. 752.1145. DIGITAL ASSET TRANSACTIONS.

(a) In this section, "digital asset" has the meaning assigned by Section 2001.002.

(b) The language conferring authority with respect to digital assets in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific digital asset, to access digital assets as provided in Chapter 2001.

Added by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017.

Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS.

The powers described by Sections 752.102-752.1145 [~~752.102-752.114~~] may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:

(1) the property is located in this state; or

(2) the powers are exercised or the durable power of attorney is executed in this state.

Amended by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017.

CHAPTER 753. REMOVAL OF ATTORNEY IN FACT OR AGENT

Sec. 753.001. PROCEDURE FOR REMOVAL.

(a) In this section, "person interested," notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.

(b) The following persons may file a petition under this section:

(1) any person named as a successor attorney in fact or agent in a durable power of attorney; or

(2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.

(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:

(1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;

(2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and

(3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact's or agent's compensation.

(d) A court may enter an order under Subsection (c) if the court finds:

(1) that the attorney in fact or agent has breached the attorney in fact's or agent's fiduciary duties to the principal;

(2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;

(3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact's or agent's duties; or

(4) that the attorney in fact or agent has failed to make an accounting;

(A) that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or

(B) as ordered by the court.

Sec. 753.002. NOTICE TO THIRD PARTIES.

Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.

Added by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017.

Attachment 12 – 2017 Amendments to the Texas Estates Code (Guardianship)

[The following excerpts reflect amendments made by SB 36, SB 39, SB 511, SB 1016, SB 1096, SB 1193, SB 1559, SB 1709, SB 1710, and SB 1764.]

Sec. 1002.009. COURT INVESTIGATOR.

"Court investigator" means a person appointed by the judge of a statutory probate court under Section 25.0025, Government Code, or a judge under Section 1054.156.

Amended by Acts 2017, 85th Legislature, Ch. 414 (SB 1016), effective September 1, 2017.

Sec. 1023.003. [~~APPLICATION FOR~~] TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY.

(a) 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.

(b) With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court's own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 1(h) of SB 39 provides: "Sections 1023.003, 1023.004, 1023.005, and 1203.052, Estates Code, as amended by this section, apply to a guardianship created before, on, or after the effective date of this Act."

Sec. 1023.004. NOTICE.

(a) On filing an application or on motion of a court to transfer a guardianship to another county under Section 1023.003, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the guardianship [~~application~~] should not be transferred [~~granted~~].

(b) If an application is filed by a person other than the guardian or if a court made a motion to transfer a guardianship, the guardian shall be cited by personal service to appear and show cause why the guardianship [~~application~~] should not be transferred [~~granted~~].

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 1023.003.

Sec. 1023.005. COURT ACTION.

On hearing an application or motion under Section 1023.003, if good cause is not shown to deny the

transfer [~~application~~] and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

(1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and

(2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 1023.003.

Sec. 1051.103. SERVICE OF CITATION FOR APPLICATION FOR GUARDIANSHIP.

(a) – (b) [No change.]

(c) A citation served as provided by Subsection (a) to a relative of the proposed ward described by Subsection (a)(2) or (4) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

Amended by Acts 2017, 85th Legislature, Ch. 1125 (SB 1709), effective June 15, 2017. Sec. 4 of SB 1709 provides: "The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act."

Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP.

(a) – (c) [No change.]

(d) Notice required by Subsection (a) to a relative of the proposed ward described by Subsection (a)(1) or (2) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

Amended by Acts 2017, 85th Legislature, Ch. 1125 (SB 1709), effective June 15, 2017. See transitional note following Sec. 1051.103.

Sec. 1053.053. EXEMPTION FROM GUARDIANSHIP PROCEEDING FEES FOR CERTAIN MILITARY SERVICEMEMBERS.

(a) In this section, "combat zone" means an area that the president of the United States by executive

order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat.

(b) Notwithstanding any other law, the clerk of a county court may not charge, or collect from, the estate of a proposed ward or ward any of the following fees if the court finds that the proposed ward or ward became incapacitated as a result of a personal injury sustained while in active service as a member of the armed forces of the United States in a combat zone:

(1) a fee for the filing of a guardianship proceeding; and

(2) a fee for any service rendered by the court regarding the administration of the guardianship.

(c) The clerk of a county court is not required to refund a fee exempt under this section that is paid before September 1, 2017. This subsection expires September 1, 2019.

Amended by Acts 2017, 85th Legislature, Ch. 436 (SB 1559), effective September 1, 2017. Sec. 2 of SB 1559 provides: "The changes in law made by this Act apply to a guardianship proceeding that is pending or commenced on or after the effective date of this Act."

Sec. 1053.054. EXEMPTION FROM GUARDIANSHIP FEES FOR CERTAIN LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHERS.

(a) In this section:

(1) "Eligible proposed ward" or "eligible ward" means an individual listed in Section 615.003, Government Code.

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

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

(1) a fee for the filing of a guardianship proceeding; and

(2) a fee for any service rendered by the court regarding the administration of the guardianship.

(c) The clerk of a county court is not required to refund a fee exempt under this section that is paid

before September 1, 2017. This subsection expires September 1, 2019.

Amended by Acts 2017, 85th Legislature, Ch. 436 (SB 1559), effective September 1, 2017. See transitional note following Sec. 1053.053.

Sec. 1054.152. GENERAL DUTIES.

A court investigator shall:

(1) supervise a court visitor program established under Subchapter C if the court for which the investigator is appointed operates that type of program and, in that capacity, shall serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and

(3) perform other duties as assigned by the judge or required by this title.

Amended by Acts 2017, 85th Legislature, Ch. 414 (SB 1016), effective September 1, 2017.

Sec. 1054.156. APPOINTMENT OF COURT INVESTIGATOR FOR CERTAIN COURTS.

(a) The judge of a court as defined by Section 1002.008(a)(1) or (2), other than a statutory probate court, may appoint a court investigator if the appointment is authorized by the commissioners court.

(b) The commissioners court may authorize additional court investigators for a county if necessary.

(c) The commissioners court shall set the salary of a court investigator.

(d) The appointment of a court investigator by the judge of a statutory probate court is governed by Section 25.0025, Government Code.

Amended by Acts 2017, 85th Legislature, Ch. 414 (SB 1016), effective September 1, 2017.

Sec. 1055.003. INTERVENTION BY INTERESTED PERSON.

(a) Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (d), an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) – (c) [No change.]

(d) A person who is entitled to receive notice under Section 1051.104 is not required to file a motion under this section to intervene in a guardianship proceeding.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(c) of SB 39 provides: "Section 1055.003, Estates Code, as amended by this Act, applies to a guardianship proceeding that is pending or commenced on or after the effective date of this Act."

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 or was 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 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(d) of SB 39 provides: "Section 1101.002, Estates Code, as amended by this Act, applies to an application for a guardianship filed on or after the effective date of this Act."

Sec. 1104.003. TRAINING REQUIRED.

A court may not appoint an individual to serve as guardian under this title if the individual has not received the training required under Section 155.204, Government Code, unless waived by the court in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 1104.203. REQUIREMENT FOR DECLARATION.

(a) Except as provided by Subsection (a-1), a [A] declaration under this subchapter must be signed by the declarant and be:

- (1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(a-1) If the declaration does not expressly disqualify any individual from serving as guardian of the declarant's person or estate, the declaration must be signed by the declarant and may be acknowledged by a notary public instead of being attested to in the declarant's presence by witnesses as required by Subsection (a)(2).

(b) Notwithstanding Subsection (a) or (a-1), a declaration that is not written wholly in the declarant's handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 298 (SB 511), effective September 1, 2017. Sec. 3 of SB 511 provides: "The changes in law made by this Act apply only to a declaration to designate a guardian executed on or after the effective date of this Act. A declaration to designate a guardian executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose."

Sec. 1104.204. FORM AND CONTENT OF DECLARATION AND SELF-PROVING AFFIDAVIT.

(a) - (b) [No change.]

(c) A declaration that complies with the requirements of Section 1104.203(a-1) may, but is not required to, be in the form specified by Subsection (b), except that instead of having attached the self-proving affidavit prescribed by that subsection, the declaration shall have attached the following acknowledgment:

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____.

by _____ (Declarant).

Notary Public, in and for the State of Texas

Notary's printed name:

My commission expires:

(d) A declaration that complies with the requirements of Section 1104.203(a-1) that has attached the acknowledgment provided by Subsection (c) is considered self-proved.

Amended by Acts 2017, 85th Legislature, Ch. 298 (SB 511), effective September 1, 2017. See transitional note following Sec. 1104.203.

Sec. 1104.359. EFFECT OF LACK OF REQUIRED REGISTRATION.

(a) A guardianship program may not be appointed guardian:

(1) if the program is not registered as required under Subchapter D, Chapter 155, Government Code;

(2) if a registration certificate issued to the program under Subchapter D, Chapter 155, Government Code, is expired or refused renewal, or has been revoked and not been reissued; or

(3) during the time a registration certificate issued to the program under Subchapter D, Chapter 155, Government Code, is suspended.

(b) This section does not prevent the appointment, on the individual's own behalf, of an individual who is employed by or contracts with a guardianship program to provide guardianship and related services independently of the program.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS [HOLDING A CERTIFICATE].

(a) The clerk described by Section 1104.402 is not required to obtain criminal history record information for a person [who holds a certificate issued under Section 155.102, Government Code, or a provisional certificate issued under Section 155.103, Government Code,] if the [guardianship certification program of the] Judicial Branch Certification Commission conducted a criminal history check on the person under Chapter 155, Government Code [before issuing or renewing the certificate].

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE PERSON.

(a) – (c) [No change.]

(d) Notwithstanding Subsection (c)(4), a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code. The guardian shall immediately provide written notice to the court that granted the guardianship as required by Section 573.004, Health and Safety Code, of the filing of an application under that section.

(e) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE.

(a) This section applies only with respect to a relative [relatives] described under Sections 1101.001(b)(13)(A)-(D):

(1) against whom a protective order has not been issued to protect the ward;

(2) who has not been found by a court or other state agency to have abused, neglected, or exploited the ward; and

(3) who has elected in writing to receive the notice about a ward under this section.

(b) – (f) [No change.]

(g) In considering a motion under Subsection (e), the court shall relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:

(1) the motion includes a written request from a relative electing to not receive the notice;

(2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;

(3) the guardian was able to locate the relative, but was unable to establish communication with the relative after making reasonable efforts to establish communication; or

(4) ~~a protective order was issued against the relative to protect the ward;~~

~~[5] a court or other state agency has found that the relative abused, neglected, or exploited the ward; or~~

~~[6] notice is not in the best interest of the ward.~~

(h) A guardian, as soon as possible but not later than September 1, 2019, shall provide notice to a relative of the ward described under Sections 1101.001(b)(13)(A)-(D) whose whereabouts are known or can reasonably be ascertained that the relative must elect in writing in order to receive notice about the ward under this section. This subsection applies only to a guardianship:

(1) created on or before the effective date of this subsection; or

(2) created after the effective date of this subsection if the application for the guardianship was pending on the effective date of this subsection.

