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[Insert Catchy Title Here]

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## 2015 Texas Estate and Trust Legislative Update

(Including Probate, 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 15<sup>th</sup> 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 14<sup>th</sup> 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 26<sup>th</sup> Annual Wills and Probate Institute, Houston 2011
- Author/Speaker, "The Role of the Guardian," 13<sup>th</sup> 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" 9<sup>th</sup> Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2007
- Speaker, "Attorney Ad Litem Duties" and Panel Member, "Ask the Experts," 8<sup>th</sup> 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



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### Legal Experience

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

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, 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
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

## **William D. Pargaman (cont.)**

- 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
- 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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# [Insert Catchy Title Here]

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## 2015 Texas Estate and Trust Legislative Update

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

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### 1. The Preliminaries.

**1.1 Introduction and Scope.** The 84<sup>th</sup> Regular Session of the Texas Legislature spans the 140 days beginning January 13, 2015, and ending June 1, 2015. 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.

**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!).
- Finally, the descriptions contained in this paper, while hopefully accurate at the time they were written, may no longer accurately reflect the contents of a bill at a later stage in the legislative process.

Therefore, you'll find directions in Section 1.5 on page 2 below 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,<sup>1</sup> you'll find it beginning with **Part 6 on page 6 below**.

**1.4 Acknowledgments.** A lot of the effort in every legislative session comes from the ReaEstate, Probate, and Trust Law Section of the State Bar of Texas. REPTL, with its 8,000+ members, has been active in proposing legislation in this area for more than three decades. During the year 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. Thanks go to:

- Craig Hopper of Austin, Chair, Estate and Trust Legislative Affairs Committee; and principal presenter of this paper
- Lisa Jamieson of Fort Worth, Immediate Past Section Chair
- Bill Pargaman of Austin, Section Chair-Elect/Secretary; Immediate Past Chair, Estate and Trust Legislative Affairs Committee; and principal author of this paper<sup>2</sup>
- Eric Reis of Dallas, Chair, Decedents' Estates Committee
- Laura Upchurch of Brenham, Chair, Guardianship Committee
- Marjorie Stephens of Dallas and Jeffrey Myers of Fort Worth, Co-Chairs, Trusts Committee
- Kristi Elsom of Houston, Chair, Designated Agents and Directives Committee
- Clint Hackney of Austin, Lobbyist
- Barbara Klitch of Austin, who provides invaluable service tracking legislation for REPTL

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<sup>1</sup> Presumably because you've read it in one of my previous legislative updates, and not because you find my writing somewhat less than scintillating.

<sup>2</sup> Yes, I'm thanking myself!

REPTL is helped along the way by the State Bar, its Board of Directors, and its excellent 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 (George Bruns of San Antonio, Chair, Michael Milich of Houston, Governmental Relations Chair, and Celeste Embrey, Executive Director).

Last, but of course not least, are the legislators and their capable staffs. In the 2015 session, sponsors of REPTL legislation include Rep. Senfronia Thompson of Houston, Rep. John Wray of Waxahachie, Sen. José Rodríguez of El Paso, Sen. Judith Zaffirini of Laredo, and Sen. Joan Huffman of Houston.

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.

**1.5 Obtaining Copies of Bills.** If you want to obtain copies of any of the bills discussed here, go to [www.legis.state.tx.us](http://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 2015 regular legislative session that spans from January through May is "84(R) - 2015). 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.** The Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting through its Council. Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL-carried legislation. REPTL is not allowed to sponsor legislation or oppose legislation without the approval of the Board of Directors of the State Bar. There is no provision to support legislation offered by someone other than REPTL, and the ability of REPTL to react during the legislative session is hampered by the necessity for Bar approval. Therefore, REPTL must receive prior permission to carry the proposals discussed in this paper that are identified as REPTL proposals. REPTL has hired Clint Hackney, who has assisted with the passage of REPTL legislation for many sessions.

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

Prior to this session, most bills in our area in the Senate went through its Committee on Jurisprudence. However, Lt. Gov. Patrick dissolved that committee this session, and it appears that most of our bills will 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. Rodney Ellis (D-Houston).

### **3. The Process.**

**3.1 The Genesis of REPTL’s Package.** REPTL<sup>3</sup> 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.

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<sup>3</sup> 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.

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

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

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

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

**3.6 State Bar Board of Directors Approval.** Assuming REPTL’s package receives preliminary approval from the State Bar’s Legislative Policy Committee, it is submitted to the full Board of Directors of the State Bar for approval in September. At times, REPTL may not receive approval of portions of its package. In these cases, REPTL usually works to satisfy any concerns raised, and then seeks approval from the full Board of Directors through an appeal process. REPTL’s 2015 legislative package received approval from the full Board of Directors at its September, 2014, meeting.

**3.7 REPTL is Ready to Go.** After REPTL receives approval from the State Bar’s Board of

## 2015 Texas Estate and Trust Legislative Update

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

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

**3.9 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](http://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 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>

**3.11 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](http://www.snpalaw.com/resources/EstatesCodeStory)

This year's Legislative Council general code update bill is **SB 1296** (West). Among other things, it:

- updates outdated references to the Probate Code in
  - Civ. Prac. & Rem. Code Sec. 15.007 (relating to venue conflicts in PI, death, or property damage cases);
  - Fin. Code Secs. 123.207 and 274.113;
  - Gov't. Code Sec. 74.098;
- updates outdated references to Probate Code Chapter XI in Fin. Code Secs. 34.306, 34.307, 95.011, and 125.308;
- updates outdated references to Probate Code Secs. 36B-36F in Fin. Code Secs. 59.105 and 125.504;
- updates an outdated reference to Probate Code Sec. 436 in Fin. Code Sec. 125.001;
- updates outdated references to Probate Code Sec. 105A in Fin. Code Secs. 182.020, 187.002, and 187.201;
- updates outdated references to Probate Code Secs. 12, 622, 694C, 694L, 71, in Gov't Code Secs. 101.0616, 101.0815, 101.1014, and 101.1215 (relating to court fees);
- updates an outdated reference to Probate Code Sec. 250 in Loc. Gov't Code Sec. 118.056;
- updates outdated references to Probate Code Sec. 683 in Loc. Gov't Code Sec. 118.067;

- eliminates several references throughout the Estates Code to Subtitle X, Title 2, and Subtitles Y and Z, Title 3, since there are no longer any provisions in those subtitles; and
- repeals:
  - Estates Code Sec. 21.001(c);
  - the heading to Subchapter E, Chapter 255, Estates Code;
  - Subtitle X, Title 2, Estates Code; and
  - Subtitles Y and Z, Title 3, Estates Code

SB 1296 was signed by the Governor on June 19, 2015.

#### **4. Key Dates.**

Key dates for the enactment of bills in the 2015 legislative session include:

- **Monday, November 10, 2014** – Prefiling of legislation for the 84<sup>th</sup> Legislature begins.
- **Tuesday, January 13, 2015** (1<sup>st</sup> day) – 84<sup>th</sup> Legislature convenes at noon. [*Government Code, Sec. 301.001*]
- **Friday, March 13, 2015** (60<sup>th</sup> 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 11, 2015** (119<sup>th</sup> 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 14, 2015** (122<sup>nd</sup> day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(b)*]
- **Friday, May 15, 2015** (123<sup>rd</sup> day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading. [*House Rule 8, Sec. 13(b)*]
- **Saturday, May 23, 2015** (131<sup>st</sup> 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 26, 2015** (134<sup>th</sup> day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(c)*]
- **Wednesday, May 27, 2015** (135<sup>th</sup> 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 29, 2015** (137<sup>th</sup> 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 135<sup>th</sup> day (two days earlier) is the last day for third reading in the senate; practical deadline for senate committees is before the 135<sup>th</sup> day; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Sunday, May 31, 2015** (139<sup>th</sup> 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, June 1, 2015** (140<sup>th</sup> day) – Last day of 84<sup>th</sup> 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 21, 2015** (20<sup>th</sup> day following final adjournment) – Last day Governor can sign or veto bills passed during the previous legislative session. [*Section 14, Art. IV, Texas Constitution*]
- **Monday, August 31, 2015** (91<sup>st</sup> 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*]

#### **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 above.

Their contact information can be found on their respective committee pages at [www.reptl.org](http://www.reptl.org).

### 6. The REPTL Bills.

#### 6.1 The Original REPTL Legislative Package.

Originally, the REPTL 2015 legislative package consisted of four bills: the Decedents' Estates bill, the Guardianship bill, the Trusts bill, and the Power of Attorney bill. However, Sec. 35(a), Article III, of the Texas Constitution contains the "one-subject" rule:

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

Because of this rule, sometimes the Texas Legislative Council staff sometimes strips out provisions from these four proposed bills that don't meet the one-subject rule and place them in separate, smaller bills. This session, Legislative Council has followed this rule with more vigor than usual, leading to a large number of separate "REPTL" bills.

**6.2 The "Main" REPTL Bills.** The "main" REPTL bills in the 2015 legislative session included the following three bills:

**(a) The Decedents' Estates Bill.** The 2015 REPTL Decedents' Estates bill was filed as **HB 2418** (Wray) and **SB 995** (Rodriguez). The descriptions contained in Section 7.2 on page 9 below are based on the enrolled version of the Senate bill.

SB 995 was signed by the Governor on June 18, 2015.

**(b) The Guardianship Bill.** The 2015 REPTL Guardianship bill was filed as **HB 1438** (Thompson, S.). The descriptions contained in Section 8.1 on page 13 below are based on the enrolled version of the bill.

HB 1438 was signed by the Governor on June 19, 2015.

**(c) The Trusts Bill.** The 2015 REPTL Trusts bill was filed as **HB 1029** (Wray) and **SB 387** (Rodriguez). Unfortunately, neither version passed this session. The descriptions contained in Section 9.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 39 below are based on the House Judiciary substitute for the Senate bill.

**(d) The Power of Attorney Bill.** The 2015 REPTL Power of Attorney bill was filed as **HB 3095** (Thompson, S.). Unfortunately, the bill did not pass this session. The descriptions contained in Sections 10.1 and 10.2 of Attachment 2 (Selected Bills

that DID NOT Pass) beginning on page 42 below are based on the engrossed version of the bill.

**6.3 The "Small" REPTL Bills.** The "small" REPTL bills are ones that have been carved out of the "main" REPTL bills by Legislative Council because of the "one-subject" rule.

**(a) The "One Continuous Statute" Bill (Sec. 21.002).** The 2015 REPTL "One Continuous Statute" bill is carved out of the REPTL Decedents' Estates bill and was filed as **HB 2419** (Wray) and **SB 993** (Rodriguez). When the Trust Code was adopted effective January 1, 1984, its Sec. 111.002 provided that the prior Texas Trust Act and the Texas Trust Code should be considered "one continuous statute," and that any reference to the former in any statute or instrument should be considered as a reference to the latter. When portions of the Estates Code were originally enacted in 2009 (effective January 1, 2014), Sec. 21.003(a) had a similar provision, but it only applied to references in other **statutes** to the Probate Code. This bill adds a subsection making the same rule applicable to instruments such as wills and trust agreements.

HB 2419 was signed by the Governor on May 28, 2015.

**(b) The Disclaimer Bill.** The 2015 REPTL Disclaimer bill is carved out of the REPTL Decedents' Estates bill and was filed as **HB 2428** (Wray) and **SB 994** (Rodriguez). The descriptions contained in Section 7.1 on page 7 below are based on the enrolled version of the House bill (which is not particularly "small").

HB 2428 was signed by the Governor on June 16, 2015.

**(c) The Exempt Property Bill.** The 2015 REPTL Exempt Property bill is carved out of the REPTL Decedents' Estates bill and was filed as **HB 2706** (Wray) and **SB 1201** (Rodriguez). The descriptions contained in Section 12.2 on page 20 below are based on the enrolled version of the House bill.

HB 2706 was signed by the Governor on June 17, 2015.

**(d) The TUTMA Bill.** The 2015 REPTL TUTMA bill is carved out of the REPTL Decedents' Estates bill and was filed as **HB 2705** (Wray) and **SB 1202** (Rodriguez). The descriptions contained in Section 8.9 on page 16 below are based on the enrolled version of the Senate bill.

SB 1202 was signed by the Governor on June 16, 2015.

(e) **The Disposition of Remains Bill.** The 2015 REPTL Disposition of Remains bill is carved out of the REPTL Power of Attorney bill and was filed as **HB 3070** (Thompson, S.). It was also supposed to contain provisions relating to anatomical gifts, but those got “lost in the translation,” so they’re described in Section 10.3 of Attachment 2 (Selected Bills that DID NOT Pass) on page 45 below. The descriptions contained in Section 10.6 on page 18 below are based on the enrolled version of the bill.

HB 3070 was signed by the Governor on June 19, 2015.

**6.4 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 amendments were added to REPTL bills, we’ve attempted to identify the original bill[s] that served as the source of the amendments.

## **7. Decedents’ Estates.**

**7.1 The Uniform Disclaimer of Property Interests Act (Ch. 122 & Prop. Code Ch. 240<sup>4</sup>).** The REPTL Disclaimer bill adopts a Texanized version of the uniform act relating to disclaimers. A detailed description of the new act is beyond the scope of this paper,<sup>5</sup> but the changes are designed to bring about the following improvements:

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<sup>4</sup> REPTL proposed amending Chapter 122 of the Estates Code which contains both disclaimer and assignment of interest provisions, but Legislative Council has moved the new disclaimer provisions to new Chapter 240 of the **Property** Code, leaving only the assignment of interest provisions in Chapter 122 of the Estates Code.

<sup>5</sup> Prof. Tom Featherston of Baylor and Austin attorneys Glenn Karisch and Julia Jonas are presenting a paper on this topic at TexasBarCLE’s 39<sup>th</sup> Annual Advanced Estate Planning and Probate Course in Dallas, June 10-12, 2015 (co-sponsored by REPTL). Titled *To Disclaim or Not to Disclaim: “How?” is the Real Question*, version of that paper has been posted on Glenn’s website, [texasprobate.com](http://texasprobate.com). For those of you reading an electronic copy of this paper, you can download Glenn’s paper [here](#).

- Texas’ disclaimer statutes would be consolidated in one place (new Chapter 240 of the Property Code), reducing confusion.
- The new law would deal with disclaimers in a cohesive and comprehensive manner, rather than the current hodge-podge reflecting numerous changes to our initial 1971 statute.
- Confusing and duplicative notice and filing requirements are replaced with simpler, coherent requirements, making it less likely that a disclaimant would inadvertently fail to comply with its requirements.
- It will no longer be required that **all** provisions of the statute must be complied with in order for a disclaimer to be effective, an unnecessary trap in current Texas law. This legislation provides a clear path for making an effective disclaimer.
- Current Texas disclaimer law is largely based on federal tax law, but is inconsistent with that federal law in certain respects. The new provisions eliminate this confusion by decoupling our disclaimer laws from federal tax law (including elimination of the 9-month deadline for making a disclaimer), making it less likely that a disclaimer meeting federal requirements would inadvertently not meet Texas requirements, and vice versa.
- Unlike our current law, disclaimers by fiduciaries are addressed in a systematic way, making it less likely that a disclaimer authorized by federal tax law would be impossible in Texas because of the uncertainty in our current law.
- Adopting a version of the uniform act would bring Texas in line with other states and help prevent interstate conflicts.

As noted above, a detailed description of the provisions of this new disclaimer statute is beyond the scope of this paper, but here is a [not-so-brief]summary:

**(a) Terms of Instrument Control.** In most cases, the terms of the instrument control and may override the statutory default rules regarding disclaimers.

**(b) Fiduciary’s Power to Disclaim.** Fiduciaries may disclaim (1) powers granted to the fiduciary, (2) property, or (3) powers over property otherwise passing into trust or for the benefit of a ward, estate, or beneficiary. Court approval is required for disclaimers by a dependent administrator, by a guardian, by a trustee of a statutory trust (Estates Code Ch. 1301 or Prop. Code Ch. 142), or if the effect of the

disclaimer would cause property to pass to the disclaiming fiduciary individually. A trustee may not disclaim property that would otherwise become trust property without either obtaining court approval or providing a specific notice to the required beneficiaries. A natural guardian of a minor ward without a court-appointed guardian may disclaim property (without a court order) that would pass to the minor only by virtue of another disclaimer, so long as the disclaimed property wouldn't pass to the natural guardian.

**(c) Procedures.** The normal requirements about the disclaimer being in writing, describing the disclaimed property, being signed by the disclaimant, and delivered or filed in the appropriate manner apply.

**(d) Type and Effect of Disclaimers.**

Subchapter B of Chapter 240 outlines the type and effect of various types of disclaimers.

- If the disclaimed interest passes by reason of death, the disclaimer is effective as of the date of death, and is not subject to the disclaimant's creditors.
- If the disclaimed interest does not pass by reason of someone's death, the disclaimer is effective when the instrument creating the disclaimed interest becomes irrevocable.
- If the disclaimed interest passes by virtue of a survivorship provision, the disclaimer is effective as of the date of death of the joint owner to which the disclaimer relates.
- Disclaimed property that would have passed to a trust passes in accordance with the terms of the original instrument as if all of the beneficiaries of the trust had predeceased the disclaimant.
- A disclaimed power of appointment or other non-fiduciary power expires when the instrument creating the power becomes irrevocable if the holder hasn't previously exercised the power; otherwise immediately after the last exercise of the power.
- A disclaimer by an appointee of a power or a taker-in-default is effective when the instrument exercising power becomes irrevocable.
- A disclaimed power held in a fiduciary capacity is effective when the instrument creating the power becomes irrevocable, if the fiduciary hasn't previously exercised the power; otherwise immediately after the last exercise. The disclaimer is also effective as to another fiduciary if the disclaimer says so, or if the disclaimant had authority to bind the other fiduciary.

**(e) Tax Savings Provisions.** If as a result of disclaimer, property is treated as having never passing to disclaimant for tax purposes (*i.e.*, the disclaimer otherwise satisfies the requirements for a qualified disclaimer under Internal Revenue Code Sec. 2518), it's effective as a disclaimer under Texas law. Further, a partial disclaimer by a decedent's spouse is not considered a disclaimer of other property passing from decedent to or for the benefit that spouse, including interest in disclaimed property passing to spouse in another manner (*e.g.*, property given outright to the spouse may be disclaimed to a disclaimer trust).

**(f) Delivery or Filing of Disclaimers.**

Subchapter C of Chapter 240 outlines rules for delivery or filing of disclaimers.

- Delivery may be in person, by mail, by fax, by e-mail, or any other method likely to result in receipt. If delivery is by certified mail, return receipt requested, delivery is deemed to have occurred on the date of mailing regardless of receipt.
- If the disclaimed interest passes by intestacy or will, the disclaimer should be delivered to the personal representative, if any, otherwise filed in public records in the county of the decedent's domicile, or where the decedent owned real property.
- If the disclaimed interest passes from a testamentary trust, the disclaimer should be delivered to the trustee, if any, otherwise filed as set forth above.
- If the disclaimed interest passes from an inter vivos trust, the disclaimer should be delivered to the trustee, if any, otherwise it should be filed with a court having jurisdiction to enforce the trust or in the public records of the county in which the situs of the trust is maintained, or the settlor is domiciled (or was domiciled at death).
- If the disclaimed interest passes by beneficiary designation, the disclaimer should be delivered to the person making designation, or if after the designation becomes effective, to the person making distribution, in the case of personal property, or filed in the public records where real property is located.
- If the disclaimed interest passes by survivorship provisions, the disclaimer should be delivered to the person to whom the disclaimed property passes.
- A disclaimer of an interest by the object of a power or a taker-in-default should be delivered to the holder of the power or a fiduciary acting under the

instrument creating the power. If there is none, the disclaimer should be filed with a court having authority to appoint a fiduciary, or in the public records of the county in which the creator of the power is domiciled (or was domiciled at death).

- A disclaimer of an interest by the appointee of a nonfiduciary power should be delivered to the holder of the power, the representative of the holder's estate, or a fiduciary acting under the instrument creating the power. If there is none, the disclaimer should be filed with a court having authority to appoint a fiduciary, or in the public records of the county in which the creator of the power is domiciled (or was domiciled at death).
- A disclaimer of a power by a fiduciary over a trust or estate should be delivered under the previous rules as if the power were an interest in property.
- A disclaimer of a power by an agent should be delivered to the principal or the principal's representative.
- If a disclaimer should be recorded, failure to file the disclaimer in the public records does not affect the validity of the disclaimer as between the disclaimant and the persons to whom the disclaimed property passes.

(g) **Barred Disclaimers.** Several rules bar or limit the effectiveness of disclaimers:

- A person may not disclaim an interest in property the person has already accepted, unless the acceptance was only in a fiduciary capacity.
- A person may not disclaim an interest in property the person has already voluntarily transferred.
- A person may not disclaim an interest in property after it has been sold in a judicial sale on the person's behalf.
- A "child support obligor" in arrears may not disclaim property that could be used to satisfy an arrearage.

**Drafting Tip**

**HB 2621** (Creighton), enacted in 2013, required a disclaimer of property by a beneficiary under the Probate or Estates (but not Trust) Codes to include a statement whether the beneficiary is a child support obligor in order to be effective. Under the literal language of the 2013 change, a disclaimer without that statement is ineffective even if the disclaimant is not a child support obligor.

The REPTL disclaimer bill eliminates the requirement that this statement be included in the disclaimer (although the disclaimer will still be ineffective if the disclaimant is, in fact, a child support obligor). The change in the law will apply to disclaimers of property passing from decedents who die before the September 1, 2015, effective date if the 9-month deadline for filing the disclaimer in effect before September 1<sup>st</sup> has not yet elapsed (*i.e.*, if the decedent died after December 1, 2014).

**7.2 The REPTL Decedents' Estates Bill.** The REPTL 2015 Decedents' Estates bill contains a large number of mostly minor changes. References to the changes can be found throughout this paper. I've described what I consider the most significant changes first, with the "tinkering"<sup>6</sup> amendments at the end, and the rest in the middle generally in order of Estates Code section number.<sup>7</sup>

(a) **Reformation of Wills (Secs. 255.451-255.455).** New Subchapter J of Subtitle F authorizes judicial modification or reformation of wills to address administrative issues, achieve the testator's tax objectives, qualify a beneficiary for governmental benefits, or correct a scrivener's error. The last ground requires clear and convincing evidence.

(b) **Who Gets Inventory? (Sec. 309.056)** If the executor chooses to file an affidavit in lieu of inventory, it seems odd to be required to send a copy of the inventory to some of the beneficiaries who were not required to receive notice under Chapter 308. This change eliminates the requirement that a copy of the inventory be sent to beneficiaries whose gifts total \$2,000 or less, whose gifts have been satisfied, or who have waived the right to receive a copy. They are still entitled to a copy upon request, even if they've previously waived their right. REPTL's intent in proposing this amendment was to eliminate the requirement that some beneficiaries receive a copy of the inventory; not to eliminate the requirement that the inventory be prepared. But did the amendment inadvertently eliminate the preparation requirement where no beneficiary is required to receive a copy? Read the further discussion at the end of this Part 7 in Section 7.9 on page 12 below.

(c) **Provisions Benefiting Former Spouses or Their Relatives.** Several provisions relating to

<sup>6</sup> "Tinkering" is my personal term of art for primarily technical provisions.

<sup>7</sup> Section references are to the Texas Estates Code unless otherwise noted.

treatment of former spouses and their relatives (who are not relatives of the testator) are amended.

**(i) Pourover Gifts to Irrevocable Trusts (Sec. 123.001).** Our provision voiding testamentary gifts in favor of ex-spouses or their relatives (who are not relatives of the testator) is expanded to apply to testamentary gifts to trusts that were irrevocable prior to the divorce that benefit the ex-spouse or his or her relatives, that give them a power of appointment, or that name them as fiduciaries. Instead, the gift is made to a separate trust with the same terms, except that the ex-spouse and his or her relatives are eliminated as beneficiaries and fiduciaries.

**(ii) “Revocable” Powers of Appointment (Sec. 123.052).** Our current statute revokes provisions in a trust instrument that confer powers of appointment on an ex-spouse or his or her relatives, or that names any of them as a fiduciary. This amendment limits application of these provisions to situations where the divorced individual only **revocably** conferred the power of appointment or named another as fiduciary.

**(iii) Account Designations (Sec. 123.151).** This new provision revokes survivorship designations in P.O.D. accounts and multi-party accounts in favor of an ex-spouse or his or her relatives upon divorce.

**(iv) Revocation Pending Divorce (Sec. 253.001).** The statute preventing a court from prohibiting the execution of a new will or codicil during a divorce proceeding is expanded to include revocation of those documents.

**(d) Inheritance by Child in Gestation (Secs. 201.051, 201.052(f), 201.056, and 255.401).** Several statutes are amended to clarify that a person who has not been born by the time of a decedent’s death will be considered a child for inheritance and class gift purposes only if he or she was in gestation at the time of the decedent’s death. A person will be presumed to be in gestation if born within 300 days of the decedent’s death.

**(e) Foreign Wills.** Several changes relate to probate of foreign wills.

**(i) Recognition of Foreign Wills (Sec. 251.053).** In recent sessions, REPTL has successfully proposed amendments to our self-proving affidavit statutes recognizing the effectiveness of affidavits in the form approved in the state where the will is executed. This brought to our attention the fact that we have no similar provision recognizing the validity of a will executed in compliance with the laws of the state where executed, or the law of the testator’s

domicile or a place where the testator has a residence at the time of execution **or** death. Now there will be.

**(ii) Probate of Foreign Will and Ancillary Administration > Four Years After Death (Secs. 256.003, 301.002, 301.151, 501.001, and 501.006(a)).** Foreign wills may be admitted to probate and administrations opened in Texas regardless of the normal four-year deadline if the will has already been admitted to probate in another state and an administration there is still pending.

**(iii) Self Proving Affidavits (Sec. 256.152).** Those recent amendments recognizing foreign self-proving affidavits are expanded to apply to the law of the state of execution, not just the testator’s domicile. And the recent amendment recognizing an affidavit in the Uniform Probate Code form without further proof of another state’s laws is expanded to include an affidavit executed in compliance with the laws of the state where executed or the testator has a residence, not just the law of the testator’s domicile, at the time of execution **or** death.

**(f) Speaking of Self Proving Affidavits ... (Sec. 251.1045(a)).** The tense of verbs in the portion of the one-step affidavit applicable to the testator are changed from past to present, since the testator hasn’t signed the will yet at the point where the language appears.

**(g) Forfeiture Clauses (Sec. 254.005(b)).** When a floor vote was taken on revisions to this statute in the 2013 session, the author 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.

**(h) Tinkering.** A number of the provisions in the REPTL Decedents’ Estates bill are what I would characterize as miscellaneous technical corrections.

**(i) Updating Heirship Procedures (Secs. 202.005, 202.055, 202.056, and 202.201).** Several statutes are amended to update heirship procedures. Required listings of residences are changed to physical addresses where the persons can be served, and necessary parties who have entered an appearance or waived citation need not be served (*i.e.*, they don’t have to execute the application itself).



**(ii) Exoneration of Liens (Sec. 255.304).**

The amendment to the Probate Code reversing the presumption regarding exoneration of liens on specific gifts was only applicable to wills executed on or after September 1, 2005. That language was inadvertently dropped when the provision was moved to the Estates Code. This change reestablishes that effective date provision.

**(iii) Designated Applicant to Probate**

**Will (Secs. 256.051** A person designated as independent administrator by the distributees of a will now will have standing to file an application to probate the will.

**(iv) Updating Will Probate Procedures**

**(Secs. 256.052(a), 256.054, 257.051(a), 257.053, 301.052).** Applications to probate a will should now state the date, not the time, of death (yes, we all state the date now anyway). If a lost will is offered, the application must state each devisee and heir's status as an adult or minor, if known, rather than their age and marital status. And a muniment application need only include the executor's state of residence and service address, not the personal residence.

**(v) Affidavit or Attorney's Certificate**

**Regarding Notice to Beneficiaries (Sec. 308.004(a)).** The beneficiaries' addresses will no longer need to be included in either of these documents.

**(vi) Appointment of Appraisers**

**(Sec. 309.001).** The nonsubstantive revision of the Estates Code resulted in two almost (but not quite) identical subsections regarding the appointment of appraisers. This change amends one of them by changing "party" to "person" and deletes the other.

**(vii) Allowance for Defending Will**

**(Sec. 352.052).** The nonsubstantive revision of the Estates Code resulted in administrators with will annexed being included in both the mandatory and permissive reimbursement provisions related to defending a will in good faith. To avoid confusion, this change leaves those administrators in the mandatory reimbursement provision and takes them out of the permissive provision.

**(viii) Prompt Action by Secured**

**Creditors (Sec. 355.1551).** **HB 3139** (Naishtat) would have required a secured creditor whose claim has been allowed and approved as a preferred debt and lien and who elects to take possession or sell the security to do so within a reasonable time (determined by the court). Failure to do so allows the court to require the sale of the property free of the lien and apply the proceeds to the payment of the debt. This bill was rolled into the

REPTL 2015 Decedents' Estates bill when it passed on the House floor.

**(ix) Consent to Independent**

**Administration (Secs. 401.002-401.004).** This change clarifies that the distributees may consent to independent administration in separate consents, rather than all having to sign the application.

**(x) Power of Sale in Independent**

**Administration (Sec. 401.006).** The recent change allowing a court to include a power of sale in an order creating independent administration by agreement is expanded to apply to situations where the will creates an independent administration but fails to provide a power of sale.

**(xi) Temporary Administrator Pending**

**Contest of Executor (Sec. 452.051).** A temporary administrator may be appointed pending a contest related to probating a will or granting letters of administration. The change clarifies that one may be appointed pending a contest related to granting letters testamentary where the will itself is not being challenged. (This is probably already the law, but the wording of the statute is unclear.)

**(i) Lawyer Trust Accounts (Ch. 456).**

A representative administering the estate of a deceased lawyer with a trust or escrow account may appoint a Texas lawyer to administer those accounts, or do so himself if the representative is a Texas lawyer.

**7.3 Small Estate Affidavits (Secs. 205.002 and**

**205.009).** **HB 3136** (Naishtat) requires a small estate affidavit to include a list of all known estate assets the applicant claims are exempt. (Note that Chapter 205 does not refer to an "applicant" anywhere else.) For purposes of the small estate affidavit, the terms "homestead" and "exempt property" are limited to a homestead or exempt property that would be eligible for a set aside if there was an administration. In other words, in the case of the homestead, there must be a surviving spouse or minor child. In the case of other exempt property, there must be a surviving spouse, minor child, unmarried adult child remaining with the family, or an adult incapacitated child.

HB 3136 was signed by the Governor on June 19, 2015.

**7.4 Time Limit for Opening Administration**

**(Secs. 301.002, 301.151, and 306.002).** **HB 3160** (Alonzo) allows an application to open an estate administration to be filed by a home-rule municipality that is a creditor of the estate more than four years after the date of death if administration is necessary to

prevent real property from becoming a danger to the health, safety, or welfare of the public.

HB 3160 was signed by the Governor on June 16, 2015.

**7.5 Repeal of Inheritance Tax (Sec. 124.001(3); Tax Code Ch. 211).** As long as the federal estate tax provides a deduction, rather than a credit, for state death taxes, we effectively have no inheritance tax in Texas (and have not had it since 2005). But the tax remains on the books. **SB 752** (Bettencourt) repeals it.

SB 752 was signed by the Governor on June 19, 2015.

**7.6 Access to Intestate's Account Information (Ch. 153).** As part of the access to probate initiative discussed further in Section 11.2 on page 19 below, **HB 705** (Farrar) provides a simplified process to access an intestate decedent's financial account information with a court order once 90 days have elapsed following the decedent's death. The intent is to allow the family to obtain the necessary information to determine what type of probate proceeding is appropriate, or whether an alternative, such as a small estate affidavit under Ch. 205, is available.

HB 705 was signed by the Governor on May 29, 2015.

**7.7 Disclosure of Mortgage Information to Surviving Spouse (Fin. Code Sec. 343.103).** **HB 831** (Giddings) allows a surviving spouse to obtain documentation regarding the promissory note for a home loan, balance information, and other information from the mortgage servicer. The request must include a death certificate, an affidavit of heirship (including language that the survivor was married to the mortgagor at death), and an affidavit of the survivor that he or she is currently residing in the mortgaged property as a principal residence. The request must also include a notice to the mortgage servicer that states in bold-faced, capital, or underlined letters: "THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8)." (relating to bank customer privacy).

HB 831 was signed by the Governor on June 16, 2015.

**7.8 The Uniform Fiduciary Access to Digital Assets Act (New Title 4 (Ch. 2001)).** See Section 7.7 of Attachment 2 (Selected Bills that DID NOT Pass) on page 38 below.

**7.9 Can We Avoid Preparing the Inventory?** Section 7.2(b) on page 9 above describes the provision in the REPTL 2015 Decedents' Estates bill that

eliminates the requirement that the executor provide a copy of the inventory to beneficiaries receiving \$2,000 or less, those whose gifts have been satisfied, and those who've waived receipt of the inventory in writing. It was not REPTL's intent to eliminate the requirement that the inventory be prepared in all cases. But did it?

**(a) The Inventory Requirement.** Estates Code Sec. 309.051 states that "[e]xcept as provided by Subsection (c) [relating to requiring the filing of an inventory in less than 90 days] or Section 309.056," the personal representative "shall **prepare and file** [the inventory] with the court clerk." There's nothing in the sentence structure limiting the "except as provided by Section 309.056" exception to just the filing of the inventory.

**(b) The Pre-2015 Affidavit in Lieu Option.** If there are no unpaid debts other than secured debts, taxes, and administration expenses when the inventory is otherwise due, Estates Code Sec. 309.056 allows an independent executor to file, in lieu of the inventory, an affidavit that all of those debts have been paid and all beneficiaries have received a copy of the inventory. There's no express requirement in Sec. 309.056 that the executor prepare an inventory, but in order to truthfully swear to the fact that all beneficiaries have received a copy of the inventory, the executor has to prepare it first. So at the very least, Sec. 309.056 seems to indirectly require the preparation of an inventory.

**(c) The 2015 Amendment.** The REPTL 2015 Decedents' Estates bill amends the requirement in Subsection (b) of Sec. 309.056 that the executor's affidavit state that all beneficiaries have received a copy of the inventory. As revised, the affidavit only need state that all beneficiaries **other than those described by new Subsection (b-1)** have received a copy. That new subsection provides that absent a written request by a beneficiary, the executor need not provide a copy of the inventory to a beneficiary (1) who is entitled to gifts valued at \$2,000 or less, (2) whose gifts have already been satisfied, or (3) who has waived receipt of the inventory in writing. If all of the beneficiaries end up in one or more of those three categories, then all of the beneficiaries are "described by Subsection (b-1)," and the executor can truthfully swear "that all of the beneficiaries other than those described by Subsection (b-1) have received a" copy of the inventory, even if the executor hasn't prepared one. This is so because of the simple reason that there aren't any beneficiaries other than those described by Subsection (b-1).

**(d) To Summarize.** Sec. 309.051 requires an independent executor to prepare and file an inventory

except as provided in Sec. 309.056. In eligible estates, the independent executor is not required to provide an inventory to any beneficiary if he or she files an affidavit stating that no beneficiary is required to receive a copy (and that statement is true). If the independent executor elects this option, then Sec. 309.056 (which nowhere directly requires the preparation of an inventory) becomes an exception to the requirement found in Sec. 309.051 that the executor “prepare and file” an inventory. Or at least that’s the argument one might make.

***Drafting Tip***

Whether or not you agree with this analysis of the 2015 amendment, there were already existing situations where no inventory needed to be prepared, most notably where the will was probated as a muniment of title, or the estate passed through a revocable management trust that was fully-funded prior to death. But even if the preparation of a formal inventory was not required in those situations, it was still necessary to obtain date of death values for all of the assets receiving a new basis at death under IRC Sec. 1014. So it would still be prudent for an independent executor to gather and disseminate this basis information among the beneficiaries, even if not in an “inventory” format.

**8. Guardianships.**

**8.1 The REPTL Guardianship Bill.** The REPTL 2015 Guardianship bill contains a number of changes, all of which I’d categorize as “tinkering.”<sup>8</sup>

**(a) Bond Pending Transfer of Guardianship (Secs. 1023.005 and 1023.010).** When a guardianship is transferred to another court, the bond payable to the judge in the original court will remain in effect until the judge in the new court has an opportunity to review and set the amount of a new or amended bond.

**(b) Notice to Other Living Relatives (Sec. 1051.104(a)(9)).** The reference to another relative within the third degree of consanguinity to receive notice of a guardianship application in the absence of a living spouse, parents, or adult siblings or children is changed to “other living relative,” since that is the term that replaced “next of kin” in Sec. 1101.001 in the 2013 session.

**(c) Notations in Guardianship Docket (Sec. 1052.001).** The clerk’s book titled “Judge’s Guardianship Docket” will include a notation of each

order, judgment, decree, and proceeding that occurs in each “guardianship,” rather than each “estate.”

**(d) Costs Assessed Against Management Trust and Applicant (Sec. 1052.051(f), 1102.005, and 1155.151).** The REPTL 2015 Guardianship bill contained a provision allowing costs to be assessed against a management trust held for the ward where there was no guardianship estate. In addition, during the 2013 session, **HB 2915** (Thompson, S.) contained number of provisions relating to costs in a guardianship proceeding, including the potential ability to pierce the spendthrift protection of a trust for the beneficiary. As ultimately consolidated into the REPTL 2013 Guardianship bill, this provision merely made the original applicant responsible for the filing fee accompanying the application (including any ad litem deposit), unless the applicant (not the ward) could file an affidavit of inability to pay costs. The applicant could later seek reimbursement for those fees from the guardianship estate, if any. This session, **HB 2733** (Thompson, S.) and **SB 1622** (Rodriguez) contained provisions more akin to the bill originally filed last session. Much of those bills was incorporated into the REPTL 2015 Guardianship bill as it moved through the Senate. Those provisions “undid” the 2013 changes and made the applicant responsible the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters in an amount the court considers equitable and just.

**(e) Security for Costs (Sec. 1053.052).** A clerk already has authority to require an applicant to provide security for the probable costs of a guardianship. **HB 2829** (Thompson, S.) and **SB 1623** (Rodriguez) allow the clerk to obtain an order to that effect from the court. These bills were rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary.

**(f) Intervention by Interested Person (Sec. 1055.003).** **HB 4058** (Naishtat) requires (notwithstanding the Rules of Civil Procedure) an interested person who wishes to intervene in a guardianship proceeding to file a timely motion, serve the parties, state the grounds for intervention, and be accompanied by a pleading setting out the purpose for which the intervention is sought. The court may grant or deny the motion. This bill was rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary. A Senate floor amendment added a requirement that the court, in exercising its discretion, consider whether (1) the intervention will unduly delay or prejudice the adjudication of the original parties’ rights, or (2) the proposed intervenor has such an

<sup>8</sup> Again, section references are to the Texas Estates Code unless otherwise noted.

adverse relationship with the proposed ward that the intervention would unduly prejudice the adjudication of the original parties' rights.

**(g) Calculation of Degrees of Consanguinity (Sec. 1101.001).** The language of Gov't Code Sec. 5773.023(c), calculating degrees of consanguinity for nepotism purposes, is added to Sec. 1101.001 for purposes of determining other living relatives within the third degree.

**(h) Self Proving Affidavit (Secs. 1104.154 and 1104.205).** The tense of verbs in the portion of the one-step affidavit applicable to the declarant in a guardianship declaration are changed from past to present, since the declarant hasn't signed the declaration yet at the point where the language appears.

**(i) Criminal Background Checks for Proposed Guardians (Secs. 1104.402(a) and 1104.409).** **HB 1921** (Naishtat) eliminates the current exemption from criminal background checks for proposed guardians who are family members of the ward or proposed ward (*i.e.*, family members would have to have such a background check). This bill was rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary.

**(j) Safekeeping Agreement Prior to Qualification (Sec. 1105.156).** The provisions regarding safekeeping agreements are amended to expressly allow them prior to the guardian's qualification in order to reduce the initial bond.

**(k) Unsworn Declarations for Annual Reports (Secs. 1163.101 and 1163.1011).** **HB 3137** (Naishtat) clarifies language relating to the use of an unsworn declaration on the annual report of a guardian of the person in lieu of a sworn declaration or affidavit. This bill was rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary.

**(l) Receipts for Predecessor Guardians (Sec. 1203.202).** A statutory typo allowing a successor guardian to provide a receipt for any portion of the estate remaining in the "successor's" hands is corrected to property remaining in the "predecessor's" hands.

**(m) Duration of Temporary Guardianship Pending Contest (Sec. 1251.052).** **HB 3643** and **HB 3645** (Naishtat) are identical bills that terminate a temporary guardianship pending a contest no later than six months from the guardian's qualification, unless extended by the court following a motion and hearing. These bills were rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary, but the six-month limitation was extended to nine months.

**(n) Initial Accounting of Management Trustee (Sec. 1301.1535).** Current law requires a trustee of a management trust for a person with an existing guardianship to file an initial report of the assets of the estate within 30 days. The change expands this to persons for whom an application for guardianship is pending.

**(o) Appointment of Ad Litem to Sell Minor's Property Without Guardianship (Secs. 1351.001 and 1351.002).** If there is no parent or managing conservator to apply for sale of a minor's property without a guardianship, the court may appoint an attorney ad litem or guardian ad litem to file the application for the minor.

**(p) Appointment of Ad Litem to Sell Ward's Property Without Guardianship (Sec. 1351.051-1351.053).** The availability of a sale of a ward's property without a guardianship is expanded from a ward with a guardian of the person only to a ward with a guardian appointed by a court outside Texas.

**(q) Compelled Discovery of Financial Information (Fin. Code Sec. 59.006).** **HB 1333** (Naishtat) expands a Finance Code provision authorizing compelled discovery of a customer's financial information to apply to investigations by court investigators in guardianship matters. This bill was rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary.

**8.2 Non-REPTL Guardianship Bill – Less Restrictive Alternatives.** **HB 39** (Smithee) is a bill that contains several proposals originating from the Texas Judicial Council's Elders Committee and "WINGS," the acronym for the Texas Working Interdisciplinary Network of Guardianship Stakeholders.<sup>9</sup> The bill contains a number of changes, mostly related to limited guardianships and alternatives to guardianships.

HB 39 was signed by the Governor on May 29, 2015.

**(a) Decisions Regarding Residence (Sec. 1001.001).** An incapacitated person subject to a limited guardianship is presumed to retain the capacity to make personal decisions regarding his or her residence.

**(b) Alternatives (Sec. 1002.0015 and 1002.031).** The following alternatives to a guardianship are listed:

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<sup>9</sup> As ETLAC chair Craig Hopper points out, the correct true acronym would be "TWINGS," but he guesses that the "T" is silent.

- execution of a medical power of attorney;
- appointment of an agent under a durable power of attorney;
- execution of a declaration for mental health treatment;
- appointment of a representative payee to manage public benefits;
- establishment of a joint bank account;
- creation of a Chapter 1301 management trust;
- creation of a special needs trust;
- designation of a guardian before a need arises; and
- establishment of alternate forms of decision-making based on person-centered planning.

Further, “supports and services” are defined as resources and assistance that enable an individual to:

- meet needs for food, clothing, or shelter;
- care for physical or mental health;
- manage financial affairs; or
- make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

**(c) Attorney ad Litem’s Duty**

**(Sec. 1054.004).** An attorney ad litem is directed to discuss with the proposed ward whether alternatives to a guardianship would meet the needs of the proposed ward and avoid the creation of a guardianship. Before any hearing, the ad litem is also directed to discuss with the proposed ward the ad litem’s opinion regarding whether a guardianship is necessary, and if so, the ad litem’s recommendations regarding specific limitations to the guardian’s powers or duties.

**(d) Guardian ad Litem’s Duty**

**(Sec. 1054.054).** A guardian ad litem is directed to investigate whether a guardianship is necessary and evaluate alternatives and supports and services that would avoid the need for a guardian. The information gathered by the ad litem is subject to examination by the court.

**(e) Applicant’s Attorney (Sec. 1054.201).**

The applicant’s attorney must now successfully complete the ad litem certification course, which is increased from three to four hours, with one hour devoted to alternatives and supports and services.

**(f) Contents of Application (Sec. 1101.001).**

The application must now state whether alternatives and supports and services were considered, and

whether any that are available to the proposed ward are feasible and would avoid the need for a guardianship. In addition, in describing the alleged incapacity, the application should state whether the proposed ward’s right to make personal decisions regarding a residence should be terminated.

**(g) Findings of Court; Order**

**(Secs. 1101.101, 1101.151, and 1101.152).** Before appointing a guardian, the court must find by clear and convincing evidence that alternatives and supports and services were considered but are not feasible. A finding that the proposed ward lacks capacity to do some, but not all, necessary tasks requires the court to specifically state whether the proposed ward lacks the capacity, with or without supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage. The order must include these findings and must state the specific rights and powers retained by the ward either with the need for supports and services, or without that need.

**(h) Physician’s Certificate (Sec. 1101.153).**

The portion of a physician’s certificate evaluating a proposed ward’s physical condition and mental functioning must state whether improvement is possible and, if so, when the proposed ward should be reevaluated. If that period is less than a year, the order must include the date by which an updated certificate must be submitted to the court.

**(i) Preference of Proposed Ward**

**(Sec. 1104.002).** The court must make a reasonable effort to consider the proposed ward’s preference regarding who should be appointed guardian, whether or not the proposed ward has executed a declaration of guardian.

**(j) Restrictive Care (Sec. 1151.051).**

Unless there’s an emergency, a guardian of the person may only place a ward in a more restrictive care facility after filing an application, providing notice to any persons requesting it, and the court authorizes the placement.

**(k) Modification of Guardianship**

**(Ch. 1202).** Similar considerations as those listed above should also apply when evaluating any application to modify or terminate a guardianship.

**8.3 Bill of Rights for Wards (Sec. 1151.351).**

**SB 1882** (Zaffirini) establishes a ward’s bill of rights. In general, a ward “has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.”

Unless limited by a court or otherwise restricted by law, a ward is authorized to twenty-four specific listed items. You can and should read them all in new Sec. 1151.351 reproduced in Attachment 5 on page 93 below.

SB 1882 was signed by the Governor on June 19, 2015.

**8.4 Supported Decision-Making Agreements (Ch. 1357).** **SB 1881** (Zaffirini) is the Supported Decision-Making Agreement Act. Its stated purpose is to “recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship.” An adult with a disability may enter into a supported decision-making agreement with a “supporter” under which the adult authorizes the supporter to do any or all of the following:

- (1) provide supported decision-making, including assistance in understanding the adult's life decisions, without making those decisions on behalf of the adult;
- (2) assist the adult in accessing information relevant to a life decision;
- (3) assist the adult in understanding that information; and
- (4) assist the adult in communicating the adult's decisions.

The supporter has the authority granted in the supported decision-making agreement. The agreement must be substantially in the form provided by the act, yet it may also be “in any form not inconsistent with” the statutory form. The agreement should be signed by the adult and the supporter in the presence of two witness (at least 14 years old) or a notary.

SB 1881 was signed by the Governor on June 19, 2015.

**8.5 The Uniform Fiduciary Access to Digital Assets Act (New Title 4 (Ch. 2001)).** See Section 7.7 of Attachment 2 (Selected Bills that DID NOT Pass) on page 38 below.

**8.6 Criminal Background Checks for Service Providers (Sec. 1104.406(a) and (c)).** **SB 219** (Schwertner, *et al.*) adds a contractor (or an employee of a contractor) who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate to the list of guardianship services providers who are subject to a criminal background check by DADS.

SB 219 was signed by the Governor on April 2<sup>nd</sup> and became effective immediately.

**8.7 Relatives' Access to Ward (Sec. 1151.055).** **HB 2665** (Moody) adds two new sections to the Estates Code. The first provides a procedure for certain relatives of a ward (spouse, parents, siblings, and children) to request access to the ward for visitation and communication. The guardian must be personally served and a hearing must be held. The court may prohibit the guardian from preventing access to the ward after considering any prior protective orders issued against the child, and whether visitation should be limited or denied. Court costs and attorney's fees may be awarded the prevailing party.

**8.8 Duty to Provide Information About Ward (Sec. 1151.056).** The second section added by **HB 2665** (Moody) requires a guardian of an adult ward to notify “as soon as practicable” those same relatives if the ward dies, is admitted to an acute care medical facility for more than three days, changes residence, or is staying at a location other than the ward's residence for more than a week. In the case of the ward's death, the relatives must also be informed of funeral arrangements and the final resting place. A relative entitled to notice may provide a written request to the guardian that the relative **not** receive the required notice.

HB 2665 was signed by the Governor on June 19, 2015.

**8.9 The REPTL TUTMA Bill – Custodianships (Prop. Code Sec. 141.007(c) and 141.008(c)).** The REPTL 2015 TUTMA bill increases the amount that a fiduciary or an obligor may transfer to a TUTMA custodianship from \$10,000 or \$15,000 to \$25,000.

**8.10 Investment of Lawsuit Recovery in 529 Plan (Prop. Code Sec. 142.004(a)).** **HB 1560** (Hernandez) amends the provision allowing money recovered on behalf of a minor or incapacitated person to be invested in an educational account by changing the references from “the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code” to “a higher education savings plan established under Subchapter G, Chapter 54, Education Code, or a prepaid tuition program established under Subchapter H, Chapter 54, Education Code.”

HB 1560 was signed by the Governor on June 1, 2015.

**8.11 Guardians of Inmates (Code of Crim. Proc. Sec. 26.041 and Gov't Code Secs. 501.010, 507.030, and 511.009).** **HB 634** (Metcalf) gives the

guardian of a ward who is an inmate the same visitation rights as the inmate's next of kin.

HB 634 was signed by the Governor on June 17, 2015.

**8.12 Maintenance of Guardianship Orders (H&S Code Secs. 242.019, 242.070, and 260A.007).** **HB 1337** (Naishtat) requires convalescent homes, nursing homes and assisted living facilities to make a reasonable effort to request a copy of any court order appointing a guardian. It must keep a copy of any court order it receives in the resident's medical records, and authorizes a DADS investigator to inspect the order when investigating a report of abuse, neglect, or exploitation.

HB 1337 was signed by the Governor on June 17, 2015.

**8.13 Transportation of Person with Mental Illness (H&S Code Sec. 574.045).** **SB 1129** (Zaffirini) provides that if a patient is being restrained during court-ordered transportation to a mental health facility to protect the health and safety of the patient or a person traveling with the patient, the patient may only be restrained during the patient's apprehension, detention, or transportation, and the patient must be permitted to sit in an upright position unless the transport is by ambulance.

SB 1129 was filed without the Governor's signature on June 17, 2015.

**8.14 Temporary and Emergency Detention (H&S Code Secs. 573.001 and 573.005).** **SB 359** (West) allows certain facilities to temporarily detain a person who requested treatment from the facility but attempts to leave before an exam or treatment is completed if a physician reasonably believes the person has a mental illness with a substantial risk of doing serious harm and there isn't sufficient time to file an application for an emergency detention or order of protective custody. The temporary detention may last up to 4 hours unless the facility arranges for a peace officer to take the person into custody under Sec. 573.001 or an order of protective custody has been issued.

Most importantly, at least to the 84<sup>th</sup> Legislature, is that a detention under Sec. 573.001 is **not** considered "psychiatric hospitalization" for purposes of Gov't Code Sec. 411.172(e) (relating to eligibility for a concealed gun license).

**SB 359 was vetoed by the Governor on June 1, 2015.**

In his veto message, the Governor cited constitutional concerns (under the Fourth, Fifth, and Fourteenth

Amendments to the United States Constitution) in giving "the power to arrest and forcibly hold a person against his or her will ... on private parties who lack the training of peace officers and are not bound by the same oath to protect and serve the public."

## **9. Trusts.**

**9.1 The REPTL Trusts Bill.** As noted in Section 6.2(c) on page 6 above, the REPTL 2015 Trusts bill did not pass, but since it may be back in 2017, a description of its provisions can be found in Section 9.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 39 below.

**9.2 Disclaimers (Sec. 112.010).**<sup>10</sup> With the enactment of the Uniform Disclaimer of Property Interests Act (see Sec. 7.1 on page 7 above), the Trust Code provision relating to disclaimers is amended by the REPTL 2015 Decedents' Estates bill to refer back to Estates Code Ch. 122.

**9.3 Directed Trusts (Secs. 114.003 and 114.0031).** **HB 3190** (Villalba) is a simpler directed trust bill proposed by TBA. It limits the application of current Sec. 114.003 to charitable trusts (as defined in Property Code Sec. 123.001<sup>11</sup>) and adds new Sec. 114.0031 that applies to trusts other than charitable trusts. It provides that a person who is given authority to direct, consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions is considered a fiduciary when exercising that authority, except to the extent the trust provides otherwise. A trustee who acts in accordance with those directions is not liable for doing so, except in cases of willful misconduct on the part of the trustee. (But the trustee is not liable for following the directions just because it knows of willful misconduct on the part of the advisor.) A trustee who must act with the consent of an advisor is not liable for any act taken or not taken as a result of the advisor's failure to provide the required consent after request by the trustee, except in cases of willful misconduct or gross negligence on the part of the trustee. (But a trustee who does not receive requested consent is not liable for ordinary negligence stemming from any decision it makes without that consent.) If a person is given authority to direct,

<sup>10</sup> Section references are to the Texas Property Code unless otherwise noted.

<sup>11</sup> This incorporation by reference may prove to be somewhat awkward since the statute clearly only makes sense with respect to what we normally consider "trusts," but the definition of "charitable trust" found in Sec. 123.001 includes "a corporation, trust, community chest, fund, foundation, or other entity organized for" charitable purposes.

consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions, the trustee has no duty to monitor the advisor's conduct, provide advice to or consult with the advisor, or communicate with or warn any beneficiary or third party just because the trustee might have exercised its discretion differently than the advisor. Absent clear and convincing evidence, a trustee's acts within the scope of the advisor's authority are presumed to be only administrative actions, and not an undertaking to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

HB 3190 was signed by the Governor on June 19, 2015.

**9.4 Trustees and P.O.D. Accounts (Sec. 113.001).** See Sec. 11.1 on page 19 below.

**9.5 Regulation of State Trust Companies (Fin. Code Chs. 181, 182, & 184). SB 875** (Eltime) makes revisions to the Finance Code's regulation of state trust companies that appear to facilitate the creation of family-owned trust companies that do not offer services to the general public.

SB 875 was signed by the Governor on May 29, 2015.

### 10. Disability Documents.

**10.1 The REPTL Power of Attorney Bill.** As noted in Section 6.2(d) on page 6 above, the REPTL 2015 Power of Attorney bill did not pass, but since it may be back in 2017, a description of its provisions can be found in Section 9.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 39 below.

**10.2 The Norwood Problem.** In June of 2013, the Supreme Court handed down its opinion in the *Norwood* case,<sup>12</sup> impacting the use of powers of attorney in home equity lending transactions. This is not a legislative issue – at least not yet – but it is potentially significant enough to warrant bringing the issue to your attention. Therefore, I've included an extensive discussion of the issue and the case in Part 17.1 on page 23 below.

**10.3 Timely Recording Requirement (Sec. 751.151). HB 3316** (Miller, D.) makes any real property transaction carried out under a power of attorney voidable if the power isn't filed with the county clerk of the county where the property is located within 30 days of the filing of the real property transaction.

HB 3316 was signed by the Governor on June 17, 2015.

**10.4 Irrevocable Business Powers of Attorney (Bus. Org. Code<sup>13</sup> Secs. 101.055 and 154.204).** See Sec. 15.1 on page 22 below.

**10.5 The Uniform Fiduciary Access to Digital Assets Act (New Title 4 (Ch. 2001)).** See Section 7.7 of Attachment 2 (Selected Bills that DID NOT Pass) on page 38 below.

**10.6 The REPTL Disposition of Remains Bill (Sec. 711.002).** The REPTL 2015 Disposition of Remains bill makes several changes to the statute dealing with the disposition of a decedent's remains.

- Executors and administrators are added after immediate family to the list of persons with the right to control the disposition of remains.
- Each of the persons on the list is authorized to seek reimbursement from the decedent's estate.
- The statutory form is made permissive.
- The authority granted to a spouse terminates upon dissolution of the marriage.
- The appointments made by the document remain valid without the agents' signatures, although an agent must sign before acting.

#### *Drafting Tip*

While the current form becomes permissive on September 1<sup>st</sup>, if you want your disposition of remains form to match the statutory form, you should update your form by then (see statutory language on page 132 below).

**10.7 The Holly Combs Act – Control of Remains In Event of Family Violence Indictment.** **SB 988** (Perry) deals with a unique situation. In October of 2014, Holly Combs was murdered. Her husband was accused of stabbing her in an Amarillo bar. However, her parents were told that they had to wait seven days to dispose of her body unless they got the accused husband to sign off on the disposition. Sec. 711.002(1) already prohibits a listed person (such as a spouse) from controlling the disposition if that person has been indicted on a charge of family violence against the decedent, but there are no consequences for a funeral director who violates this law. The "Holly Combs Act" provides that a funeral director who knowingly allows an indicted person to control the disposition in violation of Sec. 711.002(1) commits a

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<sup>12</sup> *Finance Com'n of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013).

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<sup>13</sup> Future references are to the "BOC."



prohibited practice under the Occupations Code, and allows the Texas Funeral Service Commission to take disciplinary action or assess an administrative penalty in that situation.

SB 988 was signed by the Governor on June 16, 2015.