(i) This subsection and Subsection (h) expire January 1, 2020.

Amended by Acts 2017, 85th Legislature, Ch. 1125 (SB 1709), effective June 15, 2017. See transitional note following Sec. 1051.103.

Sec. 1151.101. GENERAL POWERS AND DUTIES.

(a) Subject to Subsection (b), the guardian of the estate of a ward is entitled to:

(1) possess and manage all property belonging to the ward;

(2) collect all debts, rentals, or claims that are due to the ward;

(3) enforce all obligations in favor of the ward; ~~and~~

(4) bring and defend suits by or against the ward; ~~and~~

(5) access the ward's digital assets as provided by Chapter 2001.

(b) [No change.]

(c) In this section, "digital asset" has the meaning assigned by Section 2001.002.

Amended by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017.

Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR INVESTMENT.

A guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) with respect to investing the ward's estate if the guardian invests in the following:

(1) bonds or other obligations of the United States;

(2) tax-supported bonds of this state;

(3) except as limited by Sections 1161.004(b) and (c), tax-supported bonds of a county, district, political subdivision, or municipality in this state;

(4) if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation, shares or share accounts of:

(A) a state savings and loan association or savings bank that has its main office or a branch office in this state; or

(B) a federal savings and loan association or savings bank that has its main office or a branch office in this state;

(5) collateral bonds that:

(A) are issued by a company incorporated under the laws of this state that has a paid-in capital of \$1 million or more;

(B) are a direct obligation of the company; and

(C) are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; ~~or~~

(6) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state, if the payment of the time deposits is insured by the Federal Deposit Insurance Corporation; or

(7) an ABLÉ account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code.

Amended by Acts 2017, 85th Legislature, Ch. 938 (SB 1764), effective September 1, 2017.

Sec. 1202.003. TERMINATION OF GUARDIANSHIP OF ESTATE ON ESTABLISHMENT OF ABLE ACCOUNT BY CERTAIN PERSONS.

On application by the guardian of the estate of a ward or another person interested in the ward's welfare, the court may order that the guardianship of the estate of the ward terminate and be settled and closed if the court finds that the ward no longer needs a guardian of the estate because all of the ward's assets have been placed in an ABLÉ account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code, and the ward is the designated beneficiary of the account.

Amended by Acts 2017, 85th Legislature, Ch. 938 (SB 1764), effective September 1, 2017.

Sec. 1202.051. APPLICATION AUTHORIZED.

(a) Notwithstanding Section 1055.003, a [A] ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the guardian's powers or duties; and

(B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or manage the ward's own financial affairs commensurate with the ward's ability, with or without supports and services.

(b) If the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, the court may not require the appointment of a successor guardian before considering the application.

Amended by Acts 2017, 85th Legislature, Ch. 935 (SB 1710), effective September 1, 2017. Sec. 3(a) of SB 1710 provides: "The changes in law made by this Act to Section 1202.051, Estates Code, apply to an application for the complete restoration of a ward's capacity or modification of a guardianship filed before, on, or after the effective date of this Act."

Sec. 1202.054. INFORMAL REQUEST FOR ORDER BY WARD; INVESTIGATION AND REPORT.

(a) - (b) [No change.]

(b-1) A written letter or certificate from a physician as described by Section 1202.152 is not required before the appointment of the court investigator or a guardian ad litem under Subsection (b).

(b-2) Not later than the 30th day after the date the court receives an informal letter from a ward under

Subsection (a), the court shall send the ward a letter by certified mail:

(1) acknowledging receipt of the informal letter; and

(2) advising the ward of the date on which the court appointed the court investigator or guardian ad litem as required under Subsection (b) and the contact information for the court investigator or guardian ad litem.

(c) The court investigator or guardian ad litem shall file with the court and provide to the ward a report of the investigation's findings and conclusions. If the court investigator or guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, the court investigator or guardian ad litem shall file an application under Section 1202.051 on the ward's behalf.

(d) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 935 (SB 1710), effective September 1, 2017. Sec. 3(b) of SB 1710 provides: "The changes in law made by this Act to Section 1202.054, Estates Code, apply only to a request by informal letter for a court order that is delivered on or after the effective date of this Act. A request by informal letter for a court order that is delivered before the effective date of this Act is governed by the law in effect on the date the informal letter was delivered, and the former law is continued in effect for that purpose."

Sec. 1203.052. REMOVAL WITH NOTICE.

(a) The court may remove a guardian as provided by Subsection (a-1) [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;

(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.

(a-1) The court may remove a guardian for a reason listed in Subsection (a) on the:

(1) court's own motion, after the guardian has been notified, by certified mail, return receipt requested, to answer at a time and place set in the notice; or

(2) 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.

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 1023.003.

Sec. 1253.0515. CERTIFICATION OR TRAINING OF GUARDIAN.

(a) A guardian filing an application under this subchapter must comply with Subchapter C or D, Chapter 155, Government Code, as applicable.

(b) A court may not grant an application filed under this subchapter unless the guardian complies with Subsection (a).

Amended by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 1357.052. AUTHORITY OF SUPPORTER; NATURE OF RELATIONSHIP.

(a) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

(b) The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.

(c) The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:

(1) is one of trust and confidence; and

(2) does not undermine the decision-making authority of the adult.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(e) of SB 39 provides: "Sections 1357.052 and 1357.053(b), Estates Code, as amended by this Act, and Section 1357.0525, Estates Code, as added by this Act, apply to a supported decision-making agreement entered into before, on, or after the effective date of this Act."

Sec. 1357.0525. DESIGNATION OF ALTERNATE SUPPORTER IN CERTAIN CIRCUMSTANCES.

In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult's supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017.

Sec. 1357.053. TERMS OF AGREEMENT.

(a) [No change.]

(b) The supported decision-making agreement is terminated if:

(1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; [☐]

(2) the supporter is found criminally liable for conduct described by Subdivision (1); or

(3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. See transitional note following Sec. 1357.052

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT.

(a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

- (1) act in good faith;
- (2) act within the authority granted in this agreement;
- (3) act loyally and without self-interest; and
- (4) avoid conflicts of interest.

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20__

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter)(printed name of supporter)

Signature

(my signature)(my printed name)

(witness 1 signature)(printed name of witness 1)

(witness 2 signature)(printed name of witness 2)

State of

County of

This document was acknowledged before me on _____ (date) by _____ and _____ (name of adult with a disability)(name of supporter)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

WARNING: PROTECTION FOR THE ADULT
WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

Amended by Acts 2017, 85th Legislature, Ch. 514 (SB 39), effective September 1, 2017. Sec. 14(f) of SB 39 provides: "Section 1357.056(a), Estates Code, as amended by this Act, applies to a supported decision-making agreement entered into on or after the effective date of this Act. A supported decision-making agreement entered into before the effective date of this Act is governed by the law as it existed on the date the supported decision-making agreement was entered into, and the former law is continued in effect for that purpose."

Attachment 13 – 2017 Amendments to the Texas Estates Code (TRUFADAA)

[The following excerpts reflect amendments made by SB 1193.]

TITLE 4. DIGITAL ASSETS

CHAPTER 2001. TEXAS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Added by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017. Sec. 7 of SB 1193 provides: "Chapter 2001, Estates Code, as added by this Act, applies to:

"(1) a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this Act;

"(2) a personal representative acting for a decedent who died before, on, or after the effective date of this Act;

"(3) a guardian appointed to act for a ward in a guardianship proceeding commenced before, on, or after the effective date of this Act; and

"(4) a trustee acting under a trust created before, on, or after the effective date of this Act."

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. SHORT TITLE.

This chapter may be cited as the Texas Revised Uniform Fiduciary Access to Digital Assets Act.

Sec. 2001.002. DEFINITIONS.

In this chapter:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney in fact granted authority to act for a principal under a durable or other power of attorney. The term does not include an agent under a medical power of attorney.

(3) "Carries" means to engage in the transmission of an electronic communication.

(4) "Catalog of electronic communications" means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that:

(A) has been sent, uploaded, received, or downloaded by a user;

(B) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(C) is not readily accessible to the public.

(6) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(7) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(8) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) "Electronic communication" has the meaning assigned by 18 U.S.C. Section 2510(12), as it existed on January 1, 2017.

(11) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(12) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or trustee.

(13) "Guardian" has the meaning assigned by Section 1002.012, except that the term does not include a guardian of the person of a ward.

(14) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(15) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(16) "Person" has the meaning assigned by Section 311.005, Government Code.

(17) "Personal _____ representative," notwithstanding Section 22.031, means:

(A) an executor or independent executor;

(B) an administrator, independent administrator, or temporary administrator;

(C) a successor to an executor or administrator listed in Paragraph (A) or (B); or

(D) a person who performs functions substantially similar to those performed by the persons listed in Paragraph (A), (B), or (C) under the laws of this state, other than this chapter.

(18) "Power of attorney" means a record that grants an agent authority to act in the place of a principal with regard to property matters, including a durable power of attorney as provided by Subtitle P, Title 2. The term does not include a medical power of attorney.

(19) "Principal" means an individual who grants authority to an agent in a power of attorney.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined by 18 U.S.C. Section 2510(14), as it existed on January 1, 2017.

(22) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(23) "Trustee" has the meaning assigned by Section 111.004, Property Code.

(24) "User" means a person who has an account with a custodian.

Sec. 2001.003. APPLICABILITY.

(a) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(b) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Sec. 2001.004. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter

of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Sec. 2001.005. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

SUBCHAPTER B. GENERAL PROCEDURES FOR ACCESS TO DIGITAL ASSETS

Sec. 2001.051. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

(a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of an electronic communication. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under Subsection (a) or if the custodian has not provided an online tool, the user may allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, including the content of an electronic communication sent or received by the user, in a will, trust, power of attorney, or other record.

(c) A user's direction under Subsection (a) or (b) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Sec. 2001.052. TERMS-OF-SERVICE AGREEMENT.

(a) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate or trust, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if

the user has not provided direction under Section 2001.051.

Sec. 2001.053. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

(a) When disclosing digital assets of a user under this chapter, the custodian may, at the custodian's sole discretion:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(c) A custodian is not required to disclose under this chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian is not required to disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user's digital assets;

(2) all of the user's digital assets to the fiduciary or designated recipient;

(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

SUBCHAPTER C. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF DECEASED USER

Sec. 2001.101. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.

(a) If a deceased user consented to or a court directs disclosure of the content of an electronic communication of the user, the custodian shall disclose to the personal representative of the estate of the user

the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order; and

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of an electronic communication if the user consented to the disclosure.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user's account;

(2) evidence linking the account to the user; or

(3) a finding by the court that:

(A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1);

(B) disclosure of the content of an electronic communication of the user would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

(C) unless the user provided direction using an online tool, the user consented to disclosure of the content of an electronic communication; or

(D) disclosure of the content of an electronic communication of the user is reasonably necessary for administration of the estate.

Sec. 2001.102. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

(a) Unless the deceased user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of an electronic communication, of the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user; and

(3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user's account;

(2) evidence linking the account to the user;

(3) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) a finding by the court that:

(A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1); or

(B) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SUBCHAPTER D. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF PRINCIPAL

Sec. 2001.131. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.

(a) To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the agent authority over the content of an electronic communication of the principal; and

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

Sec. 2001.132. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.

(a) Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets of the principal, other than the content of an electronic communication, if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; and

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

SUBCHAPTER E. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST

Sec. 2001.151. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS ORIGINAL USER.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of an electronic communication.

Sec. 2001.152. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.

(a) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall

disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code, that includes consent to disclosure of the content of an electronic communication to the trustee; and

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

Sec. 2001.153. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.

(a) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets in which the trust has a right or interest, other than the content of an electronic communication, if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code; and

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

SUBCHAPTER F. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN

Sec. 2001.171. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN.

(a) After an opportunity for a hearing under Title 3, the court may grant the guardian of a ward access to the digital assets of the ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to the guardian of a ward the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of an electronic communication, if the guardian gives the custodian:

(1) a written request for disclosure in physical or electronic form; and

(2) a certified copy of the court order that gives the guardian authority over the digital assets of the ward.

(c) In addition to the items required to be given to the custodian under Subsection (b), the guardian shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(2) evidence linking the account to the ward.

(d) The guardian of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian authority over the ward's digital assets.

SUBCHAPTER G. DUTY AND AUTHORITY OF FIDUCIARY AND OTHERS REGARDING DIGITAL ASSETS

Sec. 2001.201. FIDUCIARY DUTY AND AUTHORITY.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided by Section 2001.051, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor has or had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.

(e) A fiduciary with authority over the tangible personal property of a decedent, ward, principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.

Sec. 2001.202. AUTHORITY TO TERMINATE ACCOUNT.

(a) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(b) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user; and

(2) one of the following giving the fiduciary authority over the account:

(A) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order;

(B) a power of attorney; or

(C) the trust instrument.

(c) In addition to the items required to accompany a termination request under Subsection (b), the

fiduciary shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user; or

(3) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subdivision (1).

SUBCHAPTER H. CUSTODIAN COMPLIANCE AND IMMUNITY REGARDING DIGITAL ASSETS

Sec. 2001.231. CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) Not later than 60 days after receipt of the information required under Subchapter C, D, E, F, or G, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under Subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(d) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the request.

(e) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(1) specifies that an account belongs to the ward or principal;

(2) specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(3) contains a finding required by a law other than this chapter.

Sec. 2001.232. IMMUNITY FROM LIABILITY.

A custodian and the custodian's officers, employees, and agents are immune from liability for an

act or omission done in good faith in compliance with
this chapter.

Attachment 14 – 2017 Amendments to the Texas Trust Code

[The following excerpts reflect amendments made by HB 2271, SB 617, and SB 1193.]

Sec. 111.0035. DEFAULT AND MANDATORY RULES; CONFLICT BETWEEN TERMS AND STATUTE.

(a) [No change.]

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

(1) the requirements imposed under Section 112.031;

(2) the applicability of Section 114.007 to an exculpation term of a trust;

(3) the periods of limitation for commencing a judicial proceeding regarding a trust;

(4) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify, reform, or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust; or

(6) the applicability of Section 112.038.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. Sec. 17 of SB 617 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 on or created on or after September 1, 2017.

“(b) For a trust existing on September 1, 2017, 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, 2017.”

Sec. 112.011. POSTHUMOUS CLASS GIFTS MEMBERSHIP.

(a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.

(b) For purposes of Subsection (a), a person is:

(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.

(c) A provision in the trust instrument that is contrary to this section prevails over this section.

Added by Acts 2017, 85th Legislature, Ch. 844 (HB 2271), effective September 1, 2017.

Sec. 112.035. SPENDTHRIFT TRUSTS.

(a) – (d) [No change.]

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of [~~the amount specified in~~]:

(A) the amount specified in Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.

(f) – (h) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.038. FORFEITURE CLAUSE.

(a) 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:

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

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

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.054. JUDICIAL MODIFICATION, REFORMATION, OR TERMINATION OF TRUSTS.

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or ~~avoid~~ impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust.

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, ~~or~~ terminate, or reform, but the court is not precluded from exercising its discretion to modify, ~~or~~ terminate, or reform solely because the trust is a spendthrift trust.

(b-1) On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:

(1) reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;

(2) reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(3) reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.

(c) The court may direct that an order described by Subsection (a)(4) or (b-1) has retroactive effect.

(d) [No change.]

(e) An order described by Subsection (b-1)(3) may be issued only if the settlor's intent is established by clear and convincing evidence.

(f) Subsection (b-1) is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by this section.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.058. CONVERSION OF COMMUNITY TRUST TO NONPROFIT CORPORATION.

(a) In this section:

(1) "Assets" means the assets of the component trust funds of a community trust.

(2) "Community trust" means a community trust as described by 26 C.F.R. Section 1.170A-9 (2008) [~~1.170A-9(e)(11) (1999)~~], including subsequent amendments.

(b) – (g) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.071. DEFINITIONS.

(1) – (4) [No change.]

(5) "Full discretion" means a [the] power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion [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) a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or

(B) a [limited or modified] power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support, or maintenance of the beneficiary.

(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 current beneficiaries [~~currently eligible to receive income or principal from the trust~~] ended on that date without causing the trust to terminate.

(8) – (10) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.074. NOTICE REQUIRED.

(a) – (b) [No change.]

(c) Except as provided by Subsection (e-1), in [H] 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) – (e) [No change.]

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

(f) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.078. COURT-ORDERED DISTRIBUTION.

(a) – (e) [No change.]

(f) This section does not limit a beneficiary's right to bring an action against a trustee for a breach of trust.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

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;

(A) under the terms of the trust; or

(B) in a manner that would be prohibited [as described] by Section 111.0035;

(3) ~~[(4)]~~ decrease or indemnify against a trustee's liability;

(4) add a provision exonerating [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 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS.

(a) A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

(b) Without limiting the trustee's discretion under Subsection (a), a trustee may grant an agent powers with respect to property of the trust to act for the trustee in any lawful manner for purposes of real property transactions.

(c) A trustee acting under Subsection (b) may delegate any or all of the duties and powers to:

(1) execute and deliver any legal instruments relating to the sale and conveyance of the property, including affidavits, notices, disclosures, waivers, or designations or general or special warranty deeds

binding the trustee with vendor's liens retained or disclaimed, as applicable, or transferred to a third-party lender;

(2) accept notes, deeds of trust, or other legal instruments;

(3) approve closing statements authorizing deductions from the sale price;

(4) receive trustee's net sales proceeds by check payable to the trustee;

(5) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the sale;

(6) take any action, including signing any document, necessary or appropriate to sell the property and accomplish the delegated powers;

(7) contract to purchase the property for any price on any terms;

(8) execute, deliver, or accept any legal instruments relating to the purchase of the property or to any financing of the purchase, including deeds, notes, deeds of trust, guaranties, or closing statements;

(9) approve closing statements authorizing payment of prorations and expenses;

(10) pay the trustee's net purchase price from funds provided by the trustee;

(11) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the purchase; or

(12) take any action, including signing any document, necessary or appropriate to purchase the property and accomplish the delegated powers.

(d) A trustee who delegates a power under Subsection (b) is liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.

(e) A delegation by the trustee under Subsection (b) must be documented in a written instrument acknowledged by the trustee before an officer authorized under the law of this state or another state to take acknowledgments to deeds of conveyance and administer oaths. A signature on a delegation by a trustee for purposes of this subsection is presumed to be genuine if the trustee acknowledges the signature in accordance with Chapter 121, Civil Practice and Remedies Code.

(f) A delegation to an agent under Subsection (b) terminates six months from the date of the acknowledgment of the written delegation unless terminated earlier by:

- (1) the death or incapacity of the trustee;
- (2) the resignation or removal of the trustee; or
- (3) a date specified in the written delegation.

(g) A person who in good faith accepts a delegation under Subsection (b) without actual knowledge that the delegation is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the delegation as if:

- (1) the delegation were genuine, valid, and still in effect;
- (2) the agent's authority were genuine, valid, and still in effect; and
- (3) the agent had not exceeded and had properly exercised the authority.

(h) A trustee may delegate powers under Subsection (b) if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 113.031. DIGITAL ASSETS.

(a) In this section, "digital asset" has the meaning assigned by Section 2001.002, Estates Code.

(b) A trustee may access digital assets as provided by Chapter 2001, Estates Code.

Added by Acts 2017, 85th Legislature, Ch. 400 (HB 1193), effective September 1, 2017.

Sec. 115.002. VENUE.

(a) – (b) [No change.]

(b-1) If there are multiple [~~noncorporate~~] trustees none of whom is a corporate trustee 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 none of whom is a corporate trustee 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) – (f) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 111.0035.

Attachment 15 – 2017 Selected Amendments to the Texas Property Code (Excluding Trust Code)

[The following excerpts reflect amendments made by SB 499, SB 617, SB 1193, and SB 1764.]

CHAPTER 23A. UNIFORM PARTITION OF HEIRS' PROPERTY ACT

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. Sec. 2 of SB 499 provides: "Chapter 23A, Property Code, as added by this Act, applies only to a partition action commenced on or after the effective date of this Act. A partition action commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Sec. 23A.001. SHORT TITLE.

This chapter may be cited as the Uniform Partition of Heirs' Property Act.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.002. DEFINITIONS.

In this chapter:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs' property under Section 23A.006 or 23A.010 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs' property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(A) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by open-market sale, sealed bids, or auction conducted under Section 23A.010.

(7) "Partition in kind" means the division of heirs' property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this chapter.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.003. APPLICABILITY; RELATION TO OTHER LAW.

(a) In an action to partition real property under Chapter 23, the court shall determine whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

(b) This chapter supplements Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property. If an action is governed by this chapter, this chapter supersedes provisions of Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property that are inconsistent with this chapter.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.004. SERVICE; NOTICE BY POSTING.

(a) This chapter does not limit or affect the method by which service of a petition in a partition action may be made.

(b) If the plaintiff in a partition action seeks citation by publication and the court determines that the property may be heirs' property, the plaintiff, not later than the 10th day after the date the determination is made, shall post, and maintain while the action is pending, a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.005. COMMISSIONERS.

If the court appoints commissioners under Rule 761, Texas Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications applicable to commissioners under that rule, must be impartial and may not be a party to or a participant in the action.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.006. DETERMINATION OF VALUE.

(a) Except as provided by Subsection (b) or (c), if the court determines that the property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal under Subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted under Subsection (d), not later than the 10th day after the date the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than the 30th day after the date notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court under Subsection (d), the court shall conduct a hearing to determine the fair market value of the property not earlier than the 30th day after the date a copy of the notice of the appraisal is sent to each party under Subsection (e), whether or not an objection to the appraisal is filed under Subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under Subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.007. COTENANT BUYOUT.

(a) If any cotenant requested partition by sale, after the determination of value under Section 23A.006, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than the 45th day after the date notice is sent under Subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 23A.006 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After the period provided by Subsection (b) expires:

(1) if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy; and

(B) send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or

(3) if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) send notice to all the parties of that fact; and

(B) resolve the partition action under Section 23A.008(a) or (b).