10.8 **Advance Directives.** Several bills have been filed changing rules for advance directives related to life-sustaining treatment.

**(a) Definitions and Procedures (H&S Code Sec. 166.002, 003, 166.032, 166.033, 166.046, 166.052).** **HB 3074** (Springer) changes several terms:

- “Artificial nutrition and hydration” becomes “artificially administered nutrition and hydration.”
- “Stomach (gastrointestinal tract)” becomes simply “gastrointestinal tract.”
- “Treatment decision” and “health care decision” both become “health care or treatment decision.”
- A reference to “fluids” becomes “hydration.”
- A reference to the “review process” becomes the “ethics or medical committee.”

A more substantive change provides that if a patient or surrogate requests life-sustaining treatment despite the physician’s and committee’s determination that it is medically inappropriate treatment, artificially administered nutrition and hydration must still be provided after 10 days unless, based on reasonable medical judgment, it would:

- (1) hasten the patient's death;
- (2) seriously exacerbate other major medical problems not outweighed by the benefit of the provision of the treatment;
- (3) result in substantial irremediable physical pain, suffering, or discomfort not outweighed by the benefit of the provision of the treatment;
- (4) be medically ineffective; or
- (5) be contrary to the patient's clearly stated desire not to receive artificially administered nutrition or hydration.

HB 3074 was signed by the Governor on June 12, 2015.

***Drafting Tip***

Directive forms should be updated by September 1<sup>st</sup> with the new terminology (see statutory language on page 122 below).

**(b) Voluntary Donations to Donor Registry (Trans. Code Chs. 502.521, and 522).** **HB 3283**

(Zerwas) allows persons to contribute more than the current \$1 voluntary donation to the nonprofit organization administering the Glenda Dawson Donate Life-Texas Registry under Health & Safety Code Ch. 692A when registering a vehicle or renewing the registration. In addition, individuals obtaining a driver’s license are to be given written information about the registry and the opportunity to contribute \$1 or more.

HB 3283 was signed by the Governor on June 20, 2015.

**11. Nontestamentary Transfers.**

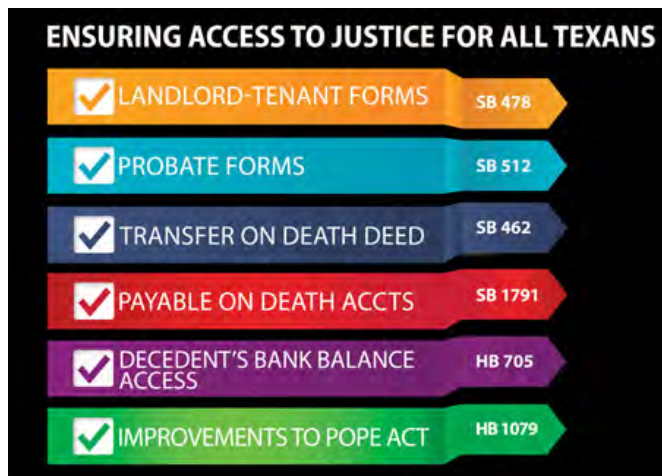
**11.1 The REPTL Decedents’ Estates Bill – P.O.D. Accounts (Secs. 113.001 and 113.152(c)).**

The REPTL 2015 Decedents’ Estates bill expands the definition of a P.O.D. account to include an account designated as a transfer on death or T.O.D. account, and allows a guardian of the estate or agent under a financial power of attorney to sign a P.O.D. agreement on behalf of the original payee. In addition, **SB 1020** (Creighton) is an IBAT bill that authorizes trustees of an express trust to be named as beneficiaries of a trust account or P.O.D. payees.

SB 1020 was signed by the Governor on May 29, 2015.

**11.2 Access to Estate Planning and Probate.**

For several years, various groups have been interested in increasing access to the legal system, primarily for those who cannot afford to pay lawyers for that access. Several years ago, the Supreme Court promulgated a number of forms in the family law area designed to be used by pro se litigants. But family law is not the only area receiving this attention. A Supreme Court task force has worked on will forms and certain probate forms. And during the interim, Judiciary held a hearing on an interim charge to “[s]tudy issues that inhibit the use of wills and access to the probate process in Texas, particularly for low-income individuals.” Craig Hopper appeared and testified at that hearing on behalf of REPTL. Several bills have been introduced as a direct result of this charge. More information on the initiative can also be found on the Texas Access to Justice Commission website, [www.texasatj.org](http://www.texasatj.org), or by clicking on the following graphic if you’re viewing an electronic version of this paper:



**(a) Transfer on Death Deed (Ch. 114).**

**SB 462** (Huffman) enacts the Texas Real Property Transfer on Death Act based on a 2009 uniform act. According to the description of the act provided by the Uniform Law Commission:

The Uniform Real Property Transfer on Death Act (URPTODA) provides a simple process for the non-probate transfer of real estate. The act allows an owner of real property to designate a beneficiary to automatically receive the property upon the owner’s death without probate. The property passes by means of a recorded transfer on death (TOD) deed. During the owner’s lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed.

A TOD deed is a revocable non-testamentary instrument and must be recorded in the deed records of the county where the real property is located before the transferor’s death. A TOD deed does not affect a transferor’s interest or right during lifetime, and is void if the transferor conveys the property during his or her lifetime. The property remains subject to liens and encumbrances at the transferor’s death, in which case the creditor’s claims process set out in the Estates Code applies. If the transferor’s estate is insufficient to satisfy a claim against the estate, estate expenses, or a family allowance, the personal representative may enforce the liability against the TOD property to the same extent he or she could enforce that liability if the property was part of the probate estate. Notwithstanding this liability provision, the bill explicitly states that the property is not considered property of the probate estate, including Medicaid estate recovery.<sup>14</sup> The bill includes an optional form

for a TOD deed. A TOD deed may not be created through use of a power of attorney.

SB 462 was signed by the Governor on June 17, 2015.

**(b) Disclosures by Financial Institutions (Sec. 113.053).** **SB 1791** (Ellis) requires a financial institution to make certain disclosures to a customer when selecting or modifying an account regarding forms of accounts. Those disclosures are currently optional. The financial institution can satisfy the disclosure requirement by using the statutory form found in Sec. 113.052 and having the customer place his or her initials to the right of each paragraph of the form. If the institution varies the format, then the disclosures must be provided separately from other account information, prior to account selection, in 14-point boldfaced type, and in the language in which the discussions regarding the account take place.

SB 1791 was signed by the Governor on May 22, 2015.

**12. Exempt Property.**

**12.1 The REPTL 2015 Decedents’ Estates Bill – Other Exempt Property (Ch. 353).** The REPTL 2015 Decedents’ Estates bill clarifies that the “other” exempt property to be set aside after the inventory is filed refers only to the homestead and tangible personal property described in Sec. 42.002(a) of the Property Code, primarily to eliminate an inference that it might apply to other nonprobate exempt property, such as insurance proceeds. The exempt property other than that specifically set aside for the surviving spouse or children is to be delivered to the distributees otherwise entitled to them, and exempt property is not to be considered in determining whether the estate is solvent.

**12.2 The REPTL 2015 Exempt Property Bill – Increase in Exempt Personal Property Limit (Prop. Code Sec. 42.001(a)).** The REPTL 2015 Exempt Property bill increases the Property Code limit on the value of exempt tangible personal property from \$60,000 to \$100,000 for a family, and from \$30,000 to \$50,000 for a single person. (These amounts roughly account for inflation since the last adjustment of these figures in 1991.)

**12.3 The REPTL 2015 Trusts Bill – Retirement Plan Exemption (Prop. Code Sec. 42.0021).** As noted in Section 6.2(c) on page 6 above, the REPTL 2015 Trusts bill did not pass, but since it may be back in 2017, a description of its provisions can be found in Section 12.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 47 below.

<sup>14</sup> Thanks to Patti Sitchler for that addition.

### **13. Jurisdiction and Venue.**

**13.1 Transfer of Foreign Guardianship (Estates Code Sec. 1253.051).** The REPTL 2015 Guardianship bill corrects the proper venue for an application to transfer a foreign guardianship from a **court** in which the ward resides or intends to reside to a court in the **county** in which the ward resides or intends to reside. (A judge’s nightmare – a ward residing in the judge’s courtroom!)

**13.2 The REPTL Trusts Bill – Venue Clarification – Again (Trust Code Sec. 115.002).** As noted in Section 6.2(c) on page 6 above, the REPTL 2015 Trusts bill did not pass, but since it may be back in 2017, a description of its provisions can be found in Section 13.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 47 below.

**13.3 UAGPPJA (Est. Code Chs. 1253 and 1254).** See Section 8.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 38 below.

**13.4 Decedent’s Estate as “Plaintiff.” (CP&R Code Sec. 71.051(e) and (h)).** Currently, a court may not stay or dismiss a plaintiff’s action for personal injury or wrongful death under the doctrine of forum non conveniens if the plaintiff is a legal Texas resident. **HB 1692** (Sheets) changes this to give the plaintiff’s choice of a Texas forum substantial deference if the plaintiff is a legal Texas resident and the underlying action has a significant Texas connection. **However**, the term “plaintiff” would not include a decedent’s estate if the decedent was not a legal Texas resident at the time of death.

HB 1692 was signed by the Governor on June 16, 2015.

### **14. Court Administration.**

**14.1 The REPTL 2015 Guardianship Bill – Recusal or Disqualification of Probate Judges (Gov’t Code Secs. 25.0022, 25.002201, 25.00255, and 26.012).** **HB 2858** (Thompson, S.) and **SB 1665** (Ellis) address the procedures relating to the recusal or disqualification of a statutory probate judge or another judge authorized to hear probate matters. The presiding judge, rather than having to select a judge to hear a motion, may order the clerk serving the statutory probate courts to randomly assign a judge to hear the motion. It also places the responsibility for assigning a new judge in a statutory probate court on the presiding judge of the statutory probate courts, rather than the presiding judge of that administrative district. A judge hearing a recusal or disqualification motion will also have new authority to assess attorney’s fees and

expenses incurred by another party against the filing party if the judge determines that the motion was groundless and filed in bad faith or for purpose of harassment; or clearly brought for unnecessary delay without sufficient cause. And the judge may enjoin the movant from filing further recusal motions without the prior consent of the presiding judge of the statutory probate courts. These bills were rolled into the REPTL 2015 Guardianship bill when it emerged from Judiciary.

**14.2 Promulgation of Will and Probate Forms by Supreme Court (Gov’t Code Sec. 22.020).** In line with the access to probate initiative discussed further in Section 11.2 on page 19 above, **SB 512** (Zaffirini) directs the Supreme Court (as it considers appropriate) to promulgate forms with accompanying instructions for use in certain probate matters or in making certain wills, including:

- a small estate affidavit,
- muniment of title pleadings, and
- simple wills for married and single individuals with adult, minor, or no children.

The forms and instructions are to be written in plain, easy-to-understand language, with a conspicuous statement that the form is not a substitute for legal advice. Spanish language translations should be made available for the purpose of assisting in understanding the forms, but those translations may not be submitted to the Supreme Court. Any court must accept a promulgated form unless completed in a way that causes a substantive defect that may not be cured.<sup>15</sup>

Since it will take some time for the Supreme Court to promulgate forms, the bill has no immediate practical effect. However, REPTL hopes to be invited by the Supreme Court to participate in the drafting process so that the expertise of our lawyers can serve as a valuable resource, both as to the language of the forms, but also the instructions, which may be just as important.

SB 512 was signed by the Governor on June 16, 2015.

**14.3 Guardianship Database Study.** As originally filed, **HB 3424** (Smithee) directed the clerk of a court to compile and provide to the DPS the names of adults who have a guardian and the name and contact information of the ward’s guardian. This

<sup>15</sup> **SB 478** (Zaffirini) is a similar bill that directs the Supreme Court (as it considers appropriate) to promulgate forms with accompanying instructions for use in certain residential landlord-tenant matters. SB 478 was signed by the Governor on June 16, 2015.

database would be accessible only to first responders. However, as finally passed, the bill merely directed the Office of Court Administration to conduct a study on the feasibility of implementing such a database and report back no later than December 1, 2016.

HB 3424 was signed by the Governor on June 19, 2015.

**14.4 Report of Appointment of Ad Litem and Mediators (Gov't Code Ch. 36). SB 1369** (Zaffirini) requires clerks to report court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or "competency evaluator" ("a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual"). These reports, to be made on a monthly basis, are to include the total compensation paid to each appointee, the source of compensation, and, if the amount paid to an appointee for one case in that month exceeds \$1,000, the number of hours billed by that appointee or the appointee's employees and the billed expenses. The bill also requires an interim study on a billing system for these court appointments.

SB 1369 was signed by the Governor on June 19, 2015.

**14.5 Lists of Ad Litem and Mediators (Gov't Code Ch. 37). SB 1876** (Zaffirini) applies only to counties with a population of 25,000 or more. New Gov't Code Ch. 37 requires judges to maintain lists of all attorneys qualified to serve as an attorney ad litem, all attorneys and others qualified to serve as a guardian ad litem, and all attorneys and others qualified to serve as a mediator – if they have registered to serve as such with the court. In most cases, these persons must be appointed in the order they appear on the list, unless the parties agree on the appointment of another, or appointment of another with specialized experience is required because of a complex matter. (Once appointed, the attorney or other person moves to the end of the list.)

If good cause exists, a court may appoint a person on the list whose name isn't first, or a person who meets the statutory or other requirements to serve on the list, if the matter is complex and the person possesses relevant education, training, certification, or skill; has relevant prior involvement with the parties or case; and is in a relevant geographical location. The court must post the lists annually. These appointment requirements do not apply to certain ADR matters and family law matters, or to a person, other than an

attorney or a private professional guardian, appointed as guardian under the Estates Code.

SB 1876 was signed by the Governor on June 19, 2015.

**14.6 "Behave Yourself" Lawyer's Oath (Gov't Code Sec. 82.037). SB 534** (Watson, *et al.*) adds to the oath persons receiving a license to practice law must take that the person shall "conduct oneself with integrity and civility in dealing and communicating with the court and all parties."

SB 534 was signed by the Governor on May 15, 2015, and became effective immediately.

**14.7 Notices from Clerk and Court (Gov't Code Secs. 80.001-80.005). SB 1116** (West) authorizes a court, justice, judge, magistrate, or clerk to send any notice or document by mail or e-mail.

SB 1116 was signed by the Governor on May 29, 2015.

**14.8 Special Judges (CP&R Code Sec. 151.003). HB 1923** (Naishtat) allows a statutory probate judge to be appointed as a special judge.

HB 1923 was signed by the Governor on June 19, 2015.

**14.9 New "Chancery" Court (Gov't Code Ch. 24A).** See Section 15.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 48 below.

**14.10 Probate Court Filing Fees (Gov't Code Secs. 51.305, 51.319, and 51.604; Local Gov't Code Sec. 118.052).** One provision of **HB 2182** (Clardy) made the \$25 filing fee for documents filed after the earlier of the approval of the inventory or 120 days after the initiation of the proceeding applicable to all documents, not just those in excess of 25 pages. At REPTL's request, this increase was removed before final passage. The fee for filing a claim is increased from \$2 to \$10. The bill also allows a county to charge a district court records archive fee for filings in any court of the county for which the district clerk accepts filings – not just filings in the district court. The maximum archive fee would remain at \$10 through September 1, 2019, and then decrease to \$5 thereafter.

HB 2182 was filed without the Governor's signature on June 17, 2015.

## 15. Selected Business Organization Issues.

**15.1 Irrevocable Business Powers of Attorney (BOC Secs. 101.055 and 154.204). SB 859** (Eltife), among other things, provides for the creation of an irrevocable power of attorney related to an LLC or a partnership if it is coupled with an interest and states that it is irrevocable. The bill contains no guidance on

whether Estates Code Ch. 751 would also apply to this type of power of attorney.

SB 859 was signed by the Governor on May 15, 2015.

15.2 **New “Chancery” Court (Gov’t Code Ch. 24A).** See Section 15.1 of Attachment 2 (Selected Bills that DID NOT Pass) on page 48 below.

## 16. Charities.

This session had no bills of note relating to charities and the areas of practice within the scope of this paper.

## 17. Selected Marital Issues.

17.1 **Additional TRO Authority in Dissolution Proceedings.** **HB 1460** (Thompson, S.) and **SB 815** (Rodriguez) would allow a court in a suit for dissolution of the marriage to issue a restraining order designed to preserve the property of the parties. The court could prohibit one or both parties from:

- selling property,
- incurring debt,
- withdrawing money from bank accounts,
- spending money,
- withdrawing from retirement plans,
- borrowing from the value of a life insurance policy,
- entering a safe deposit box,
- changing the beneficiary designation on a life insurance policy,
- failing to pay life insurance policy premiums,
- opening the other party’s emails,
- signing the other party’s name on a check,
- taking action to terminate or limit a credit card,
- discontinuing withholding on a paycheck,
- destroying financial information,
- destroying electronically stored information relevant to the suit for dissolution,
- deleting data from any social network profile created by either party,
- using the other party’s password to gain access to the financial or social media accounts,
- terminating utilities at the residence of either party,
- excluding the other party from use and enjoyment of a residence, or
- entering or operating a motor vehicle of either party.

SB 815 was signed by the Governor on May 19, 2015.

17.2 **Persons Conducting Marriage Ceremonies – Current and Retired Associate Judges.** **HB 2278** (Muñoz, Jr.) originally added to the list of persons authorized to conduct marriage ceremonies a current or retired associate judge of a

county court at law. After intense lobbying, current and retired associate judges of statutory probate courts were also added to the list.

HB 2278 was signed by the Governor on June 19, 2015.

17.3 **Same-Sex Marriages.** There were quite a few bills and constitutional amendments introduced that related to same-sex marriages, but none of them passed. If you’re interested in them, see Section 17.2 of Attachment 2 (Selected Bills that DID NOT Pass) on page 49 below. However, the Senate managed to introduce and pass **SR 1028** (Hancock) on May 27<sup>th</sup>, that resolved that the Senate “hereby affirm the preservation of the present definition of marriage as being the legal union of one man and one woman as husband and wife and pledge to uphold and defend this principle that is so dearly held by Texans far and wide.” So there.

## 18. Special Supplement: Powers of Attorney and Home Equity Lending – The Norwood Problem.

18.1 **The Origin of Home Equity Lending in Texas.** On November 4, 1997, the voters of Texas approved proposed Amendment No. 8, which amended Section 50, Article XVI, Texas Constitution, effective January 1, 1998. That section traditionally prohibited the forced sale of a debtor's homestead to repay a debt except in three specific situations: (1) a debt secured by the homestead incurred to obtain purchase money for the homestead; (2) a debt resulting from property taxes due on the homestead; or (3) a debt secured by the homestead incurred to improve the homestead. Two years earlier, the section had been amended to allow owelty liens and liens for refinancing debts on the homestead. But in 1997, the voters for the first time authorized two types of home equity lending, permitting the forced sale of a homestead to repay a debt secured by the homestead that is incurred for two new types of extensions of credit.

(a) **Equity Loans.** First was an extension of credit commonly referred to as an “equity loan” or “secondary mortgage loan.” This type of extension of credit was subject to numerous constitutional restrictions and conditions, including a limit on the total amount of debt that may be secured by a homestead (80% of total value), a requirement that the lien may be foreclosed only through a court proceeding, a 12-day waiting period before closing, and a three-day rescission period after the closing. Amended Section 50(a)(6).

(b) **Reverse Mortgages.** Second, the amendment authorized reverse mortgages, under which

the borrower receives periodic advances of money and is not required to repay the money until the homestead securing the extension of credit is transferred or the borrower moves from the homestead. Reverse mortgages were subject to fewer constitutional restrictions and conditions than an equity loan. These included a requirement that the borrower or the borrower's spouse be 55 years of age or older and a prohibition on using assets of the borrower other than the homestead to satisfy the debt. Amended Section 50(a)(7).

**(c) Place of Closing.** One of the constitutional restrictions on equity loans (Section 50(a)(6)), but not reverse mortgages (Section 50(a)(7)), required that it be **“closed only at the office of the lender, an attorney at law, or a title company.”** Amended Section 50(a)(6)(N).

**(d) Delegation of Interpretation Authority.** In 2003, the voters approved an amendment to Section 50 adding new Subsection (u), which authorized the legislature to delegate to one or more state agencies the power to interpret the provisions regarding equity loans.

**18.2 The Commissions’ Rules.** The legislature delegated this authority to the Finance Commission and the Credit Union Commission. The Commissions quickly published and subsequently adopted final interpretations effective January 8, 2004. With respect to Section 50(a)(6)(N), while the Commissions recognized that this provision was intended to prohibit the coercive closing of an equity loan at the home of the owner, they interpreted this provision to allow a borrower to mail a lender the required consent to having a lien placed on his homestead and to attend closing through his attorney-in-fact under a financial power of attorney.

**18.3 Homeowners’ Challenge.** Three weeks later, six homeowners filed suit against the Commissions, challenging several of the interpretations. By summary judgment, the trial court invalidated many of the interpretations, including the one related to the use of powers of attorney under Section 50(a)(6)(N). In 2010, a divided Austin Court of Appeals affirmed the trial court in part, and reversed in part.<sup>16</sup> The case made it to oral arguments before the Supreme Court by September of 2011. The Supreme

Court didn’t hand down its opinion until almost two years later, in June of 2013.<sup>17</sup>

**18.4 The Norwood Opinion.** The Supreme Court recognized that the use of powers of attorney is a recognized principle of Texas law, and it was neither inconsistent with the constitution nor impermissible rulemaking for the Commissions to clarify that this principle continued to apply in the context of home equity loan closings, particularly where the drafters expressly prohibited the use of powers of attorney in other home equity lending contexts, but not with regard to closing the loan.<sup>18</sup>

**(a) The Closing Process.** According to the Supreme Court,

Closing a loan is a process. It would clearly be unreasonable to interpret Section 50(a)(6)(N) to allow all the loan papers to be signed at the borrower's house and then taken to the lender's office, where funding was finally authorized. Closing is not merely the final action, and in this context, to afford the intended protection, it must include the initial action. Executing the required consent or a power of attorney are part of the closing process and must occur only at one of the locations allowed by the constitutional provision.<sup>19</sup>

**(b) Good Policy?** The Supreme Court refused to consider whether this restriction was good policy. The fact that the issue arose in the first place was an argument against “constitutionalizing minutiae, placing them beyond regulatory or legislative adjustment.” The court held that the common use of the mail and powers of attorney in closing transactions gave rise to the danger of coercion that Section 50(a)(6)(N) was intended to prevent, and that therefore the Commissions' interpretations were invalid.

**(c) It Matters Where the Power of Attorney is Executed.** In a January, 2014, supplemental opinion, Justice Hecht wrote:

... Section 50(a)(6)(N) ... **precludes a borrower from closing the loan through an attorney-in-fact under a power of attorney not itself executed at one of the three prescribed locations.** We reasoned that executing a power of attorney is “ part of the closing process”, and that not to restrict the use of a power of attorney

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<sup>16</sup> *Texas Bankers Ass'n v. Association of Community Organizations for Reform Now (ACORN)*, 303 S.W.3d 404 (Tex.App.-Austin 2010).

<sup>17</sup> *Finance Com'n of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013).

<sup>18</sup> 418 S.W.3d 566, at 576-7.

<sup>19</sup> 418 S.W.3d 566, at 588.

would impair the undisputed purpose of the provision, which is “to prohibit the coercive closing of an equity loan at the home of the owner.”<sup>20</sup>

The Texas Bankers Association objected that closing is an event, not a process. Considering a “closing” as beginning with the execution of a power of attorney would lead to absurd results and problems. Justice Hecht agreed that confusion was understandable, and that the closing was the occurrence that consummated the transaction.

But a power of attorney must be part of the closing to show the attorney-in-fact's authority to act. Section 50(a)(6)(N) does not suggest that the timing of the power of attorney is important, or that it cannot be used to close a home equity loan if executed before the borrower applied for the loan. But as we have explained, we think that the provision requires a formality to the closing that prevents coercive practices. The concern is that a borrower may be persuaded to sign papers around his kitchen table collateralizing his homestead when he would have second thoughts in a lender's, lawyer's, or title company's office. To allow the borrower to sign a power of attorney at the kitchen table raises the same concern. Requiring an attorney-in-fact to sign all loan documents in an office does nothing to sober the borrower's decision, which is the purpose of the constitutional provision.<sup>21</sup>

Justice Hecht concluded by reminding us that whether such a stringent restriction was good policy was not an issue for the Commissions or the Supreme Court to consider.

#### 18.5 Problems Stemming from the *Norwood*

**Case.** I don't think I've ever prepared a power of attorney that stated where it was being executed. So while most of the powers of attorney I have prepared for clients were signed “**at the office of ... an attorney at law,**” how would the agent prove that fact? A power of attorney executed under these circumstances would certainly be useless for home equity lending purposes after the principal became incapacitated. Even if the incapacitated principal named his or her spouse as agent under the power of attorney, the couple would be effectively precluded from using that power of attorney to obtain an equity loan without commencing an expensive guardianship – even though the principal

spouse's incapacity might be a driving force behind the need to tap the equity in the home. Remember, both spouses' signatures are required to place a valid lien on a homestead. There's no way the power of attorney – signed before incapacity without proof of execution location – can be used to provide the incapacitated spouse's signature.

Further, in today's practice, with more and more attorneys working in small-firm or solo practices, or even working out of their home with no “office,” powers of attorney are often executed outside an “attorney's office.” Even those attorneys with larger practices may send documents to clients with execution instructions so that the clients can avoid a second trip “into town.”

#### 18.6 No Imminent Solution in Sight.

Representatives of REPTL and the Texas Land Title Association discussed proposing a solution for this problem.

**(a) The Legislative Part.** REPTL's 2015 legislative package approved by the State Bar's Board of Directors included an amendment to Estates Code Section 752.102, which defines the language in a statutory durable power of attorney conferring authority with respect to “real property transactions.” New Subsection (b) would have provided:

(b) The power to mortgage and encumber real property set out in this section includes the power to execute documents necessary to create a lien against the principal's homestead pursuant to Article XVI, section 50 of the Texas Constitution and to consent to the creation of a lien against the principal's spouse's homestead.

**(b) The Constitutional Part.** But a legislative solution wouldn't be sufficient, since the *Norwood* case was based on the language of the Texas Constitution. Therefore, TLTA was considering attempting to obtain legislative approval of an amendment to Section 50 that would go before the voters in November providing:

**(c) No Go.** After consulting its stakeholders, TLTA decided not to push for a constitutional amendment, and since REPTL has no experience obtaining passage of a constitutional amendment, the *Norwood* problem was not addressed in 2015.

18.7 **In the Meantime ...** Until we have a combined statutory/constitutional solution, here are some suggestions for families wanting to access the equity in their home:

**(a) Reverse Mortgages.** *Norwood* only addressed equity loans (Section 50(a)(6)). It did not

<sup>20</sup> 418 S.W.3d 566, at 596.

<sup>21</sup> 418 S.W.3d 566, at 596-7.

apply to reverse mortgages (Section 50(a)(7)). There are no special rules relating to the place of closing of a reverse mortgage. However, a reverse mortgage is only available to a homeowner who is at least 62. And if that homeowner dies with a spouse who is not also the debtor, the reverse mortgage becomes due. Additionally, Section 50(k)(8) requires the prospective borrower and his or her spouse to attest in writing before the loan is closed that they received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives.

**(b) Affidavits?** If the power of attorney actually was signed in one of the authorized locations (*e.g.*, an attorney’s office), this author has been told that some title companies are accepting affidavits to that effect. An affidavit that the power of attorney may satisfy the *Norwood* requirement, but what if it turns out later that the affidavit was incorrect. There’s no statutory or constitutional good faith reliance exception. But then, at that point, it’s the title company’s problem, not the borrower’s.

**(c) Community Administration.** If one spouse is incapacitated, the other can institute a community administration under Texas Estates Code Chapter 1353, which allows the latter spouse to manage, control and dispose of the entire community estate, including the part of the community estate that the incapacitated spouse legally has the power to manage. This is a bit less cumbersome than a guardianship of the estate, but still involves a court proceeding, and is not available if any part of the home is the incapacitated spouse’s separate property.

**(d) Guardianship.** If any part of the home is the incapacitated spouse’s separate property, then the only alternative may be a guardianship of the estate – temporary or permanent. Appointment of a *temporary* guardian would normally be preferable to a *permanent* guardian because Texas Estates Code Sec. 751.052 provides that the latter appointment terminates a perfectly good power of attorney for all other purposes. But even the appointment of a temporary guardian to sign the equity loan papers would significantly increase the cost of the loan, as well as put closing in jeopardy if the local court does not look favorably on the creation of temporary guardianships.