(e) If the court sends notice to the parties under Subsection (d)(1) or (2), the court shall set a date, not earlier than the 60th day after the date notice was sent, by which an electing cotenant must pay the cotenant's apportioned price into the court. After that date:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall:

(A) issue an order reallocating all the interests of the cotenants; and

(B) disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than the 20th day after the date the court gives notice under Subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After that period expires:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall:

(A) issue an order reallocating the remaining interest to that cotenant;

(B) promptly issue an order reallocating the interests of all of the cotenants; and

(C) disburse the amounts held by the court to the persons entitled to the amounts;

(2) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall:

(A) reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest;

(B) promptly issue an order reallocating all of the cotenants' interests;

(C) disburse the amounts held by the court to the persons entitled to the amounts; and

(D) promptly refund any excess payment held by the court.

(g) Not later than the 45th day after the date the court sends notice to the parties under Subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under Subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 23A.006.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.008. PARTITION ALTERNATIVES.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants under Section 23A.007, or if after conclusion of the buyout under Section 23A.007 a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 23A.009, finds that partition in kind will result in substantial prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have the requesting parties' individual interests aggregated.

(b) If the court does not order partition in kind under Subsection (a), the court shall order partition by sale under Section 23A.010 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind under Subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if those cotenants' interests were not bought out under Section 23A.007, a part of the property representing the combined interests of those cotenants as determined by the court, and that part of the property shall remain undivided.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.009. CONSIDERATIONS FOR PARTITION IN KIND.

(a) In determining under Section 23A.008(a) whether partition in kind would result in substantial prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs' property practicably can be divided among the cotenants;

(2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if the property were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed the cotenants' pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor.

(b) The court may not consider any one factor under Subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.010. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION.

(a) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or at an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than the 10th day after the date the order is entered, agree on a real estate broker to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under Subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements of Section 23A.011; and

(2) the sale may be completed in accordance with state law other than this chapter.

(d) If the broker appointed under Subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or at an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted in the manner provided by law for a sale made under execution.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.011. REPORT OF OPEN-MARKET SALE.

(a) Unless required to do so earlier by other law governing the partition of real property, a broker appointed under Section 23A.010(b) to offer heirs' property for open-market sale shall file a report with the court not later than the seventh day after the date an offer is received to purchase the property for at least the value determined under Section 23A.006 or 23A.010.

(b) The report required by Subsection (a) must contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law based on the uniform act on which this chapter is based.

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 23A.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Amended by Acts 2017, 85th Legislature, Ch. 297 (SB 499), effective September 1, 2017. See transitional note following Chapter 23A heading.

Sec. 142.004. INVESTMENT OF FUNDS.

(a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested:

(1) by the next friend or guardian ad litem in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education Code, [ø] a prepaid tuition program established under Subchapter H, Chapter 54, Education Code, or an ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code; or

(B) interest-bearing time deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation; or

(2) by the clerk of the court, on written order of the court of proper jurisdiction, in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education

Code, [Ø] a prepaid tuition program established under Subchapter H, Chapter 54, Education Code, or an ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code;

(B) interest-bearing deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation;

(C) United States treasury bills;

(D) an eligible interlocal investment pool that meets the requirements of Sections 2256.016, 2256.017, and 2256.019, Government Code; or

(E) a no-load money market mutual fund, if the fund:

(i) is regulated by the Securities and Exchange Commission;

(ii) has a dollar weighted average stated maturity of 90 days or fewer; and

(iii) includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share.

(b) – (e) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 938 (SB 1764), effective September 1, 2017.

Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE.

Chapters 116 and 117 do [Subchapter B, Title 9 (the Texas Trust Code), does] not apply to any institutional fund subject to this chapter.

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. Sec. 17 of SB 617 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 on or created on or after September 1, 2017.

“(b) For a trust existing on September 1, 2017, 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, 2017.”

Sec. 240.002. DEFINITIONS.

(1) “Charity” means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(1-a) “Current beneficiary” and “presumptive remainder beneficiary” have the meanings assigned by Section 112.071.

(2) – (15) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 163.011.

Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE.

(a) – (b) [No change.]

(c) Except as provided by Subsection (e-1), in [H] addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee's disclaimer 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) – (e) [No change.]

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

(f) – (g) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 62 (SB 617), effective September 1, 2017. See transitional note following Sec. 163.011.

Attachment 16 – 2017 Selected Amendments to the Texas Health & Safety Code

[The following excerpts reflect amendments made by HB 995, HB 2425, SB 344, and SB 1096.]

Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF MARRIAGE.

(a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical power of attorney. ~~[-or]~~

(a-1) An agent's authority under a medical power of attorney is revoked if the agent's marriage to [(3) the divorce of] the principal is dissolved, annulled, or declared void [and spouse, if the spouse is the principal's agent,] unless the medical power of attorney provides otherwise.

(b) [No change.]

Added by Acts 2017, 85th Legislature, Ch. 995 (HB 995), effective January 1, 2018. Sec. 5 of HB 995 (which is effective September 1, 2017) provides: "Not later than December 1, 2017, the executive commissioner of the Health and Human Services Commission shall adopt all rules necessary to implement this Act, including the form necessary to comply with the changes in law made by this Act to Section 166.164, Health and Safety Code."

~~**[Sec. 166.162. DISCLOSURE STATEMENT.]**~~
~~[Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 995 (HB 995), Sec.4, effective January 1, 2018. See transitional note following Sec. 166.155.

~~**[Sec. 166.163. FORM OF DISCLOSURE STATEMENT.]**~~ ~~[Repealed]~~

Repealed by Acts 2017, 85th Legislature, Ch. 995 (HB 995), Sec.4, effective January 1, 2018. See transitional note following Sec. 166.155.

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, annulled, or declared void unless this document provides otherwise.)

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.

THIS MEDICAL POWER OF ATTORNEY 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 unable to make the decisions for 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 is effective 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 if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure 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 facility, or residential care facility, 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 allow a person to serve as 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 that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, 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 in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate

Decedents' Estates, Guardianships, Trusts, Powers of Attorney, Etc.

agent, the alternate agent has the same authority as the agent 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 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 medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that [~~I have been provided with a disclosure statement explaining the effect of this document.~~] I have read and understand the [~~that~~] information contained in the above 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 2017, 85th Legislature, Ch. 995 (HB 995), effective January 1, 2018. Sec. 6 of HB 995 (which is effective September 1, 2017) 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 January 1, 2018. A document executed before the effective date of this section is governed by the law in effect immediately before the effective date of this Act, and the former law continues in effect for that purpose." See also transitional note following Sec. 166.155.

**SUBCHAPTER E. HEALTH CARE FACILITY
DO-NOT-RESUSCITATE ORDERS**

Sec. 166.201. DEFINITION. In this subchapter,

"DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ___ (SB 11), effective April 1, 2018. Sec. 2 of SB 11 provides: "The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act." Sec. 3 of SB 11 provides: "Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, applies only to a do-not-resuscitate order issued on or after the effective date of this Act."

**Sec. 166.202. APPLICABILITY OF
SUBCHAPTER.**

(a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ___ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

**Sec. 166.203. GENERAL PROCEDURES AND
REQUIREMENTS FOR DO-NOT-RESUSCITATE
ORDERS.**

(a) A DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order:

(1) is issued in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, or 166.035;

(D) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Subchapter D; or

(E) a treatment decision made in accordance with Section 166.039; or

(2) is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician:

(A) the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(B) the DNR order is medically appropriate.

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.

(c) Before placing in a patient's medical record a DNR order issued under Subsection (a)(2), the physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance;

or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance

with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ___ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(b) Failure to comply with Subsection (a) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, who makes a good faith effort to comply with Subsection (a) of this section or Section 166.203(c) and contemporaneously records the person's effort to comply with Subsection (a) of this section or Section 166.203(c) in the patient's medical record is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) of this section or Section 166.203(c).

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) On admission to a health care facility or hospital, the facility or hospital shall provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the

patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ___ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY.

(a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(1) effectively revokes an advance directive, in accordance with Section 166.042, for which a DNR order is issued under Section 166.203(a); or

(2) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a).

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under Section 166.203(a)(2).

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ___ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS.

(a) If an attending physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.

(b) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the attending physician, health care facility, or hospital remain in disagreement, the

physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) The procedures required by this section may not be construed to control or supersede Section 166.203(a).

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ____ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION.

A physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ____ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER.

A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ____ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

Sec. 166.209. ENFORCEMENT.

(a) A physician, physician assistant, nurse, or other person commits an offense if the person intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or if the person intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter. An offense under this subsection is a Class A misdemeanor. This subsection does not preclude prosecution for any other applicable offense.

(b) A physician, health care professional, health care facility, hospital, or entity is subject to review and

disciplinary action by the appropriate licensing authority for intentionally:

(1) failing to effectuate a DNR order in violation of this subchapter; or

(2) issuing a DNR order in violation of this subchapter.

Added by Acts 2017, 85th Legislature, 1st C.S., Ch. ____ (SB 11), effective April 1, 2018. See transitional note following Sec. 166.201.

CHAPTER 317. DESIGNATION OF CAREGIVER FOR RECEIPT OF AFTERCARE INSTRUCTION

Sec. 317.001. DEFINITIONS.

In this chapter:

(1) "Aftercare" means assistance provided by a designated caregiver to a person after that person's discharge from a hospital, as described by this chapter. The term includes assistance with tasks that are related to the person's condition at the time of that person's discharge from a hospital but does not include those tasks required to be performed by a licensed health care professional.

(2) "Designated caregiver" means an individual designated by a patient, including a relative, partner, friend, or neighbor, who:

(A) is at least 18 years of age;

(B) has a significant relationship with the patient; and

(C) will provide aftercare to the patient.

(3) "Discharge" means a patient's release from a hospital following an inpatient admission.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or exempt from licensure under Section 241.004(3).

(5) "Patient" means a person that is receiving or has received health care services at a hospital.

(6) "Surrogate decision-maker" has the meaning assigned by Section 313.002.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.0015. APPLICABILITY.

This chapter applies only to a patient who is:

(1) 18 years of age or older; or

(2) younger than 18 years of age who has had the disabilities of minority removed.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.002. DESIGNATION OF CAREGIVER.

(a) On admission to a hospital or before the patient is discharged or transferred to another facility, the hospital shall provide the patient, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver.

(b) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker designates a caregiver, a hospital shall:

(1) document in the patient's medical record:

(A) the name, telephone number, and address of the patient's designated caregiver; and

(B) the relationship of the designated caregiver to the patient; and

(2) request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver.

(c) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to designate a caregiver, the hospital shall promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver.

(d) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to a hospital to disclose health care information to the designated caregiver, a hospital is not required to comply with Sections 317.003 and 317.004.

(e) A patient, a patient's legal guardian, or a patient's surrogate decision-maker may change the patient's designated caregiver at any time, and the hospital must document the change in the patient's medical record.

(f) The designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.003. NOTICE TO DESIGNATED CAREGIVER.

(a) Except as provided by Section 317.002(d), as soon as possible before a patient's discharge or transfer to another facility but not later than the time the patient's attending physician issues a discharge order, a

hospital shall notify the designated caregiver of the patient's discharge or transfer. The inability of the hospital to contact the designated caregiver may not interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge of the patient.

(b) If the hospital is unable to contact the designated caregiver, the hospital shall promptly record in the patient's medical record that the hospital attempted to contact the designated caregiver.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.004. DISCHARGE PLAN.

(a) Except as provided by Section 317.002(d), before a patient's discharge from a hospital, the hospital shall provide to the patient and designated caregiver a written discharge plan that describes the patient's aftercare needs.

(b) A discharge plan must include:

(1) the name and contact information of the designated caregiver and the designated caregiver's relationship to the patient;

(2) a description of the aftercare tasks that the patient requires written in a manner that is culturally competent; and

(3) the contact information for any health care resources necessary to meet the patient's aftercare needs.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.005. INSTRUCTION IN AFTERCARE TASKS.

Before a patient's discharge from the hospital to any setting in which health care services are not regularly provided to others, the hospital shall provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.006. RULES.

The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this chapter.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 317.007. RIGHTS AND REMEDIES.

(a) This chapter may not be construed to:

(1) interfere with the rights of an agent operating under a valid advance directive in accordance with Chapter 166; or

(2) alter, amend, revoke, or supersede any existing right or remedy granted under any other provision of law.

(b) This chapter does not create a private right of action against:

(1) a hospital, a hospital employee, or a person in a contractual relationship with a hospital; or

(2) a designated caregiver.

(c) A hospital, a hospital employee, or a person in a contractual relationship with a hospital may not be held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient.

(d) A designated caregiver may not be reimbursed by a government or commercial payer for aftercare assistance provided under this chapter.

(e) Nothing in this chapter may be construed:

(1) to alter the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans to provide coverage required under a health benefit plan;

(2) to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans; or

(3) to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

Added by Acts 2017, 85th Legislature, Ch. 163 (HB 2425), effective May 26, 2017.

Sec. 573.0001. DEFINITIONS.

In this chapter:

(1) "Emergency medical services personnel" and "emergency medical services provider" have the meanings assigned by Section 773.003.

(2) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

Added by Acts 2017, 85th Legislature, Ch. 541 (SB 344), effective June 9, 2017.

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) – (c) [No change.]

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately:

(1) transport the apprehended person to:

(A) [~~1~~] the nearest appropriate inpatient mental health facility; or

(B) [~~2~~] a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or

(2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) – (h) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 541 (SB 344), effective June 9, 2017.

Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF DETENTION.

(a) A peace officer shall immediately file with a facility a notification of detention after transporting a person to that facility in accordance with Section 573.001. Emergency medical services personnel of an emergency medical services provider who transport a person to a facility at the request of a peace officer made in accordance with a memorandum of understanding executed under Section 573.005 shall immediately file with the facility the notification of detention completed by the peace officer who made the request.

(b) – (c) [No change.]

(d) The peace officer shall provide [~~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: _____

SIGNATURE OF EMERGENCY MEDICAL SERVICES PERSONNEL (if applicable)

Address: _____ Zip Code: _____

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, [Texas] Health and Safety Code, and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005, Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001 and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005.

Amended by Acts 2017, 85th Legislature, Ch. 541 (SB 344), effective June 9, 2017.

Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS.

As soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 14(b) of SB 1096 provides: "A law enforcement officer or other person with custody of a ward is not required to comply with Articles 14.055 and 15.171, Code of Criminal Procedure, Section 52.011, Family Code, or Section 573.0021, Health and Safety Code, as added by this Act, as applicable, until July 1, 2018."

Sec. 573.005. TRANSPORTATION FOR EMERGENCY DETENTION BY EMERGENCY MEDICAL SERVICES PROVIDER; MEMORANDUM OF UNDERSTANDING.

(a) A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

(b) A memorandum of understanding must:

(1) address responsibility for the cost of transporting the person taken into custody; and

(2) be approved by the county in which the law enforcement agency is located and the local mental health authority that provides services in that county with respect to provisions of the memorandum that address the responsibility for the cost of transporting the person.

(c) A peace officer may request that emergency medical services personnel transport a person taken into custody by the officer under Section 573.001 only if:

(1) the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section; and

(2) the officer determines that transferring the person for transport is safe for both the person and the personnel.

(d) Emergency medical services personnel may, at the request of a peace officer, transport a person taken into custody by the officer under Section 573.001 to the appropriate facility, as provided by that section, if the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section.

(e) A peace officer who transfers a person to emergency medical services personnel under a memorandum of understanding executed under this section for transport to the appropriate facility must provide:

(1) to the person the notice described by Section 573.001(g); and

(2) to the personnel a completed notification of detention about the person on the form provided by Section 573.002(d).

Added by Acts 2017, 85th Legislature, Ch. 541 (SB 344), effective June 9, 2017.

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 or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a).

(b) – (e) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 541 (SB 344), effective June 9, 2017.

Attachment 17 – Other Selected 2017 Amendments

[The following excerpts reflect amendments made by HB 1043, HB 1787, HB 2207, HB 3921, SB 36, SB 40, SB 402, SB 869, SB 1096, and SB 1249.]

CIVIL PRACTICE & REMEDIES CODE

Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR COMBINED LIMITATIONS PERIOD.

(a) In this section, "cotenant heir" means one of two or more persons who simultaneously acquire identical, undivided ownership interests in, and rights to possession of, the same real property by operation of the applicable intestate succession laws of this state or a successor in interest of one of those persons.

(b) One or more cotenant heirs of real property may acquire the interests of other cotenant heirs in the property by adverse possession under this section if, for a continuous, uninterrupted 10-year period immediately preceding the filing of the affidavits required by Subsection (c):

(1) the possessing cotenant heir or heirs:

(A) hold the property in peaceable and exclusive possession;

(B) cultivate, use, or enjoy the property;
and

(C) pay all property taxes on the property not later than two years after the date the taxes become due; and

(2) no other cotenant heir has:

(A) contributed to the property's taxes or maintenance;

(B) challenged a possessing cotenant heir's exclusive possession of the property;

(C) asserted any other claim against a possessing cotenant heir in connection with the property, such as the right to rental payments from a possessing cotenant heir;

(D) acted to preserve the cotenant heir's interest in the property by filing notice of the cotenant heir's claimed interest in the deed records of the county in which the property is located; or

(E) entered into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest.

(c) To make a claim of adverse possession against a cotenant heir under this section, the cotenant heir or heirs claiming adverse possession must:

(1) file in the deed records of the county in which the real property is located an affidavit of heirship in the form prescribed by Section 203.002, Estates Code, and an affidavit of adverse possession that complies with the requirements of Subsection (d);

(2) publish notice of the claim in a newspaper of general circulation in the county in which the property is located for the four consecutive weeks immediately following the date the affidavits required by Subdivision (1) are filed; and

(3) provide written notice of the claim to the last known addresses of all other cotenant heirs by certified mail, return receipt requested.

(d) The affidavits required by Subsection (c) may be filed separately or combined into a single instrument. The affidavit of adverse possession must include:

(1) a legal description of the property that is the subject of the adverse possession;

(2) an attestation that each affiant is a cotenant heir of the property who has been in peaceable and exclusive possession of the property for a continuous, uninterrupted period during the 10 years preceding the filing of the affidavit;

(3) an attestation of cultivation, use, or enjoyment of the property by each affiant during the 10 years preceding the filing of the affidavit;

(4) evidence of payment by the affiant or affiants of all property taxes on the property as provided by Subsection (b) during the 10 years preceding the filing of the affidavit; and

(5) an attestation that there has been no action described by Subsection (b)(2) by another cotenant heir during the 10 years preceding the filing of the affidavit.

(e) A cotenant heir must file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir under this section not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the affidavits required by Subsection (c).

(f) If a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits required by Subsection (c) are filed and no notice described by Subsection (b)(2)(D) was filed in the 10-year period preceding the filing of the affidavits under Subsection (c), title vests in the adversely possessing cotenant heir or heirs in the manner provided by Section 16.030, precluding all claims by other cotenant heirs.

(g) A bona fide lender for value without notice accepting a voluntary lien against the real property to secure the adversely possessing cotenant heir's indebtedness or a bona fide purchaser for value without notice may conclusively rely on the affidavits required by Subsection (c) if:

(1) the affidavits have been filed of record for the period prescribed by Subsection (e); and

(2) a controverting affidavit or judgment has not been filed during that period.

(h) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160 acres. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(i) Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

Added by Acts 2017, 85th Legislature, Ch. 742 (SB 1249), effective September 1, 2017.

Sec. 121.006. ALTERATION OF AUTHORIZED FORMS; DEFINITION.

(a) – (b) [No change.]

(c) For purposes of Subsection (b), a person may personally appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or

(2) appearing by an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must include a space for an online notarization as defined by Section 406.101, Government Code, to indicate by which method described by Subsection (c) the acknowledging person appeared before the officer.

Amended by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 121.016. EFFECT OF OTHER LAW.

To the extent that a provision of this chapter conflicts with Subchapter C, Chapter 406, Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 137.003. EXECUTION AND WITNESSES; EXECUTION AND ACKNOWLEDGMENT BEFORE NOTARY PUBLIC.

(a) A declaration for mental health treatment must be:

(1) signed by the principal in the presence of two or more subscribing witnesses; or

(2) signed by the principal and acknowledged before a notary public.

(b) – (c) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 349 (HB 1787), effective September 1, 2017. Sec. 4 of HB 1787 provides: "The changes in law made by this Act to Sections 137.003 and 137.011, Civil Practice and Remedies Code, apply to a declaration for mental health treatment executed on or after the effective date of this Act. A declaration for mental health treatment executed before the effective date of this Act is governed by the law as it existed on the date the declaration for mental health treatment was executed, and the former law is continued in effect for that purpose."

Sec. 137.011. FORM OF DECLARATION FOR MENTAL HEALTH TREATMENT.

The declaration for mental health treatment must be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, wilfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive

medication, and preferences regarding emergency mental health treatment.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____ I do not consent to the administration of the following medications:

_____ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

Conditions or limitations: _____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment.

_____ I do not consent to the administration of convulsive treatment.

Conditions or limitations: _____

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment **FIRST** (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment **SECOND** (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment **THIRD** (circle one) Restraint/Seclusion/Medication.

_____ I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications:

Conditions or limitations: _____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

Conditions or limitations: _____

Signature of Principal/Date: _____

SIGNATURE ACKNOWLEDGED BEFORE NOTARY PUBLIC

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of notary public).

NOTARY PUBLIC, State of Texas

Printed name of Notary Public:

My commission expires:

SIGNATURE IN PRESENCE OF TWO WITNESSES

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

**NOTICE TO PERSON MAKING A DECLARATION
FOR MENTAL HEALTH TREATMENT**

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is either acknowledged before a notary public or signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Amended by Acts 2017, 85th Legislature, Ch. 349 (HB 1787), effective September 1, 2017. See transitional note following Sec. 137.003.

CODE OF CRIMINAL PROCEDURE

Art. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT.