### ***Drafting Tip***

Consider adding the location of execution to the power of attorney form. For example:

“Signed this 26<sup>th</sup> day of March, 2015, *at the offices of Saunders, Norval, Pargaman and Atkins, LLP.*”

## 19. A Little **Lagniappe**. [*Reserved*]

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

19.1 **Remember the Alamo!** Apparently in response to a nomination that could make the San Antonio Missions – including the Alamo – a World Heritage site through the United Nations Educational, Scientific and Cultural Organization (UNESCO), **SB 191** (Campbell) would have prohibited the General Land Office from entering into an agreement that vests any ownership, control, or management of the Alamo complex in an entity formed under the laws of another country. (No reason was given why it might be okay to transfer ownership or control to a private entity formed in the United States.) According to news reports, questions directed to Sen. Campbell at a February 24<sup>th</sup> hearing before the Senate Natural Resources and Economic Development Committee included:

- “What made you bring this bill? ... I mean, what was your thinking?”
- I get where you’re coming from, but I’m trying to figure out what problem we’re trying to solve here.”

Campbell said her bill and the UNESCO designation are unrelated, although she did say that “anything that starts with the U.N. gives me cause for concern.” After a deputy commissioner at the General Land Office testified that Land Commissioner George P. Bush had no plans to sell the Alamo (a transaction that would require legislative approval anyway), Sen. Campbell asked, “What about the next commissioner?” Response: “I cannot speak for the next commissioner.” Sen. Campbell: “Right. And I can’t either, and neither can anyone else.”

A Bexar County official, testifying on behalf of the commissioners’ court (which supports the UNESCO designation as a measure that will increase tourism), pointed out that there is nothing in UNESCO guidelines that indicates it intercedes in the operation or management of any site.

Asked for comment later, former Land Commissioner Jerry Patterson said the bill “would prohibit the [General Land Office] from doing what it has no authority to do. It would make unlawful that which is already unlawful.” The bill was left pending.

19.2 **Fort Knox in Texas? (Gov’t Code Ch. 2116).** **HB 483** (Capriglione) is a reprise from 2013’s **HB 3505** (Capriglione). It establishes the Texas Bullion Depository to hold precious metals acquired by Texas, its agencies, political subdivisions, etc. The



2013 legislation stated as one of its purposes the establishment of a procedure for making payments with precious metals that “is able to function in the event of a systemic dislocation in a national and international financial system, including systemic problems in liquidity, credit markets, or currency markets.” In other words, it was in preparation for the day when our paper money becomes worthless. The 2013 bill never emerged from committee. The 2015 version is very similar, but omits that purpose provision. It also allows the depository to accept bullion deposits from:

- an individual or fiduciary, including an administrator, executor, custodian, guardian, or trustee;
- a political subdivision of this state or an instrumentality of this state;
- a business or nonprofit corporation;
- a charitable or educational corporation or association; or
- a financial institution, including a bank, savings and loan association, or credit union.

HB 483 was signed by the Governor on June 19, 2015.

19.3 **Psst...Got a Flashlight? (Gov’t Code Sec. 580.005).** **HB 3916** (Stickland) would have prohibited a political subdivision from providing water or electricity service to an NSA data collection center. Unless, of course, that subdivision has outstanding revenue bonds secured by that utility revenue.

19.4 **It’s All in the [Name] Caption.** Thanks to Ken Herman of the Austin American-Statesman for his column listing some of the bills on Corbin Van Arsdale’s list of 50 best captions (Van Arsdale is a former state representative and current vice president and general counsel of Associated General Contractors). Some of these I already found on my own and are listed elsewhere, but here are a few I hadn’t run across:

- **HB 436** (Raymond) – “An Act relating to honesty in state taxation.” Who could oppose that?
- **HB 3429** (Lozano) – “An Act relating to the establishment of an unmanned aircraft program in the office of the governor.” Abbott drones?
- **HB 909** (Phillips) – “An Act relating to the tasting of alcoholic beverages by students enrolled in certain courses.” This is a bill allowing 18- to 20-year-olds enrolled in wine or beer technology courses to “taste: those adult beverages, defined as “to draw a beverage into the mouth without

swallowing or otherwise consuming the beverage.” Next will be a course where students will be allowed to smoke, as long as they promise not to inhale!

HB 909 was signed by the Governor on June 16, 2015.

- **SB 570** (Estes) and **HB 397** (Sheffield) – “An Act relating to the use of fireworks at certain Texas Department of Transportation rest areas.” This has been an issue? (Of course, this is Texas – why did I even ask the question?)

SB 570 was signed by the Governor on May 28, 2015.

- **HB 2332** (Miller, D.) – “An Act relating to the naming by the Texas Historical Commission of certain areas without historical value that are on historic sites.” This allows the commission to essentially sell naming rights to facilities built on historic sites that are not historic themselves, *e.g.*, the “Jack-in-the-Box Official Alamo Visitor Welcome Center.”

HB 2332 was signed by the Governor on June 16, 2015.

- **HB 3390** (Larson) – “An Act relating to a written agreement concerning a projectile that travels across a property line.” Funny thing is, this isn’t a new law. It’s an amendment to an existing statute (Parks & Wildlife Code Sec. 62.0121) that requires a written agreement to shoot across property lines (presumably while hunting). Under the bill, the agreement must include the phone number and mailing address, not just the name, of the person allowed to hunt.

**HB 3390 was vetoed by the Governor on June 20, 2015.**

In his veto message, the Governor noted that it is already a crime for hunters to fire across a property line unless the hunter owns both plots of land or has a written agreement with the property owner on either side. HB 3390’s expanded requirements for these agreements “could result in increased prosecution of hunters who are attempting to comply with the law but are not aware the law has changed. ... Increased regulation of hunters is not necessary.

- **HB 207** (Leach) – “An Act relating to creating the offense of voyeurism.” As Herman points out, this is “a bill worth watching.”

HB 207 was signed by the Governor on June 17, 2015.

- **HCR 58** (Bonnen, D) – A resolution “[c]ommemorating the life of Charlie Brown.” No, not **that** Charlie Brown. The Charlie Brown who was a former slave born in Virginia, moved to Texas after being freed, became a successful businessman and civic leader in Brazoria County, and died in 1920 at the age of 92, thought to be one of the wealthiest African Americans in Texas at the time.

HCR 58 was signed by the Governor on March 13, 2015.

The 2013 best caption winner was **HB 1819** (Kacal) – “An Act relating to liability for injuring a trespassing sheep or goat.” This year, voters chose **HB 3429** – “An Act relating to the establishment of an unmanned aircraft program in the office of the governor,” as the winning caption. Since it didn’t pass, we don’t have to worry about the height of the ceilings in the Governor’s office.

19.5 **Fonts of Knowledge.** Thanks again to Ken Herman for drawing to our attention a statement issued by the Texas General Land Office at the beginning of April that it was banning the typeface **comic sans** from all agency computers because it was appropriate for early childhood instruction rather than serious state business. “Current agency-wide substitute font recommendations are Helvetica, Times New Roman, or even Arial,” said the GLO’s publication’s director. “Any of the standard ones really. Except Papyrus. It’s terribad.” From its Twitter feed:

Apparently, several news outlets around the state thought this was a serious proposal and did not notice that it was issued on April 1<sup>st</sup>. Nevertheless, fonts are not to be trifled with. **SB 1829** (Zaffirini) would have added Gov’t Code Sec. 2051.023 requiring all state agencies to print all documents “in an ink-conserving font, such as Garamond font.”



19.6 **What Supremacy Clause?.** Several bills or resolutions deserve mention here:

- **HB 1751** (Simpson) would have allowed the legislature, by a two-thirds vote of all of the members of each house, to find that a federal law violated the Texas Constitution, whereupon the “legislature may interpose itself between the federal government and persons in this state to

oppose the federal government in the execution and enforcement of the federal law.” Neither a state agency nor a political subdivision may execute or enforce such a federal law. **SJR 59** (Campbell) was a proposed constitutional amendment that was similar and provided that such a nullified federal law has no legal effect here. See footnote 7 in the discussion of **HB 2555** (White, M.) in Section 17.2(d) on page 49 below.

- **HB 413** (Goldman) was the Second Amendment Preservation Act. It contained a number of legislative findings about the respective role of the state and federal governments and the rights of the people. It then provides that any federal law or rule infringing on a law-abiding citizen’s right to keep and bear arms under the Second Amendment of the U.S. Constitution is invalid and unenforceable in Texas. If it’s already invalid under the Second Amendment, is there really any reason to declare it invalid under Texas law?
- **SCR 1** (Creighton) claimed the sovereignty of the State of Texas under the Tenth Amendment of the U.S. Constitution and would have repealed all compulsory federal legislation not necessary to ensure rights guaranteed the people under the Constitution that directs states to comply under threat of penalties or requires states to pass legislation to avoid losing federal funding.
- **SJR 16** (Campbell) would have amended the Constitution to provide that each individual in this state has the right to choose or decline to choose to purchase health insurance coverage without penalty or sanction (or threat thereof).

19.7 **What Establishment Clause? (Ed. Code Sec. 11.173).** **HB 138** (Flynn) would have prevented school boards from prohibiting the posting of the ten commandments in a prominent location of a district classroom.

19.8 **What Constitutional Convention? In** 1899, our legislature adopted **SCR 4**, applying to the U.S. Congress for a convention under the provisions of Article V of the United States Constitution<sup>22</sup> “...for proposing amendments to said Constitution... .” That resolution, unlike subsequent applications from Texas, contained no restrictions on the subject matter of any amendments that might be discussed at a nationwide constitutional convention. No such constitutional convention has ever taken place in American history,

<sup>22</sup> “The Congress, ... on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments ... .”

but if one took place, who knows what might happen? **HJR 144** (Elkins) stated that “the Texas Legislature has absolutely no desire or intention whatsoever for Congress to call an Article V amendatory convention of a general, vague, and unlimited nature.” Therefore, the current resolution, had it passed, “officially rescinds, repeals, revokes, and nullifies” the 1899 resolution. That ought to redundantly, repetitively, and completely take care of that!

#### 19.9 What Confederate Heroes Day?

(Gov’t Code Sec. 662.003(b)). Austin eighth-grader Jacob Hale thinks the state’s Confederate Heroes Day (January 19<sup>th</sup> “in honor of Jefferson Davis, Robert E. Lee, and other Confederate heroes”) should be replaced with a more inclusive Civil War Remembrance Day “in honor of the men and women who served during the Civil War.” **HB 1242** (Howard | Dale) would have done just that, scheduling the holiday for the second Monday in May. Reports are that Hale did a fine job presenting his idea on April 14<sup>th</sup> at a hearing before the House Culture, Recreation & Tourism Committee, but chances for passage were slim given the numerous witnesses (22 of ’em), many of whom had Confederate ancestors, who testified the change would be disrespectful. The bill was left pending in committee. Ironically, January 19<sup>th</sup> often conflicts with the national and state holiday honoring Martin Luther King, Jr.<sup>23</sup>

#### 19.10 BBQ, Beer, Wine, and Other

**Certificates.** Last session, there were a number of bills bestowing official status of one sort or another on various BBQ competitions and festivals. I have been unable to find any such designations this session. Why, I do not know. However, in searching for these BBQ-related resolutions, I came across **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. Don’t rush out to get your certificates. If it

<sup>23</sup> In 1931, **HB 126** made January 19<sup>th</sup>, Robert E. Lee’s birthday, an official holiday in his honor. In 1973, **SB 60** deleted a previous holiday on June 3<sup>rd</sup> honoring Jefferson Davis and rolled it into Confederate Heroes’ Day on Robert E. Lee’s birthday. Fourteen years later, in 1987, **SB 485** made the third Monday in January an *optional* state holiday in Honor of Martin Luther King, Jr.. Four years after that, **SB 134** made it an official state holiday.

passes, the act wouldn’t take effect until September 1, 2016.

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

- **Official State Hat.** **HCR 35** (Farney) and **HCR 42** (Bohac) both designate the cowboy hat as the official State Hat of Texas. This isn’t already the case? (These two resolutions extoll different virtues of the cowboy hat and, in my opinion, really should be combined.)
- **Official State Pollinator.** **HCR 65** (Naishtat) designates the western honey bee as the official State Pollinator of Texas.
- **Official Nickname.** **HCR 78** (Guillen) designates “the Lone Star State” as the official nickname of Texas.
- **Legislature’s Official Mixed Drink.** Given that “[m]ixed together in a potent and flavorful concoction, Texas vodka and Texas red grapefruit juice provide a refreshing respite from the cares of the day on a warm Texas spring evening in the Hill Country, or even on a cold winter night in Austin in the midst of session,” **HCR 101** (Springer) designates Texas vodka and red grapefruit juice as the Official Mixed Drink of the 84<sup>th</sup> Legislative Session.
- **Official Hashtags.** Rep. Kenneth Sheets of Dallas must really be into social media (specifically, Twitter):
  - **HCR 104** (Sheets) designates #txlege as the official hashtag of the Texas Legislature.
  - **HCR 105** (Sheets) designates #Texas as the official hashtag of Texas.
  - **HCR 106** (Sheets) designates #TexasToDo as the official hashtag of Texas Tourism.
- **Official State Crustacean.** **HCR 122** (Faircloth) designates the Texas Gulf shrimp as the Official State Crustacean of Texas.

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

- **Steak Capital.** **HCR 39** (Sheffield) and **SCR 31** (Fraser) designate Hico as the official Steak Capital of Texas.
- **Wedding Capital.** **HCR 43** (Isaac) designates Dripping Springs as the Wedding Capital of Texas.

- **Classic Car Capital.** [HCR 62](#) (Springer) designates Nocona as the official Classic Car Capital of Texas, but only for 10 years.<sup>24</sup>
- **Deer Capital.** [HCR 64](#) (Murr) designates Llano as the Original Deer Capital of Texas (for 10 years), while [HR 3025](#) (Murr) designates Llano as the Deer Capital of Texas (no “Original”) without a time limitation.
- **Butterfly Capital.** [HCR 69](#) (White, J.) designates Jasper as the official Butterfly Capital of Texas.
- **Strawberry Capital.** [HCR 76](#) (Guillen) designates Poteet as the official Strawberry Capital of Texas (for 10 years).
- **Vaquero Capital.** [HCR 77](#) (Guillen) redesignates Jim Hogg County as the official Vaquero Capital of Texas (for 10 years).
- **Bison Capital.** [SCR 22](#) (Seliger) designates Quitaque as the official Bison Capital Texas.
- **Storybook Capital.** [HCR 93](#) (King, S.) and [SCR 38](#) (Fraser) designate Abilene as the official Storybook Capital of Texas (for 10 years).
- **Grape Capital.** [SCR 41](#) (Perry) designates Terry County as the official Grape Capital of Texas (for 10 years).

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

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<sup>24</sup> Interestingly (to me, at least), [Gov’t Code Ch. 391](#) contains numerous rules governing the designation of state symbol and place designations (since September 1, 2001), and day, week, and month recognitions (since September 1, 2009).

- A resolution designating a state symbol must specify the item’s historical or cultural significance to the state, and may not designate a commercial product, an individual, an event, or a place. [Sec. 391.002](#).
- A place designation may not be assigned to more than one event or location, nor may more than one place designation be assigned to the same any municipality, county, or other location, although the legislature may assign more than one place designation within a county. Place designations expire after 10 years but may be redesignated during or after that 10-year period. [Sec. 391.003](#).
- More than one day, week, or month designation may be assigned to the same day, week, or month. Date designations also expire after 10 years but may be redesignated during or after that 10-year period. [Sec. 391.004](#).

I cannot explain why [HCR 62](#) and [HCR 64](#) comply with the 10-year rule but [HCR 39](#) and [HCR 43](#) do not.

- **Javelina Day.** [HR 388](#) (Lozano) designates February 26<sup>th</sup> as Javelina Day at the State Capitol, although in the interests of full disclosure, this designation is in honor Texas A&M University—Kingsville and its beloved mascot, not the medium-sized hooved mammal found in the southwestern area of North America and throughout Central and South America.
- **Lemonade Day.** [SR 307](#) (Garcia) recognizes May 3<sup>rd</sup> as Lemonade Day (when a number of companies teach children how to start and operate the own lemonade stand businesses).
- **Don’t Mess With Texas Day.** [HR 2269](#) (Hunter) and [SR 637](#) (Nichols) recognize April 29<sup>th</sup> as Don’t Mess With Texas Day.
- **John Wayne Day.** [HCR 130](#) (Parker) and [SR 997](#) (Nichols) designate May 26<sup>th</sup> as John Wayne Day (for 10 years).
- **El Dia de la Guayabera.** [SR 1021](#) (Lucio) recognizes June 1<sup>st</sup> as “El Dia de la Guayabera” and Guayabera Day.

19.14 **Mascots.** These fall in the category of “Awww, isn’t that sweet!”

- **Mascot.** [HR 2775](#) (Geren) elects the children of House members to the office of mascot.
- **Honorary Mascots.** [HR 2776](#) (Geren) names the grandchildren of House members as honorary mascots.

## 20. Conclusion (“Words of Wisdom”).

As in any session, there are a few good bills and plenty of bad bills that don’t pass. Very few, if any, of the “bad bills” make their way all the way through to enactment. I’m not a particularly religious person, but as each session progresses and I see some good provisions go by the wayside, or some less-than-optimal provisions move successfully through the legislature, I’ve been reminded of the first sentence of [the Serenity Prayer](#):<sup>25</sup>

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

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<sup>25</sup> Original language attributed to Reinhold Niebuhr, 1943.

So, with apologies to Willie Nelson (and Don Meredith), at midnight on Monday, June 1<sup>st</sup>, it's time to...

*Turn out the lights;*

*The party's over.*

*They say that*

*All good things must end.*

*Let's call it a night,*

*The party's over.*

*And [next session] starts*

*The same old thing again.*

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



**Attachment 1 – 2015 List of Bills That Passed and Earliest Effective Dates**

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

<b>84<sup>th</sup> Legislature, Regular Session – Bills That Passed and Earliest Effective Dates</b>			
<b>Bill No.</b>	<b>Caption</b>	<b>Status</b>	<b>Effective Date</b>
HB 39	Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.	Signed 5/29/15	9/1/15
HB 483	Relating to the establishment and administration of a state bullion registry; authorizing fees.	Signed 6/19/15	6/19/15
HB 634	Relating to the rights of a guardian of a person in the criminal justice system.	Signed 6/17/15	9/1/15
HB 638	Relating to annuity payments to surviving spouses and designated beneficiaries of persons wrongfully imprisoned.	Signed 6/17/15	9/1/15
HB 705	Relating to access to a financial institution account of a person who dies intestate.	Signed 5/29/15	9/1/15
HB 831	Relating to disclosure of home mortgage information to a surviving spouse.	Signed 6/16/15	9/1/15
HB 1329	Relating to the payment of costs incurred by the involuntary commitment of persons with mental illness.	Signed 6/17/15	9/1/15
HB 1337	Relating to requiring institutions and assisted living facilities to maintain guardianship orders of residents.	Signed 6/17/15	9/1/15
HB 1438	Relating to probate matters, including guardianships and other matters related to incapacitated persons.	Signed 6/19/15	9/1/15
HB 1560	Relating to investment options for property recovered in a suit by a next friend or guardian ad litem on behalf of a minor or incapacitated person.	Signed 6/1/15	9/1/15
HB 1681	Relating to the authority of a county clerk to require an individual to present photo identification to file certain documents in certain counties.	Signed 6/19/15	6/19/15
HB 1692	Relating to the doctrine of forum non conveniens.	Signed 6/16/15	6/16/15
HB 1923	Relating to qualification of special judges.	Signed 6/19/15	9/1/15
HB 2182	Relating to the collection and refunding of certain fees and deposits by a county clerk or district clerk; increasing certain fees.	Filed without Governor's signature 6/17/15	9/1/15
HB 2419	Relating to the relationship between the Estates Code and the former Texas Probate Code.	Signed 5/28/15	5/28/15
HB 2278	Relating to authorizing certain current and retired associate judges to conduct a marriage ceremony.	Signed 6/19/15	9/1/15
HB 2428	Relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.	Signed 6/16/15	9/1/15
HB 2665	Relating to access to and receipt of certain information regarding a ward by certain relatives of the ward.	Signed 6/19/15	6/19/15
HB 2706	Relating to the value of personal property exempt from seizure from creditors.	Signed 6/17/15	9/1/15
HB 3070	Relating to disposition of remains.	Signed 6/19/15	9/1/15

## 2015 Texas Estate and Trust Legislative Update

<b>84<sup>th</sup> Legislature, Regular Session – Bills That Passed and Earliest Effective Dates</b>			
<b>Bill No.</b>	<b>Caption</b>	<b>Status</b>	<b>Effective Date</b>
HB 3074	Relating to the provision of artificially administered nutrition and hydration and life-sustaining treatment.	Signed 6/12/15	9/1/15
HB 3136	Relating to the use of a small estate affidavit to distribute certain intestate estates.	Signed 6/19/15	9/1/15
HB 3160	Relating to an exception to the period of filing an application for the grant of letters testamentary or of administration of a decedent's estate.	Signed 6/16/15	9/1/15
HB 3190	Relating to persons authorized to direct, consent to, or disapprove a trustee's decisions.	Signed 6/19/15	6/19/15
HB 3283	Relating to contributions and registrations for an anatomical gift registry; authorizing a fee.	Signed 6/20/15	1/1/16
HB 3316	Relating to the time for recording a durable power of attorney for certain real property transactions.	Signed 6/17/15	9/1/15
HB 3424	Relating to a study and report on the establishment of a central database containing information about certain individuals under guardianship.	Signed 6/19/15	9/1/15
SB 200	Relating to the continuation and functions of the Health & Human Services Commission and the provision of health and human services in this state.	Signed 6/17/15	9/1/15 2/1/16 9/1/17
SB 219	Relating to the provision of health & human service in this state, including the powers and duties of the Health and Human Services Commission and other state agencies, and the licensing of certain health professionals; clarifying certain statutory provisions; authorizing the imposition of fees.	Signed 4/2/15	4/2/15
SB 359	Relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities to temporarily detain a person with mental illness.	Vetoed 6/1/15	N/A
SB 462	Relating to authorizing a revocable deed that transfers real property at the transferor's death.	Signed 6/17/15	9/1/15
SB 512	Relating to the promulgation of certain forms for use in probate matters.	Signed 6/16/15	9/1/15
SB 534	Relating to the oath of a person admitted to practice law in the State of Texas.	Signed 5/15/15	5/15/15
SB 752	Relating to the repeal of the inheritance tax.	Signed 6/19/15	9/1/15
SB 757	Relating to the repeal of the production taxes on crude petroleum and Sulphur.	Signed 6/15/15	9/1/15
SB 815	Relating to a temporary restraining order for preservation of property and protection of the parties in a suit for the dissolution of marriage.	Signed 5/19/15	9/1/15
SB 859	Relating to partnerships and limited liability companies.	Signed 5/15/15	9/1/15
SB 875	Relating to the regulation of state trust companies.	Signed 5/29/15	9/1/15
SB 988	Relating to the prohibited disposition of a decedent's remains by a person charged with certain criminal conduct against the decedent; providing an administrative penalty.	Signed 6/16/15	6/16/15
SB 995	Relating to decedents' estates.	Signed 6/18/15	9/1/15
SB 1020	Relating to the designation of the trustee of an express trust as a beneficiary of a trust account or a P.O.D. payee of a P.O.D. account.	Signed 5/29/15	9/1/15



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

<b>84<sup>th</sup> Legislature, Regular Session – Bills That Passed and Earliest Effective Dates</b>			
<b>Bill No.</b>	<b>Caption</b>	<b>Status</b>	<b>Effective Date</b>
<a href="#">SB 1116</a>	Relating to a notice or a document sent by mail or electronic mail by a court, justice, judge, magistrate, or clerk of a judicial court.	Signed 5/29/15	9/1/15
<a href="#">SB 1129</a>	Relating to the transportation of a person with a mental illness.	Signed 6/17/15	6/17/15
<a href="#">SB 1202</a>	Relating to the value of property that may be transferred to a custodian or other person for the benefit of a minor under certain circumstances.	Signed 6/16/15	9/1/15
<a href="#">SB 1296</a>	Relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 83 <sup>rd</sup> Legislature to other Acts of that legislature.	Signed 6/19/15	9/1/15
<a href="#">SB 1369</a>	Relating to reports on attorney ad litem, guardian ad litem, guardian, mediator and competency evaluator appointments made by courts in the state and an interim study on a billing system for attorneys ad litem.	Signed 6/19/15	9/1/15
<a href="#">SB 1791</a>	Relating to disclosures on selection or modification of an account by a customer of a financial institution.	Signed 6/19/15	9/1/15
<a href="#">SB 1876</a>	Relating to the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians in certain counties.	Signed 6/19/15	9/1/15
<a href="#">SB 1881</a>	Relating to authorizing supported decision-making agreements for certain adults with disabilities.	Signed 6/19/15	6/19/15
<a href="#">SB 1882</a>	Relating to a bill of rights for wards under guardianship.	Signed 6/19/15	6/19/15
<a href="#">SR 1028</a>	Relating to the preservation of the present definition of marriage.	Reported enrolled 5/27/15	N/A



Attachment 2 – Selected Bills that DID NOT Pass in 2015

7. Decedents' Estates.<sup>1</sup>

7.1 Continuation of Utilities (Sec. 152.151).

**HB 3663** (Naishtat) would have allowed a decedent's next of kin to submit to a utility providing service to real property of the decedent a request (with a death certificate) that the entity continue service until the earlier of 90 days after the utility receives the request or 14 days after a personal representative of the estate qualifies. The next of kin making the request are not liable for the cost of the utilities; the estate is.

7.2 Statute of Limitations for Will Contest

(Sec. 256.204). **HB 2274** (Naishtat) would have shortened the statute of limitations for contesting a probated will from two years to one year following admission to probate (or one year following removal of an incapacitated person's disabilities, if later).

7.3 Adverse Possession by Co-Tenant Heirs

(Civ. Prac. & Rem. Code<sup>2</sup> 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), and in 2013, **SB 108** (West) tried to change this rule for co-tenancies created by intestacies. Neither bill was enacted. This session, **HB 2544** (Lozano), which appears similar to the 2013 bill, 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);
- 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.

<sup>2</sup> Future references are to the "CP&R Code."

<sup>2</sup> Future references are to the "CP&R Code."

**7.4 Escheat of Savings Bonds (Prop. Code Secs. 71.401 and 74.001). SB 1916** (Watson) provides that U. S. savings bonds are presumed abandoned if they remain unclaimed three years after their maturity date, allowing the Comptroller to file an action for a determination that they've escheated to the state. After obtaining the escheat order, the Comptroller shall redeem the bonds and, after paying costs relating to their collection, "promptly deposit the remaining balance of such proceeds in the general revenue fund [or any other fund you decide is correct] to be distributed in accordance with law." Sounds like Sen. Watson is asking his colleagues for guidance.

**7.5 Access to Decedent's Mental Health Information (Health & Safety Code<sup>3</sup> Sec. 611.004). HB 2130** (Klick) would have added the executor or administrator of a decedent's estate, or, if none has been appointed, the decedent's spouse or, if unmarried, an adult related to the decedent within the first degree of consanguinity (*i.e.*, a parent or child) to the list of persons or entities to whom a professional may disclose confidential mental health records.

**7.6 Disclosure of Information Regarding Death Benefits (Ins. Code Secs. 1101.201-1101.205, 1101.251, and 1101.252).** The Insurance Code already contains provisions allowing beneficiaries of death benefits to assign those benefits to a funeral home to pay funeral expenses. **HB 1046** (Collier) would have provided a simplified method for a person believed to be a beneficiary, or a person with a power of attorney from the beneficiary (*i.e.*, the funeral home) to obtain disclosures regarding the nature of the death benefit and to whom it is payable.

**7.7 The Uniform Fiduciary Access to Digital Assets Act (New Title 4 (Ch. 2001)).** The Uniform Fiduciary Access to Digital Assets Act was adopted by the Uniform Law Commission in 2014. From its website:

The Uniform Fiduciary Access to Digital Assets Act is an important update for the Internet age. A generation ago, files were stored in cabinets, photos were stored in albums, and mail was delivered by a human being. Today, we are more likely to use the Internet to communicate and store our information. This act ensures account-holders retain control of their digital property and can plan for its ultimate disposition after their death. Unless the account-holder instructs otherwise, legally appointed fiduciaries will

have the same access to digital assets as they have always had to tangible assets, and the same duty to comply with the account-holder's instructions.

REPTL established a committee, chaired by Texas Tech Prof. Gerry Beyer, to study UFADAA with a view towards enactment of a Texas version in 2017. **HB 2183** (Leach) proposed adopting the act this session. However, due to some industry opposition as written and REPTL's desire for further study (since UFADAA is such a new uniform act), consideration of this legislation will be deferred until the 2017 legislative session.