(a) In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or arrest.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 14(b) of SB 1096 provides: "A law enforcement officer or other person with custody of a ward is not required to comply with Articles 14.055 and 15.171, Code of Criminal Procedure, Section 52.011, Family Code, or Section 573.0021, Health and Safety Code, as added by this Act, as applicable, until July 1, 2018."

Art. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT.

(a) In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's arrest.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. See transitional note following Art. 14.055.

FAMILY CODE

CHAPTER 35. TEMPORARY AUTHORIZATION FOR CARE OF MINOR CHILD

Sec. 35.001. APPLICABILITY.

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001 or eligible to enter an authorization agreement under Section 34.001.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.002. TEMPORARY AUTHORIZATION.

A person described by Section 35.001 may seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the person resides if:

(1) the child has resided with the person for at least the 30 days preceding the date the petition was filed; and

(2) the person does not have an authorization agreement under Chapter 34 or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.003. PETITION FOR TEMPORARY AUTHORIZATION FOR CARE OF CHILD.

(a) A petition for temporary authorization for care of a child must:

(1) be styled "ex parte" and be in the name of the child;

(2) be verified by the petitioner;

(3) state:

(A) the name, date of birth, and current physical address of the child;

(B) the name, date of birth, and current physical address of the petitioner; and

(C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;

(4) describe the status and location of any court proceeding in this or another state with respect to the child;

(5) describe the petitioner's relationship to the child;

(6) provide the dates during the preceding 12 months that the child has resided with the petitioner;

(7) describe any service or action that the petitioner is unable to obtain or undertake on behalf of the child without authorization from the court;

(8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child;

(9) contain a statement of the period for which the petitioner is requesting temporary authorization; and

(10) contain a statement of any reason supporting the request for the temporary authorization.

(b) If the petition identifies a court proceeding with respect to the child under Subsection (a)(4), the petitioner shall submit a copy of any court order that designates a conservator or guardian of the child.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.004. NOTICE; HEARING.

(a) On receipt of the petition, the court shall set a hearing.

(b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

(c) Proof of service under Subsection (b) must be filed with the court at least three days before the date of the hearing.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.005. ORDER FOR TEMPORARY AUTHORIZATION.

(a) At the hearing on the petition, the court may hear evidence relating to the child's need for care by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) The court shall award temporary authorization for care of the child to the petitioner if the court finds it is necessary to the child's welfare and no objection is made by the child's parent, conservator, or guardian. If an objection is made, the court shall dismiss the petition without prejudice.

(c) The court shall grant the petition for temporary authorization only if the court finds by a preponderance of the evidence that the child does not have a parent, conservator, guardian, or other legal representative available to give the necessary consent.

(d) The order granting temporary authorization under this chapter expires on the first anniversary of the date of issuance or at an earlier date determined by the court. The order may authorize the petitioner to:

(1) consent to medical, dental, psychological, and surgical treatment and immunization of the child;

(2) execute any consent or authorization for the release of information as required by law relating to the treatment or immunization under Subdivision (1);

(3) obtain and maintain any public benefit for the child;

(4) enroll the child in a day-care program, preschool, or public or private primary or secondary school;

(5) authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities; and

(6) authorize or consent to any other care for the child essential to the child's welfare.

(e) An order granting temporary authorization under this chapter must state:

(1) the name and date of birth of the person with temporary authorization to care for the child;

(2) the specific areas of authorization granted to the person;

(3) that the order does not supersede any rights of a parent, conservator, or guardian as provided by court order; and

(4) the expiration date of the temporary authorization order.

(f) A copy of an order for temporary authorization must:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) be sent to the last known address of the child's parent, conservator, or guardian.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.006. RENEWAL OR TERMINATION OF TEMPORARY AUTHORIZATION.

(a) A temporary authorization order may be renewed by court order for a period of not more than one year on a showing by the petitioner of a continuing need for the order.

(b) At any time, the petitioner or the child's parent, conservator, or guardian may request the court to terminate the order. The court shall terminate the order on finding that there is no longer a need for the order.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 35.007. EFFECT OF TEMPORARY AUTHORIZATION.

(a) A person who relies in good faith on a temporary authorization order under this chapter is not subject to:

(1) civil or criminal liability to any person; or

(2) professional disciplinary action.

(b) A temporary authorization order does not affect the rights of the child's parent, conservator, or guardian

regarding the care, custody, and control of the child, and does not establish legal custody of the child.

(c) A temporary authorization order does not confer or affect standing or a right of intervention in any proceeding under Title 5.

(d) An order under this chapter is not a child custody determination and does not create a court of continuing, exclusive jurisdiction under Title 5.

Added by Acts 2017, 85th Legislature, Ch. 334 (HB 1043), effective June 1, 2017.

Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY PROBATE COURT.

(a) In this section, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a law enforcement officer takes a child who is a ward into custody under Section 52.01(a)(2) or (3), the law enforcement officer or other person having custody of the child shall notify the court with jurisdiction over the child's guardianship of the child's detention or arrest.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 14(b) of SB 1096 provides: "A law enforcement officer or other person with custody of a ward is not required to comply with Articles 14.055 and 15.171, Code of Criminal Procedure, Section 52.011, Family Code, or Section 573.0021, Health and Safety Code, as added by this Act, as applicable, until July 1, 2018."

FINANCE CODE

CHAPTER 280. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 280.001. DEFINITIONS.

In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Exploitation" means the act of forcing, compelling, or exerting undue influence over a person causing the person to act in a way that is inconsistent with the person's relevant past behavior or causing the person to perform services for the benefit of another person.

(3) "Financial exploitation" means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a person; or

(B) an act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, another person, to:

(i) obtain control, through deception, intimidation, fraud, or undue influence, over the other person's money, assets, or other property to deprive the other person of the ownership, use, benefit, or possession of the property; or

(ii) convert the money, assets, or other property of the other person to deprive the other person of the ownership, use, benefit, or possession of the property.

(4) "Financial institution" has the meaning assigned by Section 277.001.

(5) "Vulnerable adult" means:

(A) an elderly person as that term is defined by Section 48.002, Human Resources Code;

(B) a person with a disability as that term is defined by Section 48.002, Human Resources Code; or

(C) an individual receiving services as that term is defined by rule by the executive commissioner of the Health and Human Services Commission as authorized by Section 48.251(b), Human Resources Code.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

Sec. 280.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

(a) If an employee of a financial institution has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the employee shall notify the financial institution of the suspected financial exploitation.

(b) If a financial institution is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the financial institution shall assess the suspected financial exploitation and submit a report to the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The financial institution shall submit the report required by this subsection not later than the earlier of:

(1) the date the financial institution completes the financial institution's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the financial institution is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A financial institution that submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for:

(1) the employees of the financial institution to make the notification required under Subsection (a); and

(2) the financial institution to conduct the assessment and submit the report required under Subsection (b).

(e) The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the financial institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

If a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 280.002(b), the financial institution may at the time the financial institution submits the report also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the financial institution suspects the third party of financial exploitation of the vulnerable adult.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

Sec. 280.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF

SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

(a) Notwithstanding any other law, if a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 280.002(b), the financial institution:

(1) may place a hold on any transaction that:

(A) involves an account of the vulnerable adult; and

(B) the financial institution has cause to believe is related to the suspected financial exploitation; and

(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the department or a law enforcement agency.

(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the financial institution submits the report under Section 280.002(b).

(c) The financial institution may extend a hold placed on any transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection (b) if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The financial institution may also petition a court to extend a hold placed on any transaction under Subsection (a) beyond the period prescribed by Subsection (b). A court may enter an order extending or shortening a hold or providing other relief.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under this section.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

Sec. 280.005. IMMUNITY.

(a) An employee of a financial institution who makes a notification under Section 280.002(a), a financial institution that submits a report under Section 280.002(b) or makes a notification to a third party under Section 280.003, or an employee who or financial institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding,

unless the employee or financial institution acted in bad faith or with a malicious purpose.

(b) A financial institution that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Section 280.004(a)(1) is immune from any civil or criminal liability or disciplinary action resulting from that action or failure to act.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

Sec. 280.006. RECORDS.

To the extent permitted by state or federal law, a financial institution shall provide, on request, access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the department, law enforcement agency, or prosecuting attorney's office or at the request of the department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

GOVERNMENT CODE

Sec. 25.0006. BOND; REMOVAL.

(a) Notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), and (a-3) control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.

(a-1) Before beginning the duties of the office, the [The] judge of a statutory county court must execute a bond that:

(1) is payable to the treasurer of the county;

(2) is in the amount set by the commissioners court of:

(A) subject to Paragraph (B), not less than \$1,000 nor more than \$10,000; or

(B) for a judge presiding in the court over guardianship proceedings, as defined by Section 1002.015, Estates Code, or over probate proceedings, as defined by Section 22.029, Estates Code, not less than:

(i) \$100,000 for a court in a county with a population of 125,000 or less; or

(ii) \$250,000 for a court in a county with a population of more than 125,000; and

(3) is conditioned that the judge will:

(A) faithfully perform all duties of office;
and

(B) for a judge presiding in the court over guardianship or probate proceedings, perform the duties required by the Estates Code [as prescribed by law for county judges].

(a-2) The bond executed as required by Subsection (a-1) must be approved by the commissioners court.

(a-3) In lieu of the bond required by Subsection (a-1)(2)(B), a county may elect to obtain insurance against losses caused by the gross negligence of a judge of a statutory county court in performing the duties of office. The commissioners court of a county shall pay the premium for the insurance out of the general funds of the county.

(a-4) This section does not apply to:

(1) a judge of a statutory county court who does not preside over guardianship proceedings, as defined by Section 1002.015, Estates Code;

(2) a judge of a statutory probate court who executes a bond, obtains insurance, or self-insures pursuant to Section 25.00231; or

(3) a judge who presides over a county criminal court.

Amended by Acts 2017, 85th Legislature, Ch. 515 (SB 40), effective September 1, 2017. Sec. 3 of SB 40 provides: "A judge of a statutory county court, a statutory probate court, or a constitutional county court who is serving on the effective date of this Act shall comply with the requirements of Section 25.0006 or 26.001, Government Code, as amended by this Act, as applicable, not later than November 1, 2017."

Sec. 26.001. BOND.

(a) Before beginning [entering] the duties of the office, the county judge must execute a bond that:

(1) is payable to the treasurer of the county;

(2) is in the amount set by the commissioners court of:

(A) subject to Paragraph (B), not less than \$1,000 nor more than \$10,000; or

(B) for a county judge presiding in the county court over guardianship proceedings, as defined by Section 1002.015, Estates Code, or over probate proceedings, as defined by Section 22.029, Estates Code, not less than:

(i) \$100,000 for a court in a county with a population of 125,000 or less; or

(ii) \$250,000 for a court in a county with a population of more than 125,000; and

(3) is conditioned that the judge will:

(A) faithfully perform all duties of office [pay all money that comes into his hands as county judge to the person or officer entitled to it]; and

(B) for a county judge presiding in the county court over guardianship or probate proceedings, perform the duties required by the Estates Code [pay to the county all money illegally paid to the judge out of county funds; and

[(C) not vote or consent to pay out county funds for other than lawful purposes].