## 8. Guardianships.

### 8.1 UAGPPJA (Chs. 1253 and 1254).

According to the Uniform Law Commission, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), first promulgated in 2007, "addresses the issue of jurisdiction over adult guardianships, conservatorships & other protective proceedings, providing a mechanism for resolving multi-state jurisdictional disputes. The goal is that only one state will have jurisdiction at any one time." However, UAGPPJA is targeted towards states that do not have laws addressing these issues. As was pointed out to our legislature when this uniform law was first introduced in 2009, we already had statutes dealing with the two most important parts of UAGPPJA: inbound and outbound transfers of guardianship (adopted in 2001), and *Glasser*-type multi-state venue and jurisdiction conflicts (added in 2007). Additional revisions proposed by our statutory probate judges were made in 2011. All of these provisions can now be found in Chapter 1253 of the Estates Code, so it is unclear to REPTL and to the statutory probate judges why adoption of UAGPPJA is advisable. Nevertheless, **HB 2998** (Rodriguez, J.) adds UAGPPJA (applying to adults) as new Estates Code Ch. 1254, and limits the application of existing Ch. 1253 to minor wards.

### 8.2 Miscellaneous Duties of Guardian and Physicians (Secs. 1151.052-1151.004). HB 3930

(Hughes) requires a guardian of an adult ward with decision-making ability who applies for residential care for the ward with the ward's consent to visit the facility first. After the ward is placed in the facility, the guardian must visit at least once a month and return phone calls, e-mail, regular mail, and other communications regarding the ward from a physician, social worker, attorney, family member, or other care provider or advocate within a reasonable amount of time. If a guardian voluntarily admits a ward to a

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<sup>3</sup> Future references are to the "H&S Code."

residential care facility for emergency or respite care must visit the ward there within a reasonable time. The guardian of an adult ward under a protective custody order must meet with the ward and the ward's treating physician before the administration of psychoactive medication. And a physician who administers psychoactive medication in response to a medication-related emergency must notify the guardian within two business days.

**8.3 Payment of Filing Fees (Secs. 1052.051 and 1155.151).** Last session, **HB 2915** (Thompson, S.) contained number of provisions relating to costs in a guardianship proceeding, including the potential ability to pierce the spendthrift protection of a trust for the beneficiary. As ultimately consolidated into the REPTL 2013 Guardianship bill, this provision merely made the original applicant responsible for the filing fee accompanying the application (including any ad litem deposit), unless the applicant (not the ward) could file an affidavit of inability to pay costs. The applicant could later seek reimbursement for those fees from the guardianship estate, if any. This session, **HB 2733** (Thompson, S.) and **SB 1622** (Rodriguez) contain provisions more akin to the bill originally filed last session. It repeals the 2013 changes and adds new provisions making the applicant responsible for **all** costs, including the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters.

**8.4 Court-Initiated Investigations (Secs. 1102.001-003).** **HB 3914** (Klick) would have provided that if a court appoints a guardian ad litem or court investigator to investigate the condition of a person the court has probable cause to believe may be incapacitated, that person may petition the court to set aside the appointment, the order appointing the ad litem or investigator must include a statement to that effect, and the ad litem or investigator must provide a copy of the order to the person within 48 hours of appointment. The court must hold a preliminary hearing to determine whether further investigation is necessary within a reasonable time.

More importantly, to establish probable cause, the court must require either an affidavit from an interested person alleging facts that, if true, establish the person is an incapacitated person, or a physician's letter or certificate. A preliminary hearing must be held after the date of the physician's letter or certificate, if any, but within 30 days of the appointment of the ad litem or investigator. The current provision allowing the court to establish probable cause based on an information letter is **repealed**.

**8.5 Attorneys for Minor Seeking Abortion (Fam. Code Sec. 33.003).** After appointment of a guardian ad litem for a minor seeking an abortion without notification to a parent or guardian, **HB 723** (King, Phil | Bonnen, Greg | Burkett) would have required a court to appoint an attorney for an unrepresented minor. The guardian ad litem may not act as the minor's attorney, and if the minor has an attorney, that attorney may not serve as guardian ad litem.

**8.6 Transportation of Person with Mental Illness (H&S Code Secs. 531.035, 573.005, and 574.045).** **HB 2711** (Riddle) would have allowed EMS personnel to transport a person directly to an inpatient mental health facility for a preliminary examination if the personnel have reason to believe the person is mentally ill and there is a substantial risk of serious harm to the person or to others without immediate restraint.

## **9. Trusts.**

**9.1 The REPTL Trusts Bill.** The REPTL 2015 Trusts bill contained relatively few changes, but the first several described below are significant.<sup>4</sup>

**(a) Directed Trusts (Secs. 111.0035(b), 111.004(7), 112.085, 114.003, and 114.101-114.110).** New Subchapter E of Chapter 114, beginning with Sec. 114.100, titled "Directed Trusts," would have taken the place of current Sec. 114.003. A full and detailed description of the overhaul is beyond the scope of this paper, but here is a basic outline:

### **(i) Selected Definitions (Sec. 114.101).**

- A "**directing party**" is any investment trust advisor, distribution trust advisor, or trust protector, but **does not include** (A) a settlor or beneficiary who holds a power of appointment designed merely to prevent a trustee from taking any action, or who holds a power to remove or appoint a trustee, investment trust advisor, distribution trust advisor, trust protector, or another directing party, (B) a trustee; or (C) a person who merely holds a power exercisable in a nonfiduciary capacity without consent of any fiduciary, such as a power to control beneficial enjoyment of the trust assets (IRC Sec. 674) or certain administrative powers (IRC Sec. 675).
- A "**distribution trust advisor**" is anyone with authority to direct, consent to, veto, or otherwise exercise distribution powers, whether or not that term is used..

<sup>4</sup> Section references are to the Texas Property Code unless otherwise noted.

- An “**excluded fiduciary**” is one who must follow the instructions of a directing party, in which case it’s the latter who’s deemed to hold those powers.
- A “**fiduciary**” is anyone who has fiduciary duties, whether or not called a “trustee.”
- An “**independent fiduciary**” is one who is neither a settlor, a beneficiary, the spouse of either, or someone who is a related or subordinate party to any of them under IRC Sec. 672(c).
- An “**investment trust advisor**” is anyone with authority to direct, consent to, veto, or otherwise exercise investment powers, whether or not that term is used.
- A “**trust protector**” is anyone with the powers described in Sec. 114.103 below, whether or not that term is used.

### (ii) Investment Trust Advisor

**(Sec. 114.103).** Unless the trust provides otherwise, an investment trust advisor has authority to:

- direct the retention, purchase, transfer, assignment, sale, or encumbrance of trust property and investment and reinvestment of principal and income;
- direct all management, control, and voting powers;
- select and employ advisors, managers, consultants, counselors, or other agents; and
- determine the frequency and methodology for valuing assets without a readily available market value.

### (iii) Distribution Trust Advisor

**(Sec. 114.104).** Unless the trust provides otherwise, a distribution trust advisor has authority to direct discretionary distributions to or for one or more beneficiaries.

### (iv) Trust Protector (Sec. 114.105).

Unless the trust provides otherwise, a trust protector has no duty to monitor any fiduciary’s conduct, and has authority to:

- modify the trust to achieve favorable tax status or respond to tax changes;
- modify the interests of any beneficiary;
- modify any power of appointment so long as the modification does not grant a beneficial interest to anyone not specifically provided for in the trust;

- remove or appoint a trustee, investment trust advisor, distribution trust advisor, or another directing party;
- terminate the trust;
- change the situs or governing law of the trust;
- appoint successor trust protectors;
- interpret the trust terms at the trustee’s request;
- advise the trustee on matters concerning a beneficiary; or
- modify the trust to take advantage of laws governing restraints on alienation, distribution of trust property, or to improve trust administration.

### (v) Excluded Fiduciary (Sec. 114.106).

If a fiduciary is directed to act in accordance with the exercise of specified powers by a directing party, then those powers are not considered granted to the fiduciary, and the fiduciary is considered excluded from exercising those powers. If a fiduciary is directed to act in accordance with directions from the directing party with respect to specified matters, the fiduciary is an excluded fiduciary with respect to those matters.

### (vi) Duty and Liability of Directing Party

**(Sec. 114.107).** A directing party is a fiduciary with respect to areas within that party’s authority, although the scope of that authority may be limited. A directing party may not be relieved of any duties of which a trustee could not be relieved.

### (vii) Duty and Liability of Excluded Fiduciary (Sec. 114.108).

If an excluding fiduciary is directed to follow the directions of a directing party, then the former is not liable for any loss resulting from following those directions. In that case, carrying out those directions is presumed to be an administrative action. If the directing party failed to provide directions after being requested to do so by the excluded fiduciary, the latter is not liable for any loss resulting from a failure to act. However, this limitation of liability does not apply if the direction is contrary to an express trust provision, the excluded fiduciary acts with willful misconduct, or the excluded fiduciary has actual knowledge that the direction would constitute fraud.

The excluded fiduciary has no duty to:

- monitor the directing party’s conduct;
- advise or consult with the directing party;

- inform any directing party, beneficiary, or third party that the excluded fiduciary disagrees with any directions;
- prevent the directing party from providing any direction; or
- compel the directing party to redress its action or direction.

**(viii) Consent to Jurisdiction**

**(Sec. 114.109).** By accepting appointment, a directing party is submits to the jurisdiction of Texas courts, regardless of provisions to the contrary in any investment advisory agreements.

**(ix) Tax Savings (Sec. 114.110).** None of the default directed powers permit:

- a settlor to direct distributions;
- any directing party who is a beneficiary to direct distributions other than in accordance with the limits of Section 113.029 (*e.g.*, HEMS standard; no satisfaction of support obligation);
- any directing party to exercise incidents of ownership over a policy insuring the directing party's life (or that of his or her spouse); or
- any directing party to hold any power that would otherwise cause inclusion of trust assets in the directing party's estate.

**(b) Decanting (Secs. 112.071, 112.072, 112.078, and 112.085).** Several changes would have been made to the new 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 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) Court-Ordered Distributions**

**(Sec. 112.078).** New Subsection (f) provides that the section authorizing a trustee to go to court to obtain an order authorizing a distribution does not limit a beneficiary's right to sue for breach of trust.

**(iv) 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 limitation against adding a trustee exoneration provision is added.

**(c) 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**.

**(d) Forfeiture Clauses (Sec. 112.038(b)).**

The same changes made to the Estates Code forfeiture provision would have been made to the Trust Code forfeiture provisions. See Section 7.2(g) on page 10 above.

**(e) Reformation of Trusts (Sec. 112.054).**

Authority to correct a scrivener's error would have been added to the trust modification statute, requiring clear and convincing evidence. It should be noted that this is technically a reformation rather than a modification.

**(f) Delegation of Real Property Powers to Agent (Sec. 113.018).** The statutory authority of a trustee to employ agents would have been 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.

**(g) Powers of Appointment (Sec. 181.083).**

New Subsections (c) and (d) would have been added to 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) refers to Sec. 181.083(c), (2) asserts an intent to create another power of appointment described in IRC Secs. 2041(a)(3) or 2514(d), or asserts 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 is 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.

### 9.2 Business Purpose Trusts (Prop. Code

**Sec. 101.003). HB 3762** (Elkins) would have authorized a settlor to designate an express trust as a "business purpose trust," in which case it shall be considered a "legal organization" for all purposes under Texas law. A business purpose trust shall be treated as a business trust, even if distributions are for personal, family, or household purposes. Note that Sec. 101.003 is not part of the Trust Code, and while it refers to the definition of "express trust" in Trust Code Sec. 111.004(4), under Sec. 111.003(3), the Trust Code is not applicable to a "business trust." So what's this for? We *think* the purpose of a "business purpose trust" is to allow consumers to borrow money in a manner that isn't be subject to truth-in-lending laws. But we're not sure.

### 9.3 Self-Settled Asset Protection Trusts

(**Sec. 112.0351). SB 500** (Burton) would have provided spendthrift protection for certain self-settled trusts. A "self-settled asset protection trust must:

- be in writing and signed by the settlor,
- be irrevocable,
- may not **require** distributions to the settlor,
- not be intended to hinder, delay, or defraud **known** creditors, and
- have at least one trustee who is an individual Texas resident, or a corporate fiduciary maintaining an office in Texas for the purpose of transacting business.

A trust still qualifies even if:

- the settlor may veto distributions,
- the settlor holds a special power of appointment,
- the trust is a charitable remainder trust (but doesn't a trust of this type **require** distributions?),
- the settlor is entitled to receive an annuity or unitrust payment (same question),
- the settlor is entitled to receive a GRAT or GRUT payment (same question),
- the trust is a QPRT (same question),

- the settlor is authorized to receive distributions in another's discretion, or
- the settlor is authorized to use property owned by the trust.

The settlor may still hold other powers, whether or not the settlor is a co-trustee, such as a power to remove and replace a trustee, direct trust investments, or execute other management powers. The settlor just may not hold a power to make distributions to himself or herself without the consent of another person.

An existing creditor may not challenge a transfer after the later of two years following the transfer or 180 days after the creditor should have discovered the transfer. And a creditor "should have discovered" any transfer once recorded, either in county records, or through filing a UCC statement. If the creditor does bring an action, the **creditor** has the burden of proving by **clear and convincing evidence** that the transfer was fraudulent or violated a legal obligation to the creditor. And if trust property is reconveyed to the settlor for purposes of refinancing, and then transferred back to the trust, the interim transaction is ignored and the creditor's time limit is measured from the date of the original transfer into the trust.

If multiple transfers are made to the trust, any distributions are treated as coming from the most recent, least protected, transfers.

If a trustee of a self-settled asset protection trust decants to another trust that otherwise meets the requirements under this section, then the second trust is treated as qualifying under this section as of the date of the original transfers to the first trust.

If a trust from outside Texas is transferred here, meets the requirements under the section, and met similar requirements under the former jurisdiction's laws, the transfer of assets to the trust relates back to the date of the original transfers to the non-Texas trust.

## 10. Disability Documents.

**10.1 The REPTL Power of Attorney Bill – Financial Powers of Attorney.** The REPTL 2015 Power of Attorney bill contained a number changes related to financial powers of attorney. In 2011, REPTL unsuccessfully proposed a Texified version of the 2006 Uniform Power of Attorney Act. This session, REPTL stuck with our current act, but proposed a number of changes, many of which came from the new version of the uniform act. During the course of the 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.

A “style” change was that most of the references throughout the act to the “attorney in fact or agent” were shortened to just the “agent.” Other, more substantive changes include the following:

**(a) Applicability (Sec. 751.0015).** Powers of attorney coupled with an interest, proxies to exercise voting rights, and powers created by a governmental entity for a governmental purpose are excluded from application of Chapters 751 and 752.

**(b) Execution by Another (Sec. 751.002).** The change clarifies that a power of attorney may be signed by another individual in the presence of and at the direction of the adult principal.

**(c) Presumption of Genuine Signature (Sec. 751.007).** If the power of attorney is properly acknowledged, then the signature of the principal is presumed to be genuine.

**(d) Recognition of Foreign Powers (Sec. 751.008).** 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).

**(e) Copies (Sec. 751.008).** A photocopy or electronically transmitted copy of an original has the same effect as the original.

**(f) Governing Law (Sec. 751.009).** 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.

**(g) Standing (Sec. 751.010).** The following persons may bring an action to construe a power of attorney or review the agent’s conduct:

- the principal,
- a guardian, conservator, or other fiduciary for the principal,
- a person named as a beneficiary to receive property on the principal’s death,
- a governmental agency with authority to protect the principal’s welfare,
- 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 power.

**(h) Acceptance by Agent (Secs. 751.011 & 751.101).** A person accepts appointment as an agent by exercising authority or performing duties as an agent, or by any other assertion or conduct indicating acceptance. Only an agent who accepts appointment is considered a fiduciary.<sup>5</sup>

**(i) Recognition of Multiple and Successor Agents (Sec. 751.012).** A principal may name two or more co-agents, each of whom may act independently unless the power provides otherwise. Further, a principal may designate successor agents not just by name, but by office or function. However, a successor is not considered an agent, and may not act as such, until none of the predecessors can or will act.

A co-agent who doesn’t participate in or conceal a breach of fiduciary duty by another co-agent is not liable for those actions. However, if the co-agent has actual knowledge of a breach by another, the “innocent” co-agent must notify the principal, or, if the principal is incapacitated, take reasonable action to safeguard the principal’s interests. Failure to do so can result in liability for the reasonably foreseeable damages that could have been avoided.

**(j) Reimbursement and Compensation (Sec. 751.013).** Unless the power provides otherwise, an agent is entitled to reimbursement of reasonable expenses and reasonable compensation.

**(k) Effect of Agent’s Actions (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.)

**(l) Termination of Power or Authority (Secs. 751.061-751.064).** While these are not all substantive changes, the various provisions regarding termination of a power or an agent’s authority under the power are consolidated into new Subchapter B-1. A power of attorney terminates when:

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<sup>5</sup> This change would reverse one of the legal holdings in *Vogt v. Warnock*, 107 SW3d 778 (Tex. Ct. App. – El Paso 2003, no writ), which held a named agent under a power of attorney to a higher fiduciary standard with respect to the principal even though the agent had never acted as agent under the power of attorney.

- the principal dies,
- the principal revokes the power,
- the power provides that it terminates,
- the purpose of the power is accomplished,
- the principal revokes the agent's authority (without revoking the entire power), or the agent dies, becomes incapacitate, or resigns, and no other agent is named, or
- a permanent guardian of the estate has qualified.

Note that the execution of a subsequent power of attorney **does not** revoke any prior power unless the subsequent power says so.

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

- the principal revokes the authority,
- the agent dies, becomes incapacitate, or resigns,
- the agent's marriage to the principal is dissolved (unless the power provides otherwise), or
- 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. 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.

**(m) Acceptance and Reliance by Third Party (Sec. 751.065).** A person accepting a power in good faith without actual knowledge that the principal's signature is not genuine is entitled to rely on the presumption mentioned in Section 10.1(c) on page 43 above and that the power was properly executed. A person accepting a power in good faith without actual knowledge that there is another problem with the power or the agent's authority may rely on the power and the agent's authority. A person asked to accept a power may request and rely upon an agent's certification of (1) any factual matter concerning the principal, the agent, or the power (which certification is conclusive of that fact), (2) an English translation of any portion of the power that is not in English, or (3) if the requesting person provides the reason for making the request in writing, an attorney's opinion. A "person" conducting activities through employees is without actual knowledge if the employee conducting the transaction involving the power is without actual knowledge. An

optional statutory form of the certification described in this section is provided.

**(n) Authority of the Agent – "Hot" Powers (Sec. 751.201).** A new Subchapter E is added addressing the authority of agents. The powers to (1) created, 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 require an express grant of authority in the power of attorney. 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. Further, in exercising these powers, an agent must attempt to preserve the principal's estate plan, if in the principal's best interests based on all relevant factors.

**(o) Authority of the Agent – General Extent (Sec. 751.201).** If an agent is given the power to perform all acts the principal could perform, then the agent has the authority described in the defined powers in a statutory durable power of attorney. If subjects over which authority is granted overlap, the broadest authority controls. The agent's authority isn't limited to property located in Texas.

**(p) Authority of the Agent – Gifts (Sec. 751.202).** Unless the power expressly 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.

**(q) Authority of the Agent – Beneficiary Designations (Sec. 751.203).** 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.

**(r) Authority of the Agent – Incorporation by Reference (Sec. 751.204).** 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.

(s) **Statutory Form (Sec. 752.051).** The statutory form contains several modifications. First, 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. References in the form to “revocation” are changed to “termination.” The provision just before the signature line appointing successor agents refers to dissolution of the marriage as terminating the authority of a spouse named as agent. A reminder of the same is added to the relatively new notice to the agent.

(t) **Modification of Statutory Form to Include “Hot” Powers (Sec. 752.052).** The “hot” powers mentioned in Section 10.1(n) on page 44 above 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.

(u) **Construction of Statutory Grants of Authority.** Several of the provisions setting out the extent of a particular grant of authority in a statutory power are modified.

(i) **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.

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

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

(iv) **Personal and Family Maintenance (Sec. 752.111).** Authority to provide for the care of the principal’s pets is added.

(v) **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.

(vi) **Repealers.** Because of the changes described above, the following current sections are repealed:

- Section 751.004;

- Section 751.053;
- Section 751.054;
- Section 751.055;
- Section 751.056; and
- Section 751.058.

10.2 **The REPTL Power of Attorney Bill – Advance Directives.** The REPTL 2015 Power of Attorney bill also contained several changes related to medical powers of attorney and more minor changes relating to other advance directives.<sup>6</sup>

(a) **Witnesses (Sec. 166.003).** An owner or operator of the declarant’s health care facility is added to the list of persons who may not act as a witness to an advance directive.

(b) **Directives (Sec. 166.063).** The form of directive to physicians is modified to include the notary alternative to the two-witness requirement.

(c) **Duration of Authority (Sec. 166.152 and 166.164).** The principal must not only be incompetent but also unable to make and communicate a choice about a particular health care decision for the agent to be authorized to act under a medical power of attorney.

(d) **Co-Agents (Sec. 166.1525).** A principal may name two or more co-agents, each of whom may act independently unless the power provides otherwise.

(e) **Termination (Sec. 166.155 and 166.164).** The authority of an agent who is a spouse terminates upon dissolution of the marriage. (The current language provides that the medical power itself is revoked.)

(f) **Permissive Form (Sec. 166.1625 and 166.164).** The statutory form of medical power becomes permissive, and alternative forms, such as the ABA’s health care power of attorney are recognized. Medical powers valid in the state of execution (other than Texas) or on a VA form are deemed valid here.

(g) **Disclosure Statement (Sec. 166.164).** The former disclosure statement that had to be signed by the principal is moved to a notice to the principal just before the signature block.

(h) **Repealers.** Because of the changes described above, current Secs. 166.162 and 166.163 are repealed.

10.3 **The REPTL Anatomical Gifts Bill (Sec. 692A.005-692A.007).** The REPTL 2015 Anatomical Gifts bill would have allowed an

<sup>6</sup> Section references are to the Texas Health and Safety Code unless otherwise noted.

anatomical gift form to be acknowledged before a notary as an alternative to two witnesses.

10.4 **Advance Directives.** Several bills were filed changing rules for advance directives related to life-sustaining treatment.

**(a) Conflict of Interest and Discrimination Policies of Ethics or Medical Committee (H&S Code Sec. 166.0465).** **HB 2351** (Harless) would have require each health care facility providing a review by an ethics or medical committee of a physician’s decision not to honor a patient’s advance directive to adopt a policy to prevent “financial and health care professional conflicts of interest” and to prohibit consideration of a patient’s permanent disabilities unless the disability is relevant in determining whether a medical or surgical intervention is medically appropriate.

**(b) Withdrawal of Life-Sustaining Treatment from Pregnant Patient (H&S Code Secs. 166.033, 166.049, and 166.098).** Our statutes prohibit a person from withdrawing or withholding life-sustaining treatment or CPR from a pregnant patient. **HB 1901** (Krause) went further by providing that these bans apply whether or not there is irreversible cessation of spontaneous brain function if the treatment is enabling the “unborn child” (defined in Ch. 171 relating to abortions) to mature. If such treatment becomes an issue, the hospital or other health care provider must notify the attorney general. The latter has 24 hours to appoint an attorney ad litem to represent the unborn child’s interests in any litigation.

On the other hand, **HB 3183** (Naishtat) would have repealed the prohibition against from withdrawing or withholding life-sustaining treatment or CPR from a pregnant patient, and changes the form of directive to eliminate the acknowledgment of the ban under Texas law.

**(c) Factors for Consideration by Physicians and Ethics or Medical Committees (H&S Code Ch. 166).** **SB 1163** (Hancock) would have prohibiteds a physician, health care facility, or ethics or medical committee from overriding a patient’s advance directive that directs the provision of life-sustaining treatment based on the lesser value it places on sustaining the life of an elderly, disabled, or terminally ill patient compared with a patient who is younger, not disabled, or not terminal. Nor may it consider a disagreement between the physician and the patient (or authorized surrogate) over the greater weight the patient places on sustaining the patient’s life compared with the risk of disability. A person may not coerce a physician not to comply with the patient’s advance

directive by threatening an adverse employment decision. The ethics or medical committee may not consider the treatment inappropriate unless it is futile because it is physiologically ineffective in achieving the intended benefit or medically inappropriate because it would create a greater risk of causing or hastening the patient’s death. Procedures are also included for immediate injunctive relief and expedited appeals (without any filing fees or court cost).

**(d) DNR Orders (H&S Code Ch. 166).** **SB 1546** (Perry | Hall) would have required that a DNR order be issued in compliance with a patient’s or legal guardian’s directions, the patient’s advanced directive or medical power of attorney, or a physician’s “reasonable medical judgment” that the patient’s death is imminent. If a person has not executed a DNR order, is incompetent, and none of those patient representatives exist, a DNR order may be executed only if the health care facility files an application for a temporary guardian for this limited purpose.

**(e) The Patient and Family Treatment Choice Rights Act of 2015 (H&S Code Ch. 166 and Gov’t Code Sec. 25.0021).** **HB 2984** (Hughes) was designed to ensure that if an attending physician is unwilling to honor a patient’s advance directive or a patient’s family’s treatment decision, life-sustaining treatment will be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

**(f) More on Directives and DNR Orders (H&S Code Ch. 166).** **HB 4100** (Coleman) would have changed the term “artificial nutrition and hydration” to “artificially administered nutrition and hydration.” A definition of “surrogate” is added – a legal guardian, agent under a medical power, or a spouse, adult child, parent, or nearest living relative authorized to make a health care or treatment decision in the absence of a patient directive under Sec. 166.039(b). Upon admission of a patient, the bill requires a health care facility to provide the patient or surrogate written notice of their rights regarding DNR orders (called DNAR orders in the bill, for do-not-attempt-resuscitation order”). The physician or facility must inform the patient, of if incompetent, make a reasonably diligent effort to contact a surrogate, before placing a DNR order in the patient’s medical record. A patient or surrogate who disagrees with the placement of a DNR order in, or removal of it from, the medical record, he or she may request a review of the disagreement by the ethics or medical committee.

If an adult patient has not issued a directive and is incompetent, the attending physician in making a

treatment decision may consult with a previous physician if the latter is known and available, had a conversation with the patient (while competent) regarding end-of-life issues, and documented the conversation in the patient's medical record.

If a disagreement goes before an ethics or medical committee and the patient has been diagnosed with an irreversible nonterminal condition, the committee may sustain a decision to withdraw life-sustaining treatment if, based on reasonable medical judgment, the treatment would threaten the patient's life; seriously exacerbate other major medical problems not outweighed by the benefit of the treatment; (3) result in substantial irremediable physical pain or discomfort not outweighed by the benefit of the treatment; or be medically ineffective in prolonging the patient's life. Additional procedural protections are added to assure the patient's values are considered and the patient or surrogate is kept informed.

**(g) Advance Directives Registry (H&S Code Secs. 166.201-166.209).** **HB 614** (Davis, Sarah) would have established an electronic Advance Directives Registry maintained by the state Health Department on a secure website accessible only to authorized health care providers.

**10.5 Persons Who May Consent to Child's Medical Care (Fam Code Secs. 32.001-.003 and 32.101).** **HB 2429** (Vo) would have added a stepparent to the list of people who may consent to medical treatment or immunization of a child. Also, current law allows an educational institution in which the child is enrolled or another adult having care, control and possession of the child to consent if they have written authorization from anyone else who has authority to consent for the child. The bill limits those who may provide this authorization to the parent, managing conservator, guardian, or other person who may consent under the law of another state or a court order. Consent under this chapter no longer need include a description of the medical treatment or the date the treatment is to begin.

**10.6 Disregard of Mental Health Treatment Declaration (CP&R Code Sec. 131.008).** Currently, a physician may subject a patient to mental health treatment contrary to the patient's wishes under a declaration for mental health care if the patient is under court-ordered mental health services or, in case of emergency, when the patient's instructions have not been effective in reducing the severity of the emergency-causing behavior. **HB 2010** (Murr) would have changed this by allowing a physician to disregard the declaration **only** if a court determines the patient

was incompetent when the declaration was executed. The bill also eliminates a provision that the section does not apply to electroconvulsive treatment.

**10.7 Designation of Caregiver for Aftercare (H&S Code Ch. 317).** **SB 1952** (Hinojosa) requires a hospital to allow a patient to designate a caregiver to receive aftercare instruction following the patient's discharge. However, this provision may not be construed to interfere with the rights of an agent operating under a valid advanced directive.

## **12. Exempt Property.**

**12.1 The REPTL 2015 Trusts Bill – Retirement Plan Exemption (Prop. Code Sec. 42.0021).** In the 2013 legislative session, revisions were made to the language exempting retirement plans from creditor claims to clarify that Roth IRAs are protected. The State Bar's Tax Section provided comments that would improve upon the language used in the amendment that were incorporated into this year's REPTL Trusts bill, including language making clear that **excess** contributions are **not** protected.

## **13. Jurisdiction and Venue.**

**13.1 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. Therefore, the 2015 REPTL Trusts bill would have re-clarified it. As revised, Sec. 115.002 would have provided 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.)

### 13.2 Survival Actions (CP&R Code)

**Sec. 71.021(b-1).** **HB 3416** (Phillips) would have amended the survival action statute by expressly authorizing a legal representative of the estate of the injured person to bring the action. If no action is filed by the representative, then one or more heirs may bring the action on behalf of all heirs and the estate.

## 14. Court Administration.

### 14.1 Increase in Electronic Filing Fee

**(Gov't Code Chs. 51 and 101).** **SB 1970** (Huffman) would have increased the electronic filing fee in any civil action or proceeding from \$20 to \$30.

### 14.2 Safekeeping of Wills; Fee Increases

**(Est. Code Ch. 252 and Gov't Code Ch. 101).** **HB 3319** (Kuempel) would have eliminated the registered mail requirement for the notice a county clerk must provide following the death of a person who has deposited their will for safekeeping. The fee for safekeeping doubles from \$5 to \$10. In addition, when a person with custody of the will of a decedent delivers it to the clerk, a \$10 fee will be charged, and instructions are provided to the clerk as to whom should be notified. The bill also adds a \$40 filing fee to probate applications to fund the private professional guardian program under Estates Code Sec. 1104.301, *et seq.*

### 14.3 Service By Social Media (CP&R Code

**Sec. 17.032).** **HB 241** (Leach) would have authorized substituted service of citation on a defendant “through a social media presence” pursuant to rules to be adopted by the Supreme Court.

### 14.4 Statutory Probate Court Investigator

**(Gov't Code Sec. 25.0025).** **SB 1557** (Rodriguez) would have given a statutory probate court investigator the same employment status as other county employees, including the same benefits.

### 14.5 Statutory Probate Court Administrator

**(Gov't Code Secs. 25.0024, 25.1034(i), and 25.2293(j)).** **HB 1922** (Naishtat) and **SB 1621** (Rodriguez) would have changed the current title of a statutory probate court administrative assistant to “court administrator.”

### 14.6 Assignment of Retired or Former Judge

**(Gov't Code Secs. 25.0022(t) and 74.055(d)).** **HB 520** (Moody) would have removed the 96-months of service requirement for assignment of a judge who has served as a judge for more than two district, statutory probate, statutory county or appellate courts.

Meanwhile, **HB 2920** (Naishtat) would have reduced the 96-month length of service requirement to 48 months.

### 14.7 Electronic Notaries (Gov't Code

**Secs. 406.101-406.111).** **HB 3309** (Sanford) would have authorized “electronic notary publics” and directs the Secretary of State to develop standards for electronic notarization. No, we’re not talking about getting R2D2 or C3PO to notarize documents. They’re [presumably] human notaries who use electronic technology to notarize documents. My guess was that this bill came from a technology company that has developed the secure electronic signature technology and wants to expand its use. However, on April 2<sup>nd</sup>, the American Association of Notaries issued a notice indicating that the bill would authorize “webcam” notarization, rendering the services of 50-75% of Texas notaries unnecessary. Who knew?

### 14.8 Preemption of Local Law (Local

**Gov't Code Sec. 1.006).** Not sure this bill belongs in the paper, but **SB 1673** (Huffines) would have prohibited any county, municipality, or other political subdivision from contradicting or undermining a state law, rule, regulation, permit, or license. It may not adopt or enforce any local ordinance or rule that is preempted by, or more stringent than, state law. It may not regulate an activity performed under a state license in a manner that prevents its performance. In addition to declaratory and injunction relief, a person adversely affected by a local government may recover damages and attorney’s fees.

### 14.9 County Clerk in Hill County

**(Gov't Code Sec. 25.112).** Currently, the district clerk in Hill County serves as the clerk of the statutory county court in all matters other than uncontested probate and guardianship matters. **HB 3737** (Cook) would have removed the uncontested limitation so that the county clerk serves as the clerk of the statutory county court in all probate and guardianship matters.

## 15. Selected Business Organization Issues.

### 15.1 New “Chancery” Court (Gov't Code

**Ch. 24A).** **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 is also created to hear appeals from orders of the chancery court.

## 17. Selected Marital Issues.

### 17.1 Legal Separation (Fam. Code

**Secs. 6.851-6.863, Const. Art. XVI, Sec. 15).**

**HB 354** (Dutton) and **HJR 47** (Dutton) would have authorized a suit for legal separation that would authorize a court to partition existing community property along with future earnings so that each spouse would own their assets as separate property.

17.2 **Same Sex Marriages.** On the same-sex marriage front, we have a number of bills and resolutions to choose from.

(a) **In Favor (Fam. Code Secs. 2.001(a), 2.401(a), 2.402(b), 3.401(5), 6.202(b), 6.704, Const. Art. I, Sec. 32).** **HB 130** (Anchia) and **SB 98** (Hinojosa), along with **HJR 34** (Coleman) and **SJR 13** (Rodriguez) would have authorized same-sex marriages, repealing the constitutional ban.

(b) **In the Same Vein (Ins. Code Sec. 1601.004).** Insurance Code Ch. 1601 is the State University Employees Uniform Insurance Benefits Act, and one of its purposes is to provide uniformity in the basic group life, accident, and health benefit coverages for all employees of the University of Texas System and the Texas A&M University System. A spouse is considered a dependent for purposes of the act. **HB 2692** (Naishtat) and **SB 1033** (Watson) provided a definition of “spouse” that includes not only a husband or wife, but also a member of a civil union or similar relationship between individuals of the same sex. However, that definition would only take effect only if the United States Supreme Court (or other court of competent jurisdiction) invalidates any Texas law that prohibits same-sex marriages or civil unions.

(c) **Not So Fast! (Fam. Code Sec. 6.204 and Gov’t Code Sec. 810.003).** **HB 3890** (Stephenson) prohibited any public retirement system from providing benefits to a same-sex spouse of a member or retiree of the system.

(d) **Against (Fam. Code Sec. 6.204).** On the other hand, **HB 2555** (White, M.) would have made the current Texas constitutional and statutory ban “apply regardless of whether a federal court ruling or other federal law provides that a prohibition against the creation or recognition of a same-sex marriage or a civil union is not permitted under the United States Constitution.”<sup>7,8,9</sup>

<sup>7</sup> Perhaps Rep. White should take a look at the second paragraph of Article Six of the United States Constitution:

**This Constitution, and the laws of the United States** which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, **shall be the supreme law of the land; and the judges in every**

(e) **Also Against, But More Subtle (Fam. Code Ch. 1A).** On February 17<sup>th</sup>, in a determination of heirship proceeding involving a same-gender couple who had been married in a Buddhist ceremony and likely otherwise met the requirements for an informal marriage, the Travis County Probate Court No. 1 issued an order declaring the state’s ban on same-gender marriages unconstitutional under the Equal Protection and Due Process clauses of the U. S. Constitution. (On January 29<sup>th</sup>, the Attorney General’s office had declined to intervene after receiving notice of the challenge to the constitutionality of the Texas same-gender marriage ban.) Initially, the Travis County Clerk was reluctant to begin issuing marriage licenses based on that ruling pending consultation with the County Attorney. But two days later, a Travis County District Court’s issued a temporary restraining order preventing the clerk from enforcing the ban. This quickly led to the issuance of a marriage license by the clerk to a same-gender couple a few minutes later (before the Supreme Court issued a stay of both rulings), **HB 1745** (Bell) and **SB 673** (Perry), dubbed “The Preservation of Marriage Act,” would have designated the Secretary of State as the sole issuer of marriage licenses, authorizing the secretary to adopt rules for county clerks to issue licenses under its supervision.

(f) **No Funding or Recognition of Same-Sex Marriages (Fam. Code Sec. 2.001 and Local Gov’t Code Sec. 118.022).** **HB 623** (Bell), titled the Preservation of Sovereignty and Marriage Act, would

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*state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*

Or Art. XVI, Sec. 1(a), of the Texas Constitution, which contains the oath of office she, along with all other elected or appointed officials, took:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and **will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State**, so help me God.”

<sup>8</sup> In response to Texas Muslim Capitol Day on January 29<sup>th</sup>, Rep. White also suggested that Muslims visiting her legislative office would be asked to “renounce Islamic terrorist groups and publicly announce allegiance to America and our laws.” After being questioned by The Texas Tribune, she admitted that she “didn’t know that there [were] fringe groups out there watching every word you say and things you do.” In retrospect, she just “would have asked them if they would renounce terrorism.”

<sup>9</sup> See also the discussion of **HB 1751** (Simpson) in Section 19.4 on page 35.

have prohibited state and local funds from being used for an activity that includes the licensing or support of a same-sex marriage, or to enforce an order requiring the issuance or recognition of a same-sex marriage license. A state or local governmental employee may not recognize, grant, or enforce a same-sex marriage license. Any employee doing so may not continue to receive a salary or benefits. Under the Eleventh Amendment to the U.S. Constitution, the state may not be sued for compliance with this provision. **HB 4105** (Bell, *et al.*) was a similar bill prohibiting funds from being used for the licensing or support of a same-sex marriage. In addition, the Comptroller is directed to return any fees collected for the issuance of a same-sex marriage license to the county clerk.

**(g) Probably Against (Fam. Code Secs. 2.601 and 2.602).** **HB 3567** (Sanford) and **SB 2065** (Estes)<sup>10</sup> don't explicitly deal with same-sex marriages, but that's probably the inspiration for them. They would have provided that a religious organization, or an individually employed by the organization, or a member of the clergy, may not be

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<sup>10</sup> **SB 2065** has an interesting history. As noted in Part 4 on page 5 above, Friday, March 13, 2015, was the deadline for filing most bills. However, this bill was introduced 7 weeks later by Sen. Craig Estes at the request of Lt. Gov. Dan Patrick at the end of the day on Tuesday, April 28, 2015 (immediately prior to adjournment), by suspending Senate Rule 7.07(b). A hearing was set to begin the following Thursday morning (only 30½ hours after introduction despite a general requirement of 48 hours' notice). The bill was "tagged" by Sen. Jose Menéndez shortly before the hearing was to begin, causing the hearing on the bill to be rescheduled for the following Monday. Sen. Kirk Watson submitted the following statement for the Senate Journal:

It is typical and traditional that a motion to file a bill late deals with bills that are routine or local. It is unusual and unexpected for such a motion to deal with a very controversial item. This motion was made at the end of a very long day in which the Senate was involved in a lengthy debate over a controversial ethics bill. It was made at a time when members were gathering up to leave the floor and go to deal with other matters, go to committee meetings elsewhere in the Capitol or voting on the floor. I do not support this approach or the motion. As evidence of the desire to push this through without appropriate recognition and notice, Senate Bill 2065 was quickly set for a committee hearing to be held not even 48 hours later. Senate Bill 2065 has significant statewide ramifications and needs a thorough vetting by senators and the public. For that reason, I supported Sen. Jose Menéndez' request for written notice of the hearing under Rule 11.19.

required to solemnize any marriage, or provide goods or services related to the marriage, or treat the marriage as valid if the action would be in violation of "a sincerely held religious belief." A refusal to provide the service cannot be the basis of any civil or criminal action, or action by a governmental agency, such as penalizing or withholding benefits such as tax exemptions, governmental contracts, etc.

**(h) Protecting Religious Freedom?** Several measures appeared designed to address same-sex marriage, or more specifically opposition to it, in terms of protecting religious freedom.

**(i) The Marriage and Religious Rights Ensured Act (CP&R Code Ch. 150A).** **HB 3602** (Bell) and **SB 1799** (Taylor, L.) are similar, though not identical, bills that would have enacted the Marriage and Religious Rights Ensured Act. Under the House version of the act, a "conscientious objector" is a person with a sincerely held religious belief that marriage is the union of one man and one woman; sexual relations should be exclusively reserved to such a marriage; or gender or gender identity is determined by the predominant chromosomal sex. A person or government agency may not take any adverse action (extensively defined) against a conscientious objector on the basis that the conscientious objector identifies as a conscientious objector; or acts or refuses to act in accordance with his or her sincerely held religious belief. However, that prohibition does not apply to an act of a governmental agency in furtherance of a compelling governmental interest that is the least restrictive means of furthering that interest. Nor does it apply to actions taken solely for purposes of harassment (also extensively defined). Enforcement provisions are also included.

The Senate version does not use the "conscientious objector" term, but protects a person with a sincerely held religious belief about marriage as only the union of one man and one woman. Such a person is not subject to liability for declining to (1) buy, sell, offer, or provide a good or service; (2) enter a contract; (3) hire a person; or (4) take any other discretionary action because of that belief. Nor may any government agency take any adverse action against that person based on their religious belief.

Question: Are statutes ostensibly protecting religious freedom constitutional if they only protect one particular religious belief?

**(ii) More on Sincerely Held Religious Beliefs (Bus. & Comm. Code Ch. 606).** **HB 2553** (White, M.) would have allowed a private business



owner to refuse to provide goods or services to any person based on a sincerely held religious belief or on conscientious grounds without liability.

**(iii) No Burden on Freedom of Religion (Const. Art. I, Sec. 6).** **SJR 10** (Campbell) would have amended the Constitution to prohibit governmental burdens on an individual's or religious organization's freedom of religion or right to act (or refuse to act) in accordance with a sincerely held religious belief unless the government shows a compelling governmental interest that is the least restrictive alternative. **HJR 55** (Villalba)<sup>11</sup> and **HJR 125** (Krause | Sanford) are similar proposals that also would have prohibited a homeowners' association from imposing a religious burden unless it shows a compelling *quasi*-governmental interest that is the least restrictive alternative.

**(i) Neutral? (Fam. Code Sec. 6.204).** **SB 1064** (Garcia) would have allowed a same-sex marriage license or similar document to be used for the limited purpose of verifying the identity of the person presenting the document, without recognizing the validity of the union itself.

**(j) Would These Be Moot?.** On April 28<sup>th</sup>, the Supreme Court (of the United States) heard oral arguments in four consolidated cases on the following questions:

- 1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?
- 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

**17.3 Making Divorce More Difficult.** Several bills make it more difficult to obtain a divorce.

**(a) Waiting Period.** **HB 454** (Krause) would have extended the waiting period for a divorce on grounds of insupportability to 180 days if the household includes a minor child, an adult child attending high school, or an adult disabled child.

**(b) Covenant Marriage.** **HB 547** (White, James) was the latest attempt to authorize a type of marriage that would be particularly difficult to

dissolve.<sup>12</sup> This version would only apply to "a county with a population between 54,000 and 56,000 and in which more than 250 divorces are granted each year, or in which the commissioners' court has adopted an order authorizing persons to enter into covenant marriages."

**(c) Repealing Insupportability Grounds (Fam. Code Sec. 6.001).** **HB 4093** (Krause) would have repealed the provision allowing a court to "grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation."

**17.4 Forum Selection for Marital Issues.** **SB 531** (Campbell) would have added new Chapters 1A and 112 to the Family Code. This is not the first session that this bill has been introduced. A Texas ruling under the Family Code may not be based on a foreign law if application of that law would violate a right guaranteed by the U.S. Constitution, the Texas Constitution, or a Texas statute. For purposes of this chapter, "foreign" means outside the United States and its territories. Further, a choice of law or forum provision in a contract involving the marital relationship (*e.g.*, a marital property agreement?) is void to the extent that application of the foreign law would violate those rights, or the foreign forum would apply foreign law that would violate these rights. The chapters do not apply to a corporation or other legal entity that contracts to subject the entity to foreign law. (**HB 562** (Leach, *et al.*), **HB 899** (Fallon), **HB 3943** (Rinaldi), and **SB 1090** (Hall) were similar bills that failed to advance.)

**17.5 Persons Conducting Marriage Ceremonies – Legislators.** **SB 1372** (Lucio) would have authorized current and former members of the Texas legislature who have served at least 10 years to conduct up to 12 marriage ceremonies each year. Currently, they are not authorized to conduct any marriage ceremonies. (Sen. Lucio was unable to get a floor vote on a similar measure in 2013 – see **SB 370** (Lucio).)

<sup>11</sup> In fairness to Rep. Villalba, he announced in early March that he was reconsidering his proposed constitutional amendment after groups such as the Texas Association of Business expressed concern about its impact on jobs in Texas, similar to concerns expressed in Indiana and Arkansas over religious freedom proposals in those states.

<sup>12</sup> For those who are curious, Louisiana appears to be the first state to have enacted a covenant marriage law – in 1997. It does not appear to have been a popular option (1% to 2% of marriages), and it does not appear to have diminished the divorce rate. Arizona and Arkansas are the only other states that have adopted covenant marriage, although it has been introduced in over 20 other state legislatures.



Attachment 3 – 2015 Amendments to the Texas Estates Code (General Provisions)

[The following excerpts reflect amendments made by HB 2419 and SB 1296.]

**Sec. 21.001. PURPOSE OF CODE.**

(a) [No change.]

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

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

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

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

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

(c) [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1236 (SB 1296), effective September 1, 2015. Sec. 1.002(b) of SB 1296 provides: "If any provision of this Act conflicts with a statute enacted by the 84<sup>th</sup> Legislature, Regular Session, 2015, the statute controls."*

**Sec. 21.002. CONSTRUCTION.**

Sec. 21.002. CONSTRUCTION. (a) Except as provided by [~~this section,~~] Section 22.027[;] or [~~Section~~] 1002.023, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this code.

(b) This code and the Texas Probate Code, as amended, shall be considered one continuous statute, and for the purposes of any instrument that refers to the Texas Probate Code, this code shall be considered an amendment to the Texas Probate Code [~~Chapter 311, Government Code (Code Construction Act), does not apply to the construction of a provision of Subtitle X, Title 2, or Subtitle Y or Z, Title 3].~~

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 173 (HB 2419), effective May 28, 2015. Sec. 1(a) of HB 2419 provides: "This section takes effect only if the Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes [i.e., SB 1296] becomes law."*

**Sec. 21.003. STATUTORY REFERENCES.**

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

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

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

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1236 (SB 1296), effective September 1, 2015. See transitional note following Sec. 21.001.*

**Sec. 21.005. APPLICABILITY OF CERTAIN LAWS.**

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

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

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

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1236 (SB 1296), effective September 1, 2015. See transitional note following Sec. 21.001.*



Attachment 4 – 2015 Amendments to the Texas Estates Code (Decedents' Estates)

[The following excerpts reflect amendments made by HB 705, HB 3136, HB 3160, HB 3316, SB 462, SB 752, SB 995, SB 1020, SB 1296, SB 1791.]

**Sec. 34.001. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING.**

(a) [No change.]

(b) Notwithstanding any other provision of this subtitle, Title 1, [~~Subtitle X, Title 2,~~] Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1236 (SB 1296), effective September 1, 2015. Sec. 1.002(b) of SB 1296 provides: "If any provision of this Act conflicts with a statute enacted by the 84<sup>th</sup> Legislature, Regular Session, 2015, the statute controls."*

**Sec. 113.001. GENERAL DEFINITIONS.**

(1) [No change.]

(2) "Beneficiary" means a person or trustee of an express trust evidenced by a writing who is named in a trust account as a person for whom a party to the account is named as trustee.

(2-b) "Express trust" has the meaning assigned by Section 111.004, Property Code.

(3) – (4) [No change.]

(5) "P.O.D. payee" means a person, trustee of an express trust evidenced by a writing, or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

(6) – (9) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 255 (SB 1020), effective May 29, 2015. Sec.2 of SB 1020 provides: "The changes in law made by this Act apply only to an account created on or after the effective date of this Act. An account created before the effective date of this Act is covered by the law in effect on the date the account was created, and the former law is continued in effect for that purpose."*

**Sec. 113.004. TYPES OF ACCOUNTS.**

(1) – (3) [No change.]

(4) "P.O.D. account," including an account designated as a transfer on death or T.O.D. account, means an account payable on request to:

(A) one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees; or

(B) one or more persons during their lifetimes and, on the death of all of those persons, to one or more P.O.D. payees.

(5) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 48 of SB 995 provides: "The addition by this Act of Section 255.304, Estates Code, and the amendment by this Act of Sections 113.004(4), 251.1045(a), 253.001(b) and (c), 254.005, 256.003(a), 353.051(a) and (b), 353.052, 353.053(a), 353.153, 353.154, 452.051(a), and 501.001, Estates Code, is intended to clarify rather than change existing law."*

**Sec. 113.053. REQUIRED DISCLOSURE; USE OF FORM[; ~~DISCLOSURE~~].**

(a) A financial institution shall disclose the information provided in this subchapter to a customer at the time the customer selects or modifies an account. A financial institution is considered to have [~~adequately~~] disclosed the information provided in this subchapter if:

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

(2) the customer 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 may make disclosures in the account agreement or in any other form that [~~adequately~~] discloses the information provided by this subchapter. Disclosures under this subsection must:

(1) be given separately from other account information;

(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 [If the customer receives adequate disclosure of the ownership rights to an account and the names of the parties are appropriately indicated, a financial institution may combine any of the provisions in, and vary the format of, the form and notices described in Section 113.052 in:

[(1) a universal account form with options listed for selection and additional disclosures provided in the account agreement; or

[(2) any other manner that adequately discloses the information provided by this subchapter].

(d) This section does not apply to a credit union.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 85 (SB 1791), effective September 1, 2015. Sec. 3 of SB 1791 provides: "This Act applies only to an account created or modified on or after the effective date of this Act. An account created or modified before the effective date of this Act is governed by the law in effect when the account was created or modified, and the former law is continued in effect for that purpose."*

**Sec. 113.0531. USE OF FORM AND DISCLOSURE BY CREDIT UNIONS.**

(a) A credit union is considered to have disclosed the information provided by this subchapter if the credit union uses the form provided by Section 113.052.

(b) If a credit union varies the format of the form provided by Section 113.052, the credit union may make disclosures in the account agreement or in any other form that discloses the information provided by this subchapter.

(c) If the customer receives disclosure of the ownership rights to an account and the names of the parties are indicated, a credit union may combine any of the provisions in, and vary the format of, the form and notices described in Section 113.052 in:

(1) a universal account form with options listed for selection and additional disclosures provided in the account agreement; or

(2) any other manner that adequately discloses the information provided by this subchapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 85 (SB 1791), effective September 1, 2015. See transitional note following Sec. 113.053.*

**Sec. 113.152. OWNERSHIP OF P.O.D. ACCOUNT ON DEATH OF PARTY.**

(a) – (c) [No change.]

(c) A guardian of the estate or an attorney in fact or agent of an original payee may sign a written agreement described by Subsection (a) on behalf of the original payee.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 49 of SB 995 provides: "Section 113.152(c), Estates Code, as added by this Act, applies to a P.O.D. account held by a financial institution on or after the effective date of this Act, regardless of the date on which the account was opened."*

**CHAPTER 114. TRANSFER ON DEATH DEED**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 114.001. SHORT TITLE.**

This chapter may be cited as the Texas Real Property Transfer on Death Act.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.002. DEFINITIONS.**

(a) In this chapter:

(1) "Beneficiary" means a person who receives real property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive real property in a transfer on death deed.

(3) "Joint owner with right of survivorship" or "joint owner" means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term does not include a tenant in common or an owner of community property with or without a right of survivorship.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(5) "Real property" means an interest in real property located in this state.

(6) "Transfer on death deed" means a deed authorized under this chapter and does not refer to any other deed that transfers an interest in real property on the death of an individual.

(7) "Transferor" means an individual who makes a transfer on death deed.

(b) In this chapter, the terms "cancel" and "revoke" are synonymous.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.003. APPLICABILITY.**

This chapter applies to a transfer on death deed executed and acknowledged on or after September 1, 2015, by a transferor who dies on or after September 1, 2015.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.004. NONEXCLUSIVITY.**

This chapter does not affect any method of transferring real property otherwise permitted under the laws of this state.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.005. 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 similar to this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.006. 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.), except that this chapter 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)).

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**SUBCHAPTER B. AUTHORIZATION, EXECUTION, AND REVOCATION OF TRANSFER ON DEATH DEED**

**Sec. 114.051. TRANSFER ON DEATH DEED AUTHORIZED.**

An individual may transfer the individual's interest in real property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.052. TRANSFER ON DEATH DEED REVOCABLE.**

A transfer on death deed is revocable regardless of whether the deed or another instrument contains a contrary provision.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.053. TRANSFER ON DEATH DEED NONTESTAMENTARY.**

A transfer on death deed is a nontestamentary instrument.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.054. CAPACITY OF TRANSFEROR; USE OF POWER OF ATTORNEY.**

(a) The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a contract.

(b) A transfer on death deed may not be created through use of a power of attorney.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.055. REQUIREMENTS.**

To be effective, a transfer on death deed must:

(1) except as otherwise provided in Subdivision (2), contain the essential elements and formalities of a recordable deed;

(2) state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death; and

(3) be recorded before the transferor's death in the deed records in the county clerk's office of the county where the real property is located.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.056. NOTICE, DELIVERY, ACCEPTANCE, OR CONSIDERATION NOT REQUIRED.**

A transfer on death deed is effective without:

(1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) consideration.

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*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

### **Sec. 114.057. REVOCATION BY CERTAIN INSTRUMENTS; EFFECT OF WILL OR MARRIAGE DISSOLUTION.**

(a) Subject to Subsections (d) and (e), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:

(1) is one of the following:

(A) a subsequent transfer on death deed that revokes the preceding transfer on death deed or part of the deed expressly or by inconsistency; or

(B) except as provided by Subsection (b), an instrument of revocation that expressly revokes the transfer on death deed or part of the deed;

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked; and

(3) is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed being revoked is recorded.

(b) A will may not revoke or supersede a transfer on death deed.

(c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer on death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer on death deed as to that designated beneficiary if notice of the judgment is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed is recorded, notwithstanding Section 111.052.

(d) If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.

(e) A transfer on death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.

(f) This section does not limit the effect of an inter vivos transfer of the real property.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

### **SUBCHAPTER C. EFFECT OF TRANSFER ON DEATH DEED; LIABILITY OF TRANSFERRED PROPERTY FOR CREDITORS' CLAIMS**

#### **Sec. 114.101. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE.**

During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including:

(A) the right to transfer or encumber the real property that is the subject of the deed;

(B) homestead rights in the real property, if applicable; and

(C) ad valorem tax exemptions, including exemptions for residence homestead, persons 65 years of age or older, persons with disabilities, and veterans;

(2) affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law;

(5) constitute a transfer triggering a "due on sale" or similar clause;

(6) invoke statutory real estate notice or disclosure requirements;

(7) create a legal or equitable interest in favor of the designated beneficiary; or

(8) subject the real property to claims or process of a creditor of the designated beneficiary.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

#### **Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED.**

An otherwise valid transfer on death deed is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded if:

(1) a valid instrument conveying the interest is recorded in the deed records in the county clerk's office



of the same county in which the transfer on death deed is recorded; and

(2) the recording of the instrument occurs before the transferor's death.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**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 interest of a designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052;

(3) subject to Subdivision (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.

(b) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer on death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last surviving joint owner, the transfer on death deed is effective.

(c) If a transfer on death deed is made by two or more transferors who are joint owners with right of survivorship, the last surviving joint owner may revoke the transfer on death deed subject to Section 114.057.

(d) A transfer on death deed transfers real property without covenant of warranty of title even if the deed contains a contrary provision.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.104. TRANSFER ON DEATH DEED PROPERTY SUBJECT TO LIENS AND ENCUMBRANCES AT TRANSFEROR'S DEATH; CREDITORS' CLAIMS.**

(a) Subject to Section 13.001, Property Code, a beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death. For purposes of this subsection and Section 13.001, Property Code, the recording of the transfer on death deed is considered to have occurred at the transferor's death.

(b) If a personal representative has been appointed for the transferor's estate, an administration of the estate has been opened, and the real property transferring under a transfer on death deed is subject to a lien or security interest, including a deed of trust or mortgage, the personal representative shall give notice to the creditor of the transferor as the personal representative would any other secured creditor under Section 308.053. The creditor shall then make an election under Section 355.151 in the period prescribed by Section 355.152 to have the claim treated as a matured secured claim or a preferred debt and lien claim, and the claim is subject to the claims procedures prescribed by this section.

(c) If the secured creditor elects to have the claim treated as a preferred debt and lien claim, Sections 355.154 and 355.155 apply as if the transfer on death deed were a devise made in a will, and the creditor may not pursue any other claims or remedies for any deficiency against the transferor's estate.

(d) If the secured creditor elects to have the claim treated as a matured secured claim, Section 355.153 applies as if the transfer on death deed were a devise made in a will, and the claim is subject to the procedural provisions of this title governing creditor claims.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.105. DISCLAIMER.**

A designated beneficiary may disclaim all or part of the designated beneficiary's interest as provided by Chapter 122.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS; ALLOWANCES IN LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES.**

(a) To the extent the transferor's estate is insufficient to satisfy a claim against the estate, expenses of administration, any estate tax owed by the estate, or an allowance in lieu of exempt property or family allowance to a surviving spouse, minor children, or incapacitated adult children, the personal representative may enforce that liability against real property transferred at the transferor's death by a transfer on death deed to the same extent the personal representative could enforce that liability if the real property were part of the probate estate.