(b) The bond executed as required by Subsection (a) must be approved by the commissioners court.

(c) In lieu of the bond required by Subsection (a)(2)(B), a county may elect to obtain insurance against losses caused by the gross negligence of a county judge in performing the duties of office. The commissioners court of a county shall pay the premium for the insurance out of the general funds of the county.

Amended by Acts 2017, 85th Legislature, Ch. 515 (SB 40), effective September 1, 2017. See transitional note following Sec. 25.0006.

Sec. 101.0815. STATUTORY COUNTY COURT FEES AND COSTS: ESTATES CODE.

The clerk of a statutory county court shall collect fees and costs under the Estates Code as follows:

(1) fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code) . . . \$5;

(2) security deposit on filing, by any person other than the personal representative of an estate, an application, complaint, or opposition in relation to the estate, if required by the clerk (Sec. 53.052, Estates Code) . . . probable cost of the proceeding;

(3) fee on filing an application, complaint, petition, or other paper in a guardianship proceeding, which includes a deposit for payment to an attorney ad litem (Sec. 1052.051, Estates Code) . . . cost of filing and payment of attorney ad litem;

(4) security deposit on filing, by any person other than the guardian, attorney ad litem, or guardian ad litem, an application, complaint, or opposition in relation to a guardianship matter, if required by the

clerk (Sec. 1053.052, Estates Code) . . . probable cost of the guardianship proceeding;

(5) nonrefundable fee to cover the cost of administering Subchapter G, Chapter 1104, Estates Code (Sec. 1104.303, Estates Code) . . . \$40; and

(6) costs for attorney ad litem appointed to pursue the restoration of a ward's capacity or modification of the ward's guardianship (Sec. 1202.102, Estates Code) . . . reasonable compensation.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 101.1014. STATUTORY PROBATE COURT FEES AND COSTS: ESTATES CODE.

The clerk of a statutory probate court shall collect fees and costs under the Estates Code as follows:

(1) fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code) . . . \$5;

(2) security deposit on filing, by any person other than the personal representative of an estate, an application, complaint, or opposition in relation to the estate, if required by the clerk (Sec. 53.052, Estates Code) . . . probable cost of the proceeding;

(3) fee on filing an application, complaint, petition, or other paper in a guardianship proceeding, which includes a deposit for payment to an attorney ad litem (Sec. 1052.051, Estates Code) . . . cost of filing and payment of attorney ad litem;

(4) security deposit on filing, by any person other than the guardian, attorney ad litem, or guardian ad litem, an application, complaint, or opposition in relation to a guardianship matter, if required by the clerk (Sec. 1053.052, Estates Code) . . . probable cost of the guardianship proceeding;

(5) nonrefundable fee to cover the cost of administering Subchapter G, Chapter 1104, Estates Code (Sec. 1104.303, Estates Code) . . . \$40; and

(6) costs for attorney ad litem appointed to pursue the restoration of a ward's capacity or modification of the ward's guardianship (Sec. 1202.102, Estates Code) . . . reasonable compensation.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 101.1215. COUNTY COURT FEES AND COSTS: ESTATES CODE.

The clerk of a county court shall collect the following fees and costs under the Estates Code:

(1) fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code) . . . \$5;

(2) security deposit on filing, by any person other than the personal representative of an estate, an application, complaint, or opposition in relation to the estate, if required by the clerk (Sec. 53.052, Estates Code) . . . probable cost of the proceeding;

(3) fee on filing an application, complaint, petition, or other paper in a guardianship proceeding, which includes a deposit for payment to an attorney ad litem (Sec. 1052.051, Estates Code) . . . cost of filing and payment of attorney ad litem;

(4) security deposit on filing, by any person other than the guardian, attorney ad litem, or guardian ad litem, an application, complaint, or opposition in relation to a guardianship matter, if required by the clerk (Sec. 1053.052, Estates Code) . . . probable cost of the guardianship proceeding;

(5) nonrefundable fee to cover the cost of administering Subchapter G, Chapter 1104, Estates Code (Sec. 1104.303, Estates Code) . . . \$40; and

(6) costs for attorney ad litem appointed to pursue the restoration of a ward's capacity or modification of the ward's guardianship (Sec. 1202.102, Estates Code) . . . reasonable compensation.

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 155.101. STANDARDS FOR CERTAIN GUARDIANSHIPS AND ALTERNATIVES TO GUARDIANSHIP.

(a) The commission shall adopt minimum standards for:

(1) the provision of guardianship services or other similar but less restrictive types of assistance or services by:

(A) individuals employed by or contracting with guardianship programs to provide the assistance or services on behalf of the programs; and

(B) private professional guardians; and

(2) the provision of guardianship services by the Department of Aging and Disability Services or its successor agency.

(b) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

Sec. 155.102. CERTIFICATION REQUIRED FOR CERTAIN GUARDIANS.

(a) [No change.]

(a-1) An individual who directly supervises an individual who will provide guardianship services in this state to a ward of a guardianship program must hold a certificate issued under this section.

(b) – (g) [No change.]

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017. Sec. 6(b) of SB 36 provides: "An individual described by Section 155.102(a-1), Government Code, as added by this Act, is not required to hold a certificate issued under that section until September 1, 2018."

Sec. 155.106. PROHIBITED EMPLOYMENT.

A guardianship program may not employ an individual to provide, or directly supervise the provision of, guardianship and related services on the program's behalf:

(1) if a certificate issued to the individual under this subchapter is expired or refused renewal, or has been revoked and not been reissued; or

(2) during the time a certificate issued to the individual under this subchapter is suspended.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION [REGULATION] OF CERTAIN GUARDIANS

SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE

As added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. See below for another Subchapter D added by Acts 2017, 85th Legislature, Ch. 714 (SB 36).

Sec. 155.151. REGISTRATION OF GUARDIANSHIPS.

(a) The supreme court, after consulting with the office and the commission, shall by rule establish a mandatory registration program for guardianships

under which all guardianships in this state shall be required to register with the commission.

(b) In establishing rules under this section, the supreme court shall ensure courts with jurisdiction over a guardianship immediately notify the commission of the removal of a guardian.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.152. GUARDIANSHIP DATABASE.

In cooperation with the commission and courts with jurisdiction over guardianship proceedings and by using the information obtained by the commission under this subchapter, the office shall establish and maintain a central database of all guardianships subject to the jurisdiction of this state.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 14(a) of SB 1096 provides: "Not later than June 1, 2018, the Office of Court Administration of the Texas Judicial System shall establish the guardianship database required under Section 155.152, Government Code, as added by this Act, and provide access to the database to the Department of Public Safety in accordance with Section 155.153, Government Code, as added by this Act."

Sec. 155.153. ACCESS TO DATABASE.

(a) The office shall ensure the database is accessible to the Department of Public Safety for law enforcement purposes.

(b) Subject to Subsection (c), the Department of Public Safety shall make information from the database available to law enforcement personnel through the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the department.

(c) The only information that may be disclosed from the database to a law enforcement official inquiring into a guardianship is:

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

(2) the name, telephone number, and address of the guardian of a ward; and

(3) the name of the court with jurisdiction over the guardianship.

(d) The office shall limit access to the database to properly trained staff.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. See transitional note following Sec. 155.152.

Sec. 155.154. DATABASE DISCLAIMER.

To the extent feasible, the following disclaimer shall be displayed when the database is accessed: "This database is for the limited purpose of determining whether an individual has a guardian and obtaining a guardian's contact information. The scope of a guardian's authority is determined by court order, and a guardian should not be presumed to have the authority to act for or on behalf of a ward until the extent of the guardian's authority is verified by the court with jurisdiction over the guardianship."

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE.

(a) Information that is contained in the database required under Section 155.152, including personally identifying information of a guardian or a ward, is confidential and not subject to disclosure under Chapter 552 or any other law.

(b) A law enforcement agency or officer that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552 or any other law, and may not use the information for a purpose that does not directly relate to the purpose for which it was obtained.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

SUBCHAPTER D. REGULATION OF GUARDIANSHIP PROGRAMS

As added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017. See above for another Subchapter D added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096). Sec. 6(a) of SB 36 provides: "As soon as practicable after the effective date of this Act, the Judicial Branch Certification Commission and the Supreme Court of Texas shall adopt the standards and rules, respectively, necessary to implement Subchapter D, Chapter 155, Government Code, as added by this Act."

Sec. 155.151. APPLICATION OF SUBCHAPTER.

This subchapter does not apply to guardianship and related services provided by a guardianship program under a contract with the Health and Human Services Commission.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

Sec. 155.152. STANDARDS FOR OPERATION OF GUARDIANSHIP PROGRAMS.

(a) The commission, in consultation with the Health and Human Services Commission and other interested parties, shall adopt minimum standards for the operation of guardianship programs.

(b) The commission shall design the standards to monitor and ensure the quality of guardianship and related services provided by guardianship programs.

(c) Standards adopted under this section must be designed to ensure continued compliance by a guardianship program with this chapter and other applicable state law.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

Sec. 155.153. REGISTRATION REQUIRED FOR GUARDIANSHIP PROGRAMS.

(a) A guardianship program may not provide guardianship and related services to an incapacitated person or other person described by Section 155.001(4) unless the program is registered with and holds a certificate of registration issued by the commission under this subchapter.

(b) The supreme court shall adopt rules and procedures for issuing, renewing, suspending, or revoking a registration certificate under this section. Rules adopted by the supreme court under this section must:

(1) ensure compliance with the standards adopted under Section 155.152;

(2) provide that the commission establish qualifications for obtaining and maintaining a registration certificate;

(3) provide that a registration certificate expires on the second anniversary of the date the certificate is issued;

(4) prescribe procedures for accepting complaints and conducting investigations of alleged violations by guardianship programs of the standards adopted under Section 155.152 or other violations of this chapter or other applicable state law;

(5) prescribe procedures by which the commission, after notice and hearing, may suspend or revoke the registration certificate of a guardianship program that does not substantially comply with the standards adopted under Section 155.152 or other provisions of this chapter or other applicable state law; and

(6) prescribe procedures for addressing a guardianship for which a guardianship program is the appointed guardian if the guardianship program's registration certificate is expired or refused renewal, or has been revoked and not been reissued.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017. Sec. 6(b) of SB 36 provides: "A guardianship program is not required to hold a registration certificate issued under Section 155.153, Government Code, as added by this Act, until September 1, 2018."

Sec. 155.154. REGISTRATION DATABASE.

(a) The commission shall make available on the commission's Internet website a publicly accessible list of all registered guardianship programs. The list must contain the following for each guardianship program:

(1) the information provided under Section 155.105(a); and

(2) whether the guardianship program holds in good standing a registration certificate under this subchapter.

(b) The commission shall update the list described by Subsection (a) at least quarterly.

Added by Acts 2017, 85th Legislature, Ch. 714 (SB 36), effective September 1, 2017.

SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 15(a) of SB 1096 provides: "As soon as practicable after the effective date of this Act, the Supreme Court of Texas, after consulting with the Judicial Branch Certification Commission, shall adopt rules necessary to implement Subchapter E, Chapter 155, Government Code, as added by this Act."

Sec. 155.201. DEFINITION.

In this subchapter, "probate court" has the meaning assigned by Section 1002.008, Estates Code.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.202. APPLICABILITY.

This subchapter does not apply with respect to the following persons who are or will be providing guardianship services to a proposed ward:

(1) an attorney or corporate fiduciary; or

(2) an individual subject to certification under Subchapter C.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING GUARDIANS; SUPREME COURT RULEMAKING.

(a) The supreme court, after consulting with the commission, shall by rule establish a process by which the commission performs training and criminal history background checks for individuals seeking appointment as guardian.

(b) In adopting rules under this section, the supreme court shall ensure that the commission is required to provide confirmation of a person's completion of training and a copy of the person's criminal history background check to the probate court not later than the 10th day before the date of the hearing to appoint a guardian.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.204. TRAINING REQUIRED.

(a) In adopting rules under Section 155.203, the supreme court shall:

(1) subject to Subdivision (2), ensure that before a person is appointed guardian, the person completes a training course:

(A) designed by the commission to educate proposed guardians about their responsibilities as guardians, alternatives to guardianships, supports and services available to the proposed ward, and a ward's bill of rights under Section 1151.351, Estates Code; and

(B) made available for free to proposed guardians by the commission online via the commission's Internet website and, on request, in a written format; and

(2) identify the circumstances under which a court may waive the training required under this section.

(b) Notwithstanding Section 155.203(b) or Section 1251.052, Estates Code, the training required under Subsection (a):

(1) does not apply to the initial appointment of a temporary guardian under Chapter 1251, Estates Code; and

(2) applies only if there is a motion to extend the term of a temporary guardian.

(c) The commission may make the training required under this section available to court investigators and guardians ad litem. A court

investigator or guardian ad litem is not required to receive training unless required to do so by a court.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017. Sec. 15(b) of SB 1096 provides: "A proposed guardian is not required to comply with Section 155.204, Government Code, as added by this Act, until June 1, 2018."

Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION.

(a) In accordance with the rules adopted by the supreme court under Section 155.203, the commission shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to an individual seeking appointment as a guardian or temporary guardian.

(b) The commission shall obtain:

(1) fingerprint-based criminal history record information of an applicant if the liquid assets of the estate of a ward exceed \$50,000; or

(2) name-based criminal history record information of an applicant if the liquid assets of the estate of a ward are \$50,000 or less.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION AND COURT.

(a) Criminal history record information obtained under this subchapter is privileged and confidential and is for the exclusive use of the commission and the court with jurisdiction over the guardianship. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the individual being investigated.

(b) The commission may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION.

(a) The commission shall use the criminal history record information obtained under this subchapter only for a purpose authorized by this subchapter or to maintain the registration of a guardianship under Subchapter D.

(b) A court may use the criminal history record information obtained under this subchapter only in the

same manner and only to the same extent a court is authorized to use the information under Section 1104.409, Estates Code.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED.

(a) This subchapter does not grant to the commission the authority to:

(1) establish additional qualifications or a code of ethics for individuals subject to training or a background check under this subchapter, require those individuals to pass examinations or take continuing education courses, or otherwise regulate those individuals; or

(2) interfere with a court's authority to ensure a guardian is performing all of the duties required of the guardian respecting a ward.

(b) Individuals subject to training or a background check under this subchapter are not subject to enforcement action under Chapter 153.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

Sec. 155.209. FEE FOR OBTAINING CRIMINAL HISTORY RECORD INFORMATION.

(a) Except as provided by Subsection (b), the commission may charge a fee to obtain criminal history record information under this subchapter, in an amount approved by the supreme court.

(b) The supreme court may adopt rules excluding individuals who are indigent from having to pay the fee authorized by this section.

(c) A guardian is entitled to reimbursement from the guardianship estate as provided by Subchapter C, Chapter 1155, Estates Code, for the fee authorized by this section.

Added by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS.

In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

(A) the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) other required information concerning the date and place of the online notarization; and

(C) the facts attested to or certified by the online notary public in the particular notarization.

(5) "Electronic seal" means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(6) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

(10) "Online notary public" means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:

(A) whose electronic signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(12) "Remote presentation" means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) identify the individual seeking the online notary public's services; and

(B) perform credential analysis.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER.

This subchapter applies only to an online notarization.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.103. RULEMAKING.

The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION.

(a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.105. APPLICATION; QUALIFICATIONS.

(a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an online notary public by:

(1) satisfying the qualification requirements for appointment as a notary public under Subchapter A;

(2) paying the application fee described by Subsection (d); and

(3) electronically submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by Subsection (b) must include:

(1) the applicant's name to be used in acting as a notary public;

(2) a certification that the applicant will comply with the secretary of state's standards developed under Section 406.104; and

(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS.

An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;

(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) may perform an online notarization authorized under this subchapter.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS.

An online notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.

(a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(A) a statement that the person is personally known to the online notary public;

(B) a notation of the type of identification document provided to the online notary public;

(C) a record of the identity verification made under Section 406.110, if applicable; or

(D) the following:

(i) the printed name and address of each credible witness swearing to or affirming the person's identity; and

(ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(b) The online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of online notarizations;

(2) maintain a backup for the electronic record required by Subsection (a); and

(3) protect the backup record from unauthorized use.

(c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL.

(a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been

revoked or terminated by the device's issuing or registering authority.

(b) An online notary public shall keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control. The online notary public may not allow another person to use the online notary public's electronic record, electronic signature, or electronic seal.

(c) An online notary public may use the online notary public's electronic signature only for performing online notarization.

(d) An online notary public shall attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss or use by another person of the online notary public's electronic record, electronic signature, or electronic seal.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES.

(a) An online notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity may be verified by:

(1) the online notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-

issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) The online notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION.

An online notary public or the online notary public's employer may charge a fee in an amount not to exceed \$25 for performing an online notarization in addition to any other fees authorized under Section 406.024.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION.

(a) Except as provided by Subsection (b), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal. The online notary public shall certify compliance with this subsection to the secretary of state.

(b) A former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by Subsection (a) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated.

Added by Acts 2017, 85th Legislature, Ch. 340 (HB 1217), effective July 1, 2018.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE.

(a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the

certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; COURT CLERK; DEPARTMENT OF AGING AND DISABILITY SERVICES; GUARDIANSHIPS.

(a) – (a-5) [No change.]

(a-6) The clerk described by Subsection (a) is not required to obtain criminal history record information for a person [~~who holds a certificate issued under Section 155.102 or a provisional certificate issued under Section 155.103~~] if the [~~guardianship certification program of the~~] Judicial Branch Certification Commission conducted a criminal history check on the person under Chapter 155 [before issuing or renewing the certificate]. The commission shall provide to the clerk at the court's request the criminal history record information that was obtained from the department or the Federal Bureau of Investigation.

(b) – (i) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 313 (SB 1096), effective September 1, 2017.

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) – (2) [No change.]

(3) OTHER FEES

(A) – (D) [No change.]

(E) Deposit and Safekeeping of Wills (Sec. 118.062) . . . \$ 5.00

(F) – (H) [No change.]

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

Sec. 118.062. DEPOSIT AND SAFEKEEPING OF WILLS.

The fee for "Deposit and Safekeeping of Wills" under Section 118.052(3) is for receiving [filing] and keeping wills deposited [held] for safekeeping. The fee must be paid at the time the will is deposited with the county clerk [held].

Amended by Acts 2017, 85th Legislature, Ch. 701 (HB 2207), effective September 1, 2017.

THE SECURITIES ACT (Art. 581-1, *et seq.*, V.T.C.S.)

Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION.

A. In this section:

(1) "Department" means the Department of Family and Protective Services.

(2) "Exploitation," "financial exploitation," and "vulnerable adult" have the meanings assigned by Section 280.001, Finance Code.

(3) "Securities professional" means an agent, an investment adviser representative, or a person who serves in a supervisory or compliance capacity for a dealer or investment adviser.

B. If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

C. If a dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection N of this section, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

(1) the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection C of this section is not required to make an additional report of suspected abuse, neglect, or exploitation under

Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

E. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection C of this section. The policies, programs, plans, or procedures adopted under this subsection may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

F. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

G. Notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser:

(1) may place a hold on any transaction that:

(A) involves an account of the vulnerable adult; and

(B) the dealer or investment adviser has cause to believe is related to the suspected financial exploitation; and

(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the Securities Commissioner, the department, or a law enforcement agency.

H. Subject to Subsection I of this section, a hold placed on any transaction under Subsection G of this section expires on the 10th business day after the date the dealer or investment adviser submits the reports under Subsection C of this section.

I. A dealer or investment adviser may extend a hold placed on any transaction under Subsection G of this section for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection H of this section if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The dealer or investment adviser may also petition a court to extend a hold placed on any transaction under Subsection G of this section beyond the period prescribed by Subsection H of this section. A court may enter an order extending or shortening a hold or providing other relief.

J. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under Subsection G of this section.

K. A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification to a third party under Subsection F of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

L. A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Subsection G(1) of this section is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act.

M. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

N. The Board by rule shall prescribe the form and content of the report required to be submitted by a

dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

Added by Acts 2017, 85th Legislature, Ch. 376 (HB 3921), effective September 1, 2017.

TRANSPORTATION CODE

Sec. 461.009. ~~[ELIGIBILITY OF VISITORS TO USE CERTAIN]~~ PUBLIC TRANSPORTATION SERVICES FOR PEOPLE WITH DISABILITIES.

(a) – (b) [No change.]

(c) To the extent practicable within available resources, a provider shall notify individuals who are certified by the provider as eligible to use the provider's services that the individuals are entitled to use another provider's service for not more than 21 days without an additional application.

Added by Acts 2017, 85th Legislature, Ch. 546 (SB 402), effective September 1, 2017.

Sec. 501.0315. BENEFICIARY DESIGNATION.

(a) The owner of a motor vehicle may designate a sole beneficiary to whom the owner's interest in the vehicle transfers on the owner's death as provided by Chapter 115, Estates Code, by submitting an application for title under Section 501.023 with the designation. To be effective, the designation must state that the transfer of an interest in the vehicle to the designated beneficiary is to occur at the transferor's death.

(b) The legal name of a beneficiary designated under this section must be included on the title.

(c) The department shall transfer title of a motor vehicle to a beneficiary designated under this section for the vehicle if the beneficiary submits:

(1) an application for title under Section 501.023 not later than the 180th day after the date of the owner's death or, if the vehicle is owned by joint owners, the last surviving owner's death, as applicable; and

(2) satisfactory proof of the death of the owner or owners, as applicable.

(d) A beneficiary designation may be changed or revoked by submitting a new application for title under Section 501.023.

(e) A beneficiary designation or a change or revocation of a beneficiary designation made on an application for title of a motor vehicle that has not been submitted to the department before the death of a vehicle's owner or owners who made, changed, or revoked the designation, as applicable, is invalid.

(f) The department may adopt rules to administer this section.

Added by Acts 2017, 85th Legislature, Ch. 586 (SB 869), effective September 1, 2017.