(b) Notwithstanding Subsection (a), real property transferred at the transferor's death by a transfer on death deed is not considered property of the probate estate for any purpose, including for purposes of Section 531.077, Government Code.

(c) If a personal representative does not commence a proceeding to enforce a liability under Subsection (a) on or before the 90th day after the date the representative receives a demand for payment, a proceeding to enforce the liability may be brought by a creditor, a distributee of the estate, a surviving spouse of the decedent, a guardian or other appropriate person on behalf of a minor child or adult incapacitated child of the decedent, or any taxing authority.

(d) If more than one real property interest is transferred by one or more transfer on death deeds or if there are other nonprobate assets of the transferor that may be liable for the claims, expenses, and other payments specified in Subsection (a), the liability for those claims, expenses, and other payments may be apportioned among those real property interests and other assets in proportion to their net values at the transferor's death.

(e) A proceeding to enforce liability under this section must be commenced not later than the second anniversary of the transferor's death, except for any rights arising under Section 114.104(d).

(f) In connection with any proceeding brought under this section, a court may award costs and reasonable and necessary attorney's fees in amounts the court considers equitable and just.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**SUBCHAPTER D. FORMS FOR TRANSFER ON DEATH DEED**

**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:

\_\_\_\_\_  
Printed name                      Mailing address

**6. Transfer on Death**

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.

**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: 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.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**Sec. 114.152. OPTIONAL FORM OF REVOCATION.**

The following form may be used to create an instrument of revocation under this chapter.

**CANCELLATION OF TRANSFER ON DEATH DEED**

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 FORM: Before your death, this cancellation form must be recorded with the county clerk where the property is located, or it will not be effective. This cancellation is effective only as to the interests in the property of owners who sign this cancellation form.

1. Owner (Transferor) Making this Cancellation:

\_\_\_\_\_  
Printed name                      Mailing address

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2. Legal Description of the Property:

\_\_\_\_\_

3. Address of the Property (if any) (include county):

\_\_\_\_\_

4. Cancellation

I cancel all my previous transfers of this property by transfer on death deed.

5. Printed Name and Signature of Owner (Transferor) Making this Cancellation:

\_\_\_\_\_

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 CANCELING A TRANSFER ON DEATH (TOD) DEED

DO NOT RECORD THESE INSTRUCTIONS

Instructions for Completing the Form

1. Owner (Transferor) Making this Cancellation: 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. Cancellation: No action needed.

5. 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.

6. Acknowledgment: This cancellation form must be signed before a notary. The notary will fill out this section of the form.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 841 (SB 462), effective September 1, 2015.*

**CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS**

**SUBCHAPTER A. [GENERAL PROVISIONS RELATING TO] DISCLAIMER OF INTEREST OR POWER**

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 122.001. DEFINITIONS.**

In this subchapter [~~chapter, other than Subchapter E~~]:

(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; or

(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.

(2) "Disclaim" and "disclaimer" have the meanings assigned by Section 240.002, Property Code ["Disclaimer" includes renunciation].

~~[(3) "Property" includes all legal and equitable interests, powers, and property, present or future, vested or contingent, and beneficial or burdensome, in whole or in part.]~~

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 122.002. DISCLAIMER [WHO MAY DISCLAIM].**

[(a)] A person who may be entitled to receive property as a beneficiary may disclaim the person's interest in or power over the property in accordance with Chapter 240, Property Code [who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property shall evidence the disclaimer as provided by this chapter].

~~[(b) Subject to Subsection (c), the legally authorized representative of a person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property on the beneficiary's behalf shall evidence the disclaimer as provided by this chapter.~~

~~[(c) A disclaimer made by a legally authorized representative described by Subsection (d)(1), (2), or (3), other than an independent executor, must be made with prior court approval of the court that has or would have jurisdiction over the legally authorized representative. A disclaimer made by an independent executor on behalf of a decedent may be made without prior court approval.~~

~~[(d) In this section, "legally authorized representative" means:~~

~~[(1) a guardian if the person entitled to receive the property as a beneficiary is an incapacitated person;~~

~~[(2) a guardian ad litem if the person entitled to receive the property as a beneficiary is an unborn or unascertained person;~~

~~[(3) a personal representative, including an independent executor, if the person entitled to receive the property as a beneficiary is a decedent; or~~

~~[(4) an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers if the person entitled to receive the property as a beneficiary executed the power of attorney as a principal.]~~

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**~~Sec. 122.003. EFFECTIVE DATE; CREDITORS' CLAIMS.~~**

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**~~Sec. 122.004. DISCLAIMER IRREVOCABLE.~~**

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**~~Sec. 122.005. POWER TO PROVIDE METHOD OF DISCLAIMER.~~**

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**~~SUBCHAPTER B. FORM, FILING, AND NOTICE OF DISCLAIMER~~**

**~~Secs. 122.051 – 122.056.~~** [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. Sec. 17 of HB 2428 provides: "Title 13, Property Code, as added by this Act, applies to an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing a disclaimer under former law, including the time for filing a written memorandum of disclaimer under Section 122.055, Estates Code, the time for delivering notice of the disclaimer under Section 122.056, Estates Code, or the time for delivering a written memorandum of disclaimer under Section 112.010, Property Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of a written memorandum of disclaimer under former law has elapsed, the former law applies and is continued in effect for that purpose."*

**~~SUBCHAPTER C. EFFECT OF DISCLAIMER~~**

**~~Secs. 122.101 – 122.107.~~** [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**~~SUBCHAPTER D. PARTIAL DISCLAIMER~~**

**~~Secs. 122.151 – 122.153.~~** [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 122.201. ASSIGNMENT.**

A person who is entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, and does not disclaim the property under Chapter 240, Property Code, [this chapter] may assign the property or interest in property to any person.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. Sec. 18 of HB 2428 provides: "Sections 122.201, 122.202, 122.204, and 122.205, Estates Code, as amended by this Act, apply to property or an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing an assignment under former law, including the time for filing an assignment under Section 122.202, Estates Code, or the time for delivering notice of the filing of assignment under Section 122.203, Estates Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of an assignment under former law has elapsed, the former law applies and is continued in effect for that purpose."*

**Sec. 122.202. FILING OF ASSIGNMENT.**

An assignment may, at the request of the assignor, be delivered or filed as provided for the delivery or filing of a disclaimer under Subchapter C, Chapter 240, Property Code [B].

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec. 122.201.*

**~~Sec. 122.203. NOTICE.~~**

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 122.204. FAILURE TO COMPLY.**

Failure to comply with Chapter 240, Property Code, [Subchapters A, B, C, and D] does not affect an assignment.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec. 122.201.*

**Sec. 122.205. GIFT.**

An assignment under this subchapter is a gift to the assignee and is not a disclaimer under Chapter 240, Property Code [Subchapters A, B, C, and D].

**Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE.**

(a) In this section:

(1) "Irrevocable trust" means a trust:

(A) for which the trust instrument was executed before the dissolution of a testator's marriage; and

(B) that the testator was not solely empowered by law or by the trust instrument to revoke.

(2) "Relative"[-,"relative-"] means an individual related to another individual by:

(A) [(+) ] consanguinity, as determined under Section 573.022, Government Code; or

(B) [(2) ] affinity, as determined under Section 573.024, Government Code.

(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise:

(1) all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) all provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the

dissolution of the marriage[~~, unless the will expressly provides otherwise~~].

(c) Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) a court order; or

(2) an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 51 of SB 995 provides: "Sections 123.001 and 123.052(a), Estates Code, as amended by this Act, and Subchapter D, Chapter 123, Estates Code, as added by this Act, apply only to an individual whose marriage is dissolved on or after the effective date of this Act."*

**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 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) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 123.001.*

**SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN MULTIPLE-PARTY ACCOUNTS**

**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," "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.

(b) If, after a decedent 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, the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, the designation provision on the account is not effective as to the former spouse or the former spouse's relative unless:

(1) the court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary;

(2) the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary after the marriage was dissolved; or

(3) the former spouse or the former spouse's relative is designated to 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) If a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.

(d) A financial institution or other person obligated to pay an account described by Subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee or beneficiary under a designation that is not effective under Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:

(1) before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and

(2) the payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 123.001.*

**Sec. 124.001. DEFINITIONS.**

In this subchapter:

(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 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

(4) – (6) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1161 (SB 752), effective September 1, 2015. Sec. 3 of SB 752 provides: "The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes."*

**Sec. 124.004. EFFECT OF DISCLAIMERS.**

This subchapter shall be applied after giving effect to any disclaimers made in accordance with Chapter 240, Property Code [~~Subchapters A, B, C, and D, Chapter 422~~].

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**CHAPTER 153. ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION**

**Sec. 153.001. DEFINITIONS.**

In this chapter:

(1) "Account" has the meaning assigned by Section 113.001.

(2) "Financial institution" has the meaning assigned by Section 201.101, Finance Code.

(3) "P.O.D. account" and "trust account" have the meanings assigned by Section 113.004.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 217 (HB 705), effective September 1, 2015.*

**Sec. 153.002. INAPPLICABILITY OF CHAPTER.**

This chapter does not apply to:

(1) an account with a beneficiary designation;

(2) a P.O.D. account;

(3) a trust account; or

(4) an account that provides for a right of survivorship.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 217 (HB 705), effective September 1, 2015.*

**Sec. 153.003. COURT-ORDERED ACCESS TO INTESTATE'S ACCOUNT INFORMATION.**

(a) In this section, "interested person" means an heir, spouse, creditor, or any other having a property right in or claim against the decedent's estate.

(b) On application of an interested person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if:

(1) 90 days have elapsed since the date of the decedent's death;

(2) no petition for the appointment of a personal representative for the decedent's estate is pending; and

(3) no letters testamentary or of administration have been granted with respect to the estate.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 217 (HB 705), effective September 1, 2015.*



**Sec. 201.051. MATERNAL INHERITANCE.**

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

(b) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 50 of SB 995 provides: "Sections 201.051, 201.052, 201.056, 308.004(a), 309.056, and 352.052(b), Estates Code, as amended by this Act, and Section 251.053 and Subchapter I, Chapter 255, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."*

**Sec. 201.052. PATERNAL INHERITANCE.**

(a) – (e) [No change.]

(f) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

**Sec. 201.056. PERSONS NOT IN BEING.**

No right of inheritance accrues to any person ~~[other than to a child or lineal descendant of an intestate,]~~ unless the person is born before, or is in gestation at, [in being and capable in law to take as an heir at] the time of the intestate's death and survives for at least 120 hours. A person is:

(1) considered to be in gestation at the time of the intestate's death if insemination or implantation occurs at or before the time of the intestate's death; and

(2) presumed to be in gestation at the time of the intestate's death if the person is born before the 301st day after the date of the intestate's death.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

**Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP.**

A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

(1) the decedent's name and date [time] and place of death;

(2) the names and physical addresses where service can be had [residences] of the decedent's heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;

(3) if the date [time] or place of the decedent's death or the name or physical address where service can be had [residence] of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date [time] or place of the decedent's death or the name or physical address where service can be had [residence] of the heir;

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

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated; and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

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

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

(8) an explanation for the omission from the application of any of the information required by this section.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 52 of SB 995 provides: "Sections 202.005, 202.055, 202.056, 202.201(a), and 257.053, Estates Code, as amended by this Act, apply to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before that date is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose."*

**Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT REQUIRED.**

A party to a proceeding to declare heirship who executed the application filed under Section 202.005, entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 202.005.*

**Sec. 202.056. WAIVER OF SERVICE OF CITATION.**

(a) Except as provided by Subsection (b)(2), a distributee may waive citation required by this subchapter to be served on the distributee.

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

(1) is younger than 12 years of age may waive citation required by this subchapter to be served on the distributee; and

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 202.005.*

**Sec. 202.201. REQUIRED STATEMENTS IN JUDGMENT.**

(a) The judgment in a proceeding to declare heirship must state:

(1) the names [~~and places of residence~~] of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs' respective shares and interests in the decedent's property.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 202.005.*

**Sec. 205.002. AFFIDAVIT REQUIREMENTS.**

(a) An affidavit filed under Section 205.001 must:

(1) be sworn to by:

(A) two disinterested witnesses;

(B) each distributee of the estate who has legal capacity; and

(C) if warranted by the facts, the natural guardian or next of kin of any minor distributee or the guardian of any other incapacitated distributee;

(2) show the existence of the conditions prescribed by Sections 205.001(1), (2), and (3); and

(3) include:

(A) a list of all known estate assets and liabilities;

(B) the name and address of each distributee; and

(C) the relevant family history facts concerning heirship that show each distributee's right to receive estate money or other property or to have any evidence of money, property, or other right of the estate as is determined to exist transferred to the distributee as an heir or assignee.

(b) A list of all known estate assets under Subsection (a)(3)(A) must indicate which assets the applicant claims are exempt.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1106 (HB 3136), effective September 1, 2015.*

**Sec. 205.009. CONSTRUCTION OF CERTAIN REFERENCES.**

A reference in this chapter to "homestead" or "exempt property" means only a homestead or other exempt property that would be eligible to be set aside under Section 353.051 if the decedent's estate was being administered.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1106 (HB 3136), effective September 1, 2015. Sec. 3 of HB 3136 provides: "Section 205.009, Estates Code, as added by this Act, applies to the estate of a decedent that is pending on or after the effective date of this Act, regardless of the decedent's date of death."*

**Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS.**

Section 251.051 does not apply to a written will executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

**Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND SELF-PROVING.**

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

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

\_\_\_\_\_  
Testator

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being

under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

(SEAL)

(Signed)

(Official Capacity of Officer)

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING OR REVOKING A WILL.**

SECTION 16. Sections 253.001(b) and (c), Estates Code, are amended to read as follows:

(a) [No change.]

(b) A court may not prohibit a person from:

(1) executing a new will;

(2) executing [or] a codicil to an existing will;

or

(3) revoking an existing will or codicil in whole or in part.

(c) Any portion of a court order that purports to prohibit a person from engaging in an action described by Subsection (b) [executing a new will or a codicil to an existing will] is void and may be disregarded without penalty or sanction of any kind.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 254.005. FORFEITURE CLAUSE.**

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

- (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 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**SUBCHAPTER G. EXONERATION OF DEBTS SECURED BY SPECIFIC DEVISES**

**Sec. 255.304. APPLICABILITY OF SUBCHAPTER.**

This subchapter is applicable only to wills executed on or after September 1, 2005.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS**

**SUBCHAPTER I. CLASS GIFTS**

**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 and survives for at least 120 hours. 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; and
- (2) presumed to be in gestation at the time of the testator's death if the person was born before the 301st day after the date of the testator's death.

(b) A provision in the testator's will that is contrary to this section prevails over this section.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

**SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION OF WILLS**

**Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED.**

(a) 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.

(b) An order described in Subsection (a)(3) may be issued only if the testator's intent is established by clear and convincing evidence.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 53 of SB 995 provides: "Subchapter J, Chapter 255, Section 355.1551, and Chapter 456, Estates Code, as added by this Act, and Sections 309.001, 401.002, 401.003(a), 401.004(c) and (h), and 401.006, Estates Code, as amended by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act."*

**Sec. 255.452. JUDICIAL DISCRETION.**

The court shall exercise the court's discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 255.453. RETROACTIVE EFFECT.**

The court may direct that an order described by this subchapter has retroactive effect.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 255.454. POWERS CUMULATIVE.**

This subchapter does not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under Section 112.054, Property Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 255.455. DUTIES AND LIABILITY OF PERSONAL REPRESENTATIVE UNDER SUBCHAPTER.**

(a) This subchapter does not create or imply a duty for a personal representative to:

(1) petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will;

(2) inform devisees about the availability of relief under this subchapter; or

(3) review the will or other evidence to determine whether any action should be taken under this subchapter.

(b) A personal representative is not liable for failing to file a petition under Section 255.451.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 256.003. PERIOD FOR ADMITTING WILL TO PROBATE; PROTECTION FOR CERTAIN PURCHASERS.**

(a) Except as provided by Section 501.001 with respect to a foreign will, a [A] will may not be admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for probate on or before the fourth anniversary of the testator's death.

(b) Except as provided by Section 501.006 with respect to a foreign will, letters [~~L~~etters] testamentary

may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. Sec. 54 of SB 995 provides: "Sections 256.003(b), 256.051(a), 256.052(a), 256.054, 256.152(b) and (c), 257.051(a), 301.002(a), 301.051, 301.052, 301.151, and 501.006(a), 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. 256.051. ELIGIBLE APPLICANTS FOR PROBATE OF WILL.**

(a) An executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b), or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

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

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

**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;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, date [~~t~~ime], 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 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

**Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.**

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

(1) the reason the will cannot be produced;

(2) the contents of the will, as far as known; and

(3) the name~~[-age, marital status,]~~ and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A) each devisee;

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

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

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

(a) [No change.]

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, ~~that [or, if executed in another state or a foreign country,]~~ is self-proved in accordance with the law [laws] of another [the] state or foreign country where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or the time of the testator's death, ~~[of the testator's domicile at the time of the execution]~~ is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b), a will ~~[executed in another state or a foreign country]~~ is considered self-proved without further evidence of the law of any [the other] state or foreign country if:

(1) the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and

(2) the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) [1] the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) [2] the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as

witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

**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;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, date [time], and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of [~~and~~] residence, and physical address where service can be had of the [~~of~~] [~~(A) any~~] executor named in the will;
- (8) the name of [~~and~~] [~~(B)~~] each subscribing witness to the will, if any;
- (9) [~~(8)~~] whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (10) [~~(9)~~] that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;
- (11) [~~(10)~~] whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

(b) [No change.]

**Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.**

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

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 202.005.*

**Sec. 301.002. PERIOD FOR FILING APPLICATION FOR LETTERS TESTAMENTARY OR OF ADMINISTRATION.**

(a) Except as provided by Subsection (b) and Section 501.006 with respect to a foreign will, an application for the grant of letters testamentary or of administration of an estate must be filed not later than the fourth anniversary of the decedent's death.

(b) This section does not apply if administration is necessary to:

- (1) receive or recover property due a decedent's estate; or
- (2) prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate.

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Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 575 (HB 3160), effective September 1, 2015. Sec. 4 of HB 3160 provides: "The changes in law made by this Act apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after the effective date of this Act. An application for the grant of letters testamentary or of administration of a decedent's estate filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."

### Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS.

An executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003, or an interested person may file an application with the court for:

- (1) the appointment of the executor named in the will; or
- (2) the appointment of an administrator, if:
  - (A) there is a will, but:
    - (i) no executor is named in the will; or
    - (ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns; or
  - (B) there is no will.

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.

### Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION.

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;
- (2) the decedent's name and that the decedent died intestate;
- (3) the fact, date [~~time~~], 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 [~~age, marital status,~~] 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.

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.

### Sec. 301.151. GENERAL PROOF REQUIREMENTS.

An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

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

*Text of Sec. 301.151(2) as amended by SB 995:*

(2) except as provided by Section 301.002(b) with respect to administration necessary to receive or recover property due a decedent's estate, and Section 501.006 with respect to a foreign will, four years have not elapsed since the date of the decedent's death and before the application;

*Text of Sec. 301.151(2) as amended by HB 3160:*

(2) except as provided by Section 301.002(b)(2), four years have not elapsed since the date of the decedent'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; and

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



*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 575 (HB 3160), effective September 1, 2015. See transitional note following Sec. 301.002.*

**Sec. 306.002. GRANTING LETTERS OF ADMINISTRATION.**

(a) – (b) [No change.]

(c) The court may find other instances of necessity for an administration based on proof before the court, but a necessity is considered to exist if:

(1) there are two or more debts against the estate;

(2) there is a desire for the county court to partition the estate among the distributees; ~~[or]~~

(3) the administration is necessary to receive or recover funds or other property due the estate; or

(4) the administration is necessary to prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 575 (HB 3160), effective September 1, 2015. See transitional note following Sec. 301.002.*

**Sec. 308.004. AFFIDAVIT OR CERTIFICATE.**

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

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name ~~[and address]~~ of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name ~~[and address]~~ of the beneficiary and of the person to whom the notice was given;

(2) the name ~~[and address]~~ of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4);

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

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

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

**Sec. 309.001. APPOINTMENT OF APPRAISERS.**

(a) At any time after letters testamentary or of administration are granted, the court, for good cause, on the court's own motion or on the motion of an interested person ~~[party]~~ shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

~~(b) [At any time after letters testamentary or of administration are granted, the court, for good cause shown, on the court's own motion or on the motion of an interested person shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.]~~

~~[(e)]~~ If the court makes an appointment under Subsection (a) ~~[or (b)]~~ and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.**

(a) [No change.]

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisement, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries other than those described by Subsection

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(b-1) have received a verified, full, and detailed inventory and appraisal. The affidavit in lieu of the inventory, appraisal, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(b-1) Absent a written request by a beneficiary, an independent executor is not required to provide a verified, full, and detailed inventory and appraisal to a beneficiary who:

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

(2) has received all devises to which the beneficiary is entitled under the will on or before the date an affidavit under this section is filed; or

(3) has waived in writing the beneficiary's right to receive a verified, full, and detailed inventory and appraisal.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisal, and list of claims as authorized under Subsection (b):

(1) any person interested in the estate, including a possible heir of the decedent, ~~[or]~~ a beneficiary under a prior will of the decedent, or a beneficiary described by Subsection (b-1), is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;

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

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

(d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

### **Sec. 352.052. ALLOWANCE FOR DEFENSE OF WILL.**

(a) [No change.]

(b) A person designated as a devisee in or beneficiary of a will or an alleged will ~~[or as~~

~~administrator with the will or alleged will annexed,~~ who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, may be allowed out of the estate the person's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 201.051.*

### **Sec. 353.051. EXEMPT PROPERTY TO BE SET ASIDE.**

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisal, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisal, and list of claims is filed, the court by order shall set aside:

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

(2) all other exempt [estate] property described by Section 42.002(a), Property Code, [that is exempt from execution or forced sale by the constitution and laws of this state] for the use and benefit of the decedent's:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent's family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed:

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

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have

all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all the exempt property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 353.052. DELIVERY OF EXEMPT PROPERTY.**

(a) This section only applies to exempt property described by Section 353.051(a).

(a-1) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent's surviving spouse and children in accordance with this section.

(b) – (e) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 353.053. ALLOWANCE IN LIEU OF EXEMPT PROPERTY.**

(a) If all or any of the specific articles of exempt property described by Section 353.051(a) [~~from execution or forced sale by the constitution and laws of this state~~] are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE.**

If on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. The distributees are entitled to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property. The property and allowances set aside or paid to the decedent's surviving spouse or children, and any remaining exempt property held by the executor or administrator,

may not be taken for any of the estate debts except as provided by Section 353.155.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY.**

In determining whether an estate is solvent or insolvent, the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, ~~and~~ the family allowance under Subchapter C, and any remaining exempt property held by the executor or administrator may not be estimated or considered as estate assets.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 355.1551. CLAIM HOLDER DUTY TO POSSESS OR SELL WITHIN REASONABLE TIME.**

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

(b) If the claim holder fails to take possession or sell secured property within a reasonable time under Subsection (a), on application by the personal representative, the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

(c) This section does not apply to an estate administered as an independent administration under Subtitle I.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT.**

(a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, the

executor named in the will to serve as independent executor and request [~~in the application~~] that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees [~~in the application~~] as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, a qualified person, firm, or corporation to serve as independent administrator and request [~~in the application~~] that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees [~~in the application~~] as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT.**

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate, or in one or more documents consenting to the application for administration of the decedent's estate, a qualified person, firm, or corporation to serve as independent administrator and request [~~in the application~~] that no other action shall be had in the

probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisal, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees [~~in the application~~] as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEE CONSENT.**

(a) – (b) [No change.]

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may consent to the creation of an independent administration [sign the application] on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees [~~in the application~~] as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to act [~~make application~~] on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) – (g) [No change.]

(h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may consent to the [~~sign the application for~~] independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**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 [~~under Section 401.002 or 401.003~~] any general or specific authority regarding the power of the independent executor to sell property that may be consented to by the 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 beneficiaries.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 452.051. APPOINTMENT OF TEMPORARY ADMINISTRATOR.**

(a) If a contest related to probating a will or granting letters testamentary or of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.

(b) – (c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**CHAPTER 456. DISBURSEMENT AND CLOSING OF LAWYER TRUST OR ESCROW ACCOUNTS**

**Sec. 456.001. DEFINITION.**

In this chapter, "eligible institution" means a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 456.002. AUTHORITY TO DESIGNATE LAWYER ON CERTAIN TRUST OR ESCROW ACCOUNTS.**

(a) When administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

(3) disburse the funds to the appropriate persons or to the decedent's estate; and

(4) close the account.

(b) If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).

(c) An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts were established.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS.**

Within a reasonable time after 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, an eligible institution shall disburse the funds and close the account in compliance with the instructions.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 456.004. LIABILITY OF ELIGIBLE INSTITUTIONS.**

An eligible institution is not liable for any act respecting an account taken in compliance with this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 456.005. RULES.**

The supreme court may adopt rules regarding the administration of funds in a trust or escrow account subject to this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 255.451.*

**Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL.**

The written will of a testator who was not domiciled in this state at the time of the testator's death may be admitted to probate at any time in this state if:

- (1) the will would affect any property in this state; and
- (2) proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 113.004.*

**Sec. 501.006. ANCILLARY LETTERS TESTAMENTARY.**

(a) On application, an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter is entitled to receive ancillary letters testamentary on proof made to the court that:

- (1) the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established; [and]
- (2) the executor is not disqualified from serving in that capacity in this state; and
- (3) if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 949 (SB 995), effective September 1, 2015. See transitional note following Sec. 256.003.*

**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, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, 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 30<sup>th</sup> day after the date the instrument is filed for recording.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 808 (HB 3316), effective September 1, 2015. Sec. 2 of HB 3316 provides: "This Act applies only to a real property transaction entered into on or after the effective date of this Act. A real property transaction entered into before the effective date of this Act is governed by the law in effect when the transaction was entered into, and the former law is continued in effect for that purpose."*

Attachment 5 – 2015 Amendments to the Texas Estates Code (Guardianship)

[The following excerpts reflect amendments made by HB 39, HB 1438, HB 2665, SB 219, SB 1296, SB 1881, and SB 1882.]

**Sec. 1001.001. POLICY; PURPOSE OF GUARDIANSHIP.**

(a) [No change.]

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Sec. 24(a) of HB 39 provides: "Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act."*

**Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.**

"Alternatives to guardianship" includes the:

(1) execution of a medical power of attorney under Chapter 166, Health and Safety Code;

(2) appointment of an attorney in fact or agent under a durable power of attorney as provided by Subtitle P, Title 2;

(3) execution of a declaration for mental health treatment under Chapter 137, Civil Practice and Remedies Code;

(4) appointment of a representative payee to manage public benefits;

(5) establishment of a joint bank account;

(6) creation of a management trust under Chapter 1301;

(7) creation of a special needs trust;

(8) designation of a guardian before the need arises under Subchapter E, Chapter 1104; and

(9) establishment of alternate forms of decision-making based on person-centered planning.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**Sec. 1002.031. SUPPORTS AND SERVICES.**

"Supports and services" means available formal and informal resources and assistance that enable an individual to:

(1) meet the individual's needs for food, clothing, or shelter;

(2) care for the individual's physical or mental health;

(3) manage the individual's financial affairs; or

(4) make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**Sec. 1002.015. GUARDIANSHIP PROCEEDING.**

The term "guardianship proceeding" means a matter or proceeding related to a guardianship or any other matter covered by this title, including:

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

(2) an application, petition, or motion regarding guardianship or a substitute for ~~[an alternative to]~~ guardianship under this title;

(3) a mental health action; and

(4) an application, petition, or motion regarding a trust created under Chapter 1301.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.**

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

(1) the granting of letters of guardianship;

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

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

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

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

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:

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

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

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

(D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155 [~~and Subpart H, Part 2, Subtitle Z~~]; and

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1236 (SB 1296), effective September 1, 2015. Sec. 1.002(b) of SB 1296 provides: "If any provision of this Act conflicts with a statute enacted by the 84<sup>th</sup> Legislature, Regular Session, 2015, the statute controls."*

**Sec. 1023.005. COURT ACTION.**

~~[(a)]~~ On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

(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.

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

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

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

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (b) of HB 1438 provide: "(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(b) The changes in law made by this Act to Sections 1023.005 and 1023.010, Estates Code, apply only to an application for the transfer of a guardianship to another county filed on or after the effective date of this Act. An application for the transfer of a guardianship to another county filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."*

**Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP.**

(a) Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

(b) After the hearing described by Subsection (a), the court to which the guardianship was transferred shall enter an order requiring the guardian to:

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

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



Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1023.005.

**Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP.**

(a) The person filing an application for guardianship shall mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

- (1) each adult child of the proposed ward;
- (2) each adult sibling of the proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
- (4) the operator of a residential facility in which the proposed ward resides;
- (5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
- (6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;
- (7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;
- (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and

(9) each adult [person] named [as another relative within the third degree by consanguinity] in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(b) – (c) [No change.]

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) of HB 1438 provides: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:

(1) a guardianship created before, on, or after the effective date of this Act; and

(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.”

**Sec. 1052.001. GUARDIANSHIP DOCKET.**

(a) The county clerk shall maintain a record book titled "Judge's Guardianship Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;

(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship;

(3) the date each original application for a guardianship proceeding is filed;

(4) a notation of each order, judgment, decree, and proceeding that occurs in each guardianship [estate], including the date it occurs; and

(5) the docket number of each guardianship as assigned under Subsection (b).

(b) [No change.]

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.

**Sec. 1052.051. FILING PROCEDURES.**

(a) – (c) [No change.]

(d) – (f) [Repealed.]

Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (g) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:

(1) a guardianship created before, on, or after the effective date of this Act; and

(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(g) The changes in law made by this Act to Sections 1052.051, 1102.001, and 1155.151, Estates Code, and Section 1055.003, Estates Code, as added by this Act, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.”

**Sec. 1053.052. SECURITY FOR CERTAIN COSTS.**

(a) The clerk may require or may obtain from the court an order requiring a person who files an application, complaint, or opposition relating to a guardianship proceeding, other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition.

(b) – (c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1054.004. DUTIES.**

(a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

- (1) the law and facts of the case;
- (2) the proposed ward's legal options regarding disposition of the case; ~~[and]~~
- (3) the grounds on which guardianship is sought; and
- (4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.

(b) [No change.]

(c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem's opinion regarding:

- (1) whether a guardianship is necessary for the proposed ward; and
- (2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Secs. 24(a) and (b) of HB 39 provide:*

*“(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*“(b) Sections 1054.004 and 1054.054, Estates Code, as amended by this Act, apply only to a guardianship proceeding for which a court has appointed a guardian ad litem or attorney ad litem to represent the interests of a proposed ward on or after the effective date of this Act.”*

**Sec. 1054.054. DUTIES.**

(a) – (b) [No change.]

(c) The guardian ad litem shall:

(1) investigate whether a guardianship is necessary for the proposed ward; and

(2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.

(d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.004.*

**Sec. 1054.155. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS.**

If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1054.151 or 1054.152, the court shall provide written notice of that fact to the ward or proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1054.201. CERTIFICATION REQUIRED.**

(a) An attorney for an applicant for guardianship and a [A] court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) The State Bar of Texas shall require ~~four~~ [three] hours of credit for certification under this subchapter, including one hour on alternatives to

guardianship and supports and services available to proposed wards.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Secs. 24(a) and (c) of HB 39 provide:*

*“(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*“(c) Sections 1054.201, 1101.101, 1101.103, 1101.151, 1101.152, and 1101.153, Estates Code, as amended by this Act, apply only to a guardianship proceeding filed on or after the effective date of this Act. A guardianship proceeding filed before the effective date of this Act is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1055.003. INTERVENTION BY INTERESTED PERSON.**

(a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether:

(1) the intervention will unduly delay or prejudice the adjudication of the original parties' rights; or

(2) the proposed intervenor has such an adverse relationship with the ward or proposed ward that the intervention would unduly prejudice the adjudication of the original parties' rights.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS.**

(a) [No change.]

(b) The application must be sworn to by the applicant and state:

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

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

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

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

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

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

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

(C) the right of a proposed ward to make personal decisions regarding residence;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

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

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

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

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

(11) for a proposed ward who is a minor, the following information if known by the applicant:

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

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

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

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

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

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

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

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

(c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Secs. 24(a) and (d) of HB 39 provide:*

*“(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*“(d) Section 1101.001, Estates Code, as amended by this Act, applies only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a guardian filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

### **Sec. 1101.101. FINDINGS AND PROOF REQUIRED.**

(a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; ~~and~~

(C) the proposed ward's rights or property will be protected by the appointment of a guardian;

(D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E) supports and services available to the proposed ward that would avoid the need for the

appointment of a guardian have been considered and determined not to be feasible; and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) [No change.]

(c) A finding under Subsection (a)(2)(D)(ii) must specifically state whether the proposed ward lacks the capacity, or lacks sufficient capacity with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.201.*

**Sec. 1101.103. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS.**

(a) [No change.]

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning [~~function~~] and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems [~~perform simple calculations~~];

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific

powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(c) – (d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.201.*

**Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY.**

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and ~~to~~ vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.201.*

**Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY.**

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary

to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(2-a) the specific rights and powers retained by the person:

(A) with the necessity for supports and services; and

(B) without the necessity for supports and services;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.201.*

**Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING GUARDIAN.**

(a) [No change.]

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian

must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

(b) – (c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1054.201.*

### **Sec. 1101.156. DEPOSIT OF ESTATE ASSETS.**

(a) At the time or after an order appointing a guardian is signed by the court but before letters of guardianship are issued, a court may, on the request of a party, require the deposit for safekeeping of cash, securities, or other assets of a ward or proposed ward in a financial institution described by Section 1105.155(b).

(b) The amount of the bond required to be given by the guardian under Section 1105.101 shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

### **Sec. 1102.001. COURT-INITIATED INVESTIGATION.**

(a) If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate the person's conditions and circumstances to determine whether:

- (1) the person is an incapacitated person; and
- (2) a guardianship is necessary.

(b) If a court appoints a guardian ad litem or court investigator under Subsection (a):

(1) the court's order appointing a guardian ad litem or court investigator must include a statement that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;

(2) at the initial meeting between the guardian ad litem or court investigator and the person believed to be incapacitated, the guardian ad litem or court investigator, as appropriate, shall provide a copy of the information letter under Section 1102.003 and the order to, and discuss the contents of the letter and order with, the person believed to be incapacitated; and

(3) during the period beginning after the date of the initial meeting described by Subdivision (2) and ending on the date an application for the appointment of a guardian is filed, the person believed to be incapacitated may petition the court to have the appointment of the guardian ad litem or court investigator, as appropriate, set aside.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1052.051.*

### **Sec. 1102.003. INFORMATION LETTER.**

(a) – (b) [No change.]

(c) Any information provided by the Department of Family and Protective Services under this section that is confidential under Chapter 48, Human Resources Code, remains confidential and is not subject to disclosure under Chapter 552, Government Code.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

### **Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM.**

(a) Regardless of whether a guardianship is created for a proposed ward and except as provided by Section 1155.151, a [A] court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:

(1) the proposed ward's estate; or

(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301[~~, regardless of whether a guardianship is created for the proposed ward~~].

(b) Except as provided by Section 1155.151, after [After] examining the proposed ward's assets or the assets of any management trust created for the proposed ward's benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

### **Sec. 1102.006. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS.**

If a request is made to a financial institution for a customer record in connection with an investigation

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conducted under Section 1102.001, the court shall provide written notice of that fact to the proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON.**

Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent consistent with other provisions of this title, shall give due consideration to the preference indicated by the incapacitated person, regardless of whether the person has designated by declaration a guardian before the need arises under Subchapter E.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**Sec. 1104.154. ALTERNATIVE TO SELF-PROVING AFFIDAVIT.**

(a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, \_\_\_\_\_, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I willingly make [~~have made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Declarant

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death

or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission expires:

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (c) of HB 1438 provide: "(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(c) The changes in law made by this Act to Sections 1104.154 and 1104.205, Estates Code, apply only to a declaration executed on or after the effective date of this Act. A declaration 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. 1104.205. ALTERNATIVE TO SELF-PROVING AFFIDAVIT.**

(a) As an alternative to the self-proving affidavit authorized by Section 1104.204, a declaration of guardian in the event of later incapacity or need of guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, \_\_\_\_\_, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this



instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I willingly make [~~have made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Declarant

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas  
My Commission expires:  
\_\_\_\_\_

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1104.154.*

**Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE.**

(a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian 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:

(1) a private professional guardian;

(2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;

(3) each person employed by a private professional guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate;

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or

(5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than [~~the ward's or proposed ward's family member or~~] an attorney.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1104.406. DEPARTMENT'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION.**

(a) The department 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 each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the department;

(2) a volunteer or an applicant selected to volunteer with the department;

(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department to provide guardianship services to a ward referred by the department; [~~and~~]

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(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3); and

(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(b) [No change.]

(c) The department must annually obtain the information in Subsection (a) regarding employees, contractors, or volunteers providing guardianship services.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

### **Sec. 1104.409. USE OF INFORMATION BY COURT.**

The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or

(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

### **Sec. 1151.055. APPLICATION BY CERTAIN RELATIVES FOR ACCESS TO WARD; HEARING AND COURT ORDER.**

(a) This section applies to a relative described under Sections 1101.001(b)(13)(A)-(D).

(b) A relative of a ward may file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward.

(c) Except as provided by Subsection (d), the court shall schedule a hearing on the application not later than the 60th day after the date an application is filed under Subsection (b). The court may grant a continuance of a hearing under this section for good cause.

(d) If an application under Subsection (b) states that the ward's health is in significant decline or that the ward's death may be imminent, the court shall conduct

an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (b).

(e) The guardian of a ward with respect to whom an application is filed under Subsection (b) shall be personally served with a copy of the application and cited to appear at a hearing under:

(1) Subsection (c) at least 21 days before the date of the hearing; and

(2) Subsection (d) as soon as practicable.

(f) The court shall issue an order after notice and a hearing under this section. An order issued under this section may:

(1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a preponderance of the evidence that:

(A) the guardian's past act or acts prevented access to the ward; and

(B) the ward desires contact with the applicant; and

(2) specify the frequency, time, place, location, and any other terms of access.

(g) In deciding whether to issue or modify an order issued under this section, the court:

(1) shall consider:

(A) whether any protective orders have been issued against the applicant to protect the ward;

(B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and

(C) the best interest of the ward; and

(2) may consider whether:

(A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or

(B) visitation should be suspended or denied.

(h) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any. Court costs or attorney's fees awarded under this subsection may not be paid from the ward's estate.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1087 (HB 2665), effective June 19, 2015.*

**Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE.**

(a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).

(b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:

(1) the ward dies;

(2) the ward is admitted to a medical facility for acute care for a period of three days or more;

(3) the ward's residence has changed; or

(4) the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.

(c) In the case of the ward's death, the guardian shall inform relatives of any funeral arrangements and the location of the ward's final resting place.

(d) A relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. A guardian shall file any written request received by the guardian under this subsection with the court.

(e) On motion filed with the court showing good cause and after a relative is provided an opportunity to present evidence to the court under Subsection (f), the court, subject to Subsection (g), may relieve the guardian of the duty to provide notice about a ward to a relative under this section.

(f) A copy of the motion required under Subsection (e) shall be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. The relative provided notice under this subsection may file evidence with the court in response to the motion, and the court shall consider that evidence before making a decision on the motion.

(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;

(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.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1087 (HB 2665), effective June 19, 2015.*

**Sec. 1151.151. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE PERSON.**

(a) – (d) [No change.]

(e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:

(1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement before the eighth business day after the person's receipt of the notice; or

(2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**SUBCHAPTER H. RIGHTS OF WARDS**

**Sec. 1151.351. BILL OF RIGHTS FOR WARDS.**

(a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance

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and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

(7) to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

(8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(9) to control the ward's personal environment based on the ward's preferences;

(10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) This section does not supersede or abrogate other remedies existing in law.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1225 (SB 1882), effective June 19, 2015.*

**Sec. 1155.151. COSTS IN GUARDIANSHIP PROCEEDING GENERALLY.**

(a) In a guardianship proceeding, the court costs of the proceeding, including the costs described by Subsection (a-1) [~~cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (e)], shall, except as provided by Subsection (c), be paid as follows~~ [out of the guardianship estate, or the county treasury if the estate is insufficient to pay the cost], and the court shall issue the judgment accordingly:

(1) out of the guardianship estate;

(2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward's best interest;

(3) by the party to the proceeding who incurred the costs, unless that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if:

(A) there is no guardianship estate or no management trust has been created for the ward's benefit; or

(B) the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; or

(4) out of the county treasury if:

(A) there is no guardianship estate or management trust or the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; and

(B) the party to the proceeding who incurred the costs filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs.

(a-1) In a guardianship proceeding, the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters appointed under this title shall be set in an amount the court considers equitable and just.

(a-2) Notwithstanding any other law requiring the payment of court costs in a guardianship proceeding, the following are not required to pay court costs on the filing of or during a guardianship proceeding:

(1) an attorney ad litem;

(2) a guardian ad litem;

(3) a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs;

(4) a nonprofit guardianship program;

(5) a governmental entity; and

(6) a government agency or nonprofit agency providing guardianship services.

(a-3) For purposes of Subsections (a) and (a-2), a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, is unable to afford the costs if the affidavit shows that the person or entity:

(1) is currently receiving assistance or other benefits from a government program under which assistance or other benefits are provided to individuals on a means-tested basis;

(2) is eligible for and currently receiving free legal services in the guardianship proceeding through the following:

(A) a legal services provider funded partly by the Texas Access to Justice Foundation;

(B) a legal services provider funded partly by the Legal Services Corporation; or

(C) a nonprofit corporation formed under the laws of this state that provides legal services to low-income individuals whose household income is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services;

(3) applied and was eligible for free legal services through a person or entity listed in Subdivision (2) but was declined representation; or

(4) has a household income that is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services and has money or other available assets, excluding any homestead and exempt property under Chapter 42, Property Code, in an amount that does not exceed \$2,000.

(a-4) If an affidavit of inability to pay costs filed under Rule 145, Texas Rules of Civil Procedure, is contested, the court, at a hearing, shall review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs. If the court finds that the person or entity is able to afford the costs, the person or entity must pay the court costs. Except with leave of court, no further action in the guardianship proceeding may be taken by a person or entity found able to afford costs until payment of those costs is made.

(b) The costs attributable to the services of a person described by Subsection (a-1) [~~(a)~~] shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(c) [No change.]

(d) If a guardianship of the estate or management trust under Chapter 1301 is created, a person or entity who paid any costs on the filing of or during the proceeding is entitled to be reimbursed out of assets of the guardianship estate or management trust, as appropriate, for the costs if:

(1) the assets of the estate or trust, as appropriate, are sufficient to cover the reimbursement of the costs; and

(2) the person or entity has not been ordered by the court to pay the costs as all or part of the payment of court costs under Subsection (c).

(e) If at any time after a guardianship of the estate or management trust under Chapter 1301 is created there are sufficient assets of the estate or trust, as appropriate, to pay the amount of any of the costs exempt from payment under Subsection (a-2), the court

shall require the guardian to pay out of the guardianship estate or management trust, as appropriate, to the court clerk for deposit in the county treasury the amount of any of those costs.

(f) To the extent that this section conflicts with the Texas Rules of Civil Procedure or other rules, this section controls.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1052.051.*

**Sec. 1163.101. ANNUAL REPORT REQUIRED.**

(a) – (b) [No change.]

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address, telephone number, and age;

(3) a description of the type of home in which the ward resides, which shall be described as:

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

(F) a relative's home, in which case the description must specify the relative's relationship to the ward;

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

(A) the length of time the ward has resided in the present home;

(B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;

(C) the date the guardian most recently saw the ward;

(D) how frequently the guardian has seen the ward in the past year;

(E) whether the guardian has possession or control of the ward's estate;

(F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(H) whether the ward has regular medical care; and

(I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:

(i) a physician;

(ii) a psychiatrist, psychologist, or other mental health care provider;

(iii) a dentist;

(iv) a social or other caseworker; or

(v) any other individual who provided treatment;

(5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;

(6) the guardian's evaluation of:

(A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(B) whether the ward is content or unhappy with the ward's living arrangements; and

(C) unmet needs of the ward;

(7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(8) a statement indicating that the guardian has paid the bond premium for the next reporting period;

(9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 155 [111], Government Code, who is providing guardianship services to the ward and who is filing [swearing to] the affidavit on the guardian's behalf, is

or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and

(10) any additional information the guardian desires to share with the court regarding the ward, including:

(A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and

(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1163.1011. USE OF UNSWORN DECLARATION IN LIEU OF SWORN DECLARATION OR AFFIDAVIT FOR [ELECTRONIC] FILING [OF] ANNUAL REPORT.**

(a) A guardian of the person who is required to file an [files the] annual report under [required by] Section 1163.101 [electronically] with the court, including a guardian filing the annual report electronically, may use an unsworn declaration made as provided by this section instead of the [a written] sworn declaration or affidavit required by Section 1163.101.

(b) – (d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP.**

(a) [No change.]

(b) A guardianship shall be settled and closed when the ward:

(1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself and to manage the ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.

(c) Except for an order issued under Section 1101.153(a-1), an [An] order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

(d) – (e) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**Sec. 1202.051. APPLICATION AUTHORIZED.**

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 [tø] manage the ward's own financial affairs commensurate with the ward's ability, with or without supports and services.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Secs. 24(a) and (e) of HB 39 provide:*

*“(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*“(e) Section 1202.051, Estates Code, as amended by this Act, applies only to an application for the*

*restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING.**

(a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship, including whether:

(1) the guardianship is necessary; and

(2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. Secs. 24(a) and (f) of HB 39 provide:*

*“(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*“(f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and 1202.156, Estates Code, as amended by this Act, apply only to a proceeding for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1202.152. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.**

(a) [No change.]

(b) A letter or certificate presented under Subsection (a) must:



(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1201.151.*

SECTION 19. Section 1202.153(c), Estates

Code, is amended to read as follows:

**Sec. 1202.153. FINDINGS REQUIRED.**

(a) – (b) [No change.]

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward's rights need to be restored, with or without supports and services.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1201.151.*

**Sec. 1202.154. GENERAL REQUIREMENTS FOR ORDER.**

(a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward's capacity or modify a ward's guardianship must state:

(1) the guardian's name;

(2) the ward's name; ~~and~~

(3) whether the type of guardianship being addressed at the proceeding is a:

(A) guardianship of the person;

(B) guardianship of the estate; or

(C) guardianship of both the person and the estate; and

(4) if applicable, any necessary supports and services for the restoration of the ward's capacity or modification of the guardianship.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1201.151.*

**Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING GUARDIANSHIP.**

If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;

(2) the specific areas of protection and assistance to be provided to the ward;

(3) any limitation of the ward's rights;

(4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote and make personal decisions regarding residence; and

(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1201.151.*

**Sec. 1203.202. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR GUARDIAN.**

(a) – (b) [No change.]

(c) A successor guardian may:

(1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor;

(2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the predecessor's [successor's] possession; or

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN TEMPORARY GUARDIANSHIPS.**

(a) [No change.]

(b) The term of a temporary guardian appointed under Section 1251.051 expires on the earliest of the following:

(1) ~~at~~ the conclusion of the hearing challenging or contesting the application; ~~or~~

(2) ~~on~~ the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian; or

(3) the nine-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (h) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(h) The change in law made by this Act to Section 1251.052(b), Estates Code, applies only to a temporary guardian appointed on or after the effective date of this Act. A temporary guardian appointed before the effective date of this Act is governed by the law in effect when the guardian was appointed, and the former law is continued in effect for that purpose.”*

**Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP.**

A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in the county in which the ward resides or in which it is intended that the ward will ~~[intends to]~~ reside to have the guardianship transferred to that ~~[the]~~ court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1051.104.*

**Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.**

(a) This section applies only to a trustee of a management trust created for a person who ~~[for whom a guardianship proceeding is pending]~~ on the date the trust is created is:

(1) a ward under an existing guardianship; or

(2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed ~~[proceeding is pending]~~ a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (d) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

(d) *The changes in law made by this Act to Section 1301.1535, Estates Code, apply only to a management trust created on or after the effective date of this Act. A management trust created before the effective date of this Act is governed by the law in effect on the date the management trust was created, and the former law is continued in effect for that purpose.*”

**Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN PROPERTY WITHOUT GUARDIANSHIP.**

(a) A parent or managing conservator of a minor who is not a ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed \$100,000.

(b) If a minor who is not a ward does not have a parent or managing conservator willing or able to file an application under Subsection (a), the court may appoint an attorney ad litem or guardian ad litem to act on the minor's behalf for the limited purpose of applying for an order to sell the minor's interest in property under this subchapter.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (e) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(e) The changes in law made by this Act to Sections 1351.001 and 1351.002, Estates Code, apply only to an application for the sale of an interest in property of a minor filed on or after the effective date of this Act. An application for the sale of an interest in property of a minor that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1351.002. APPLICATION; VENUE.**

(a) A parent, ~~[or]~~ managing conservator, or attorney ad litem or guardian ad litem appointed under Section 1351.001(b) shall apply to the court under oath for the sale of property under this subchapter.

(b) An application must contain:

(1) the minor's name;

(2) a legal description of the real property or a description that identifies the personal property, as applicable;

(3) the minor's interest in the property;

(4) the purchaser's name;

(5) a statement that the sale of the minor's interest in the property is for cash; and

(6) a statement that all money received from the sale of the minor's interest in the property ~~[by the parent or managing conservator]~~ shall be used for the minor's use and benefit.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1351.001.*

**Sec. 1351.051. APPLICABILITY OF SUBCHAPTER.**

This subchapter applies only to a ward who has:

(1) a guardian of the person but does not have a guardian of the estate; or

(2) a guardian of the person or estate appointed by a foreign court.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (f) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(f) The changes in law made by this Act to Sections 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an application for the sale of an interest in property of a ward filed on or after the effective date of this Act. An application for the sale of an interest in property of a ward that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE.**

A guardian of the person of a ward or a guardian of the person or estate of a ward appointed by a foreign court

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may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$100,000.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1351.051.*

### **Sec. 1351.053. APPLICATION; VENUE.**

(a) [No change.]

(b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to:

~~[(1)] "minor" are replaced with references to "ward."~~ ["ward"; and

~~[(2) "parent or managing conservator" are replaced with references to "guardian of the person."]~~

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 1351.051.*

## **CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 1357.001. SHORT TITLE.**

This chapter may be cited as the Supported Decision-Making Agreement Act.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

#### **Sec. 1357.002. DEFINITIONS.**

In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with,

and where the adult wants to work, without impeding the self-determination of the adult.

(4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.

(5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

### **Sec. 1357.003. PURPOSE.**

The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

### **SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS**

#### **Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT.**

An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;

(3) assist the adult with a disability in understanding the information described by Subdivision (2); and

(4) assist the adult in communicating the adult's decisions to appropriate persons.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**Sec. 1357.052. AUTHORITY OF SUPPORTER.**

A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**Sec. 1357.053. TERM OF AGREEMENT.**

(a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(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; or

(2) the supporter is found criminally liable for conduct described by Subdivision (1).

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**Sec. 1357.054. ACCESS TO PERSONAL INFORMATION.**

(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section

1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT.**

(a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**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

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.**

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

**SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT**

**Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY.**

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*

**Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION.**

If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making 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 in accordance with Section 48.051, Human Resources Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 214 (HB 39), effective September 1, 2015. See transitional note following Sec. 1001.001.*

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1244 (SB 1881), effective June 19, 2015.*





Attachment 6 – 2015 Amendments to the Texas Trust Code

[The following excerpts reflect amendments made by HB 2428 and HB 3190.]

**Sec. 112.010. PRESUMED ACCEPTANCE [OR DISCLAIMER] BY [OR ON BEHALF OF] BENEFICIARY; DISCLAIMER.**

(a) [No change.]

(b) A disclaimer of an interest in or power over trust property is governed by Chapter 240 [If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law].

(c) – (e) [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. Sec. 17 of HB 2428 provides: "Title 13, Property Code, as added by this Act, applies to an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing a disclaimer under former law, including the time for filing a written memorandum of disclaimer under Section 122.055, Estates Code, the time for delivering notice of the disclaimer under Section 122.056, Estates Code, or the time for delivering a written memorandum of disclaimer under Section 112.010, Property Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of a written memorandum of disclaimer under former law has elapsed, the former law applies and is continued in effect for that purpose."*

**Sec. 114.003. POWERS TO DIRECT: CHARITABLE TRUSTS.**

(a) In this section, "charitable trust" has the meaning assigned by Section 123.001.

(a-1) The terms of a charitable trust may give a trustee or other person a power to direct the modification or termination of the trust.

(b) If the terms of a charitable trust give a person the power to direct certain actions of the trustee, the trustee shall act in accordance with the person's direction unless:

(1) the direction is manifestly contrary to the terms of the trust; or

(2) the trustee knows the direction would constitute a serious breach of a fiduciary duty that the person holding the power to direct owes to the beneficiaries of the trust.

(c) A person, other than a beneficiary, who holds a power to direct with respect to a charitable trust is presumptively a fiduciary required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct with respect to a charitable trust is liable for any loss that results from a breach of the person's fiduciary duty.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1108 (HB 3190), effective June 19, 2015. Sec. 3 of HB 3190 provides:*

*"(a) Except as specifically provided by a trust term in effect before the effective date of this Act, the changes in law made by this Act apply to a trust created before, on, or after the effective date of this Act with respect to an action taken or not taken on or after September 1, 2015, by a trustee or other person with respect to the trust.*

*"(b) An action taken or not taken with respect to a trust before September 1, 2015, is governed by the law that applied to the action taken or not taken immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

**Sec. 114.0031. DIRECTED TRUSTS; ADVISORS.**

(a) In this section:

(1) "Advisor" includes protector.

(2) "Investment decision" means, with respect to any investment, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of the investment or rights in the investment and, with respect to a nonpublicly traded investment, the valuation of the investment.

(b) This section does not apply to a charitable trust as defined by Section 123.001.

(c) For purposes of this section, an advisor with authority with respect to investment decisions is an investment advisor.

(d) A protector has all the power and authority granted to the protector by the trust terms, which may include:

(1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;

(2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.

(e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.

(f) A trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, is not liable, except in cases of wilful misconduct on the part of the trustee so directed, for any loss resulting directly or indirectly from that act.

(g) If the trust terms provide that a trustee must make decisions with the consent of an advisor, the trustee is not liable, except in cases of wilful misconduct or gross negligence on the part of the trustee, for any loss resulting directly or indirectly from any act taken or not taken as a result of the advisor's failure to provide the required consent after having been requested to do so by the trustee.

(h) If the trust terms provide that a trustee must act in accordance with the direction of an advisor with respect to investment decisions, distribution decisions, or other decisions of the trustee, the trustee does not, except to the extent the trust terms provide otherwise, have the duty to:

(1) monitor the conduct of the advisor;

(2) provide advice to the advisor or consult with the advisor; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor.

(i) Absent clear and convincing evidence to the contrary, the actions of a trustee pertaining to matters within the scope of the advisor's authority, such as confirming that the advisor's directions have been carried out and recording and reporting actions taken at the advisor's direction, are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the trust terms, and such administrative actions are not considered to constitute an undertaking

by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1108 (HB 3190), effective June 19, 2015. See transitional note following Sec. 114.003.*

Attachment 7 – 2015 Selected Amendments to the Texas Property Code (Excluding Trust Code)

[The following excerpts reflect amendments made by HB 1560, HB 2706 and SB 1202.]

**Sec. 42.001. PERSONAL PROPERTY EXEMPTION.**

(a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than \$100,000 [~~\$60,000~~], exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$50,000 [~~\$30,000~~], exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) – (e) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 793 (HB 2706), effective September 1, 2015. Sec. 2 of HB 2706 provides: “The changes in law made this Act do not apply to property that is, as of the effective date of this Act, subject to a voluntary bankruptcy proceeding or to a valid claim of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that would otherwise be held by a trustee in bankruptcy if a bankruptcy petition were then pending against the debtor. That property is subject to the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.”*

**Sec. 141.007. OTHER TRANSFER BY FIDUCIARY.**

(a) – (b) [No change.]

(c) A transfer under Subsection (a) or (b) may be made only if:

(1) the legal representative or trustee considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(3) the transfer is authorized by the court if it exceeds \$25,000 [~~\$10,000~~] in value.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 622 (SB 1202), effective September 1, 2015. Sec. 3 of SB 1202 provides: “The changes in law made by this*

*Act apply only to a transfer made on or after the effective date of this Act. A transfer made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.”*

**Sec. 141.008. TRANSFER BY OBLIGOR.**

(a) – (b) [No change.]

(c) If a custodian has not been nominated under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$25,000 [~~\$15,000~~] in value.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 622 (SB 1202), effective September 1, 2015. See transitional note following Sec.141.008.*

**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, or a prepaid tuition program [~~the Texas tomorrow fund~~] established under [~~by~~] Subchapter H [~~F~~], 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, or a prepaid tuition program [~~the Texas tomorrow fund~~] established under [~~by~~] Subchapter H [~~F~~], Chapter 54, Education Code; or

(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 2015, 84<sup>th</sup> Legislature, Ch. 289 (HB 1560), effective September 1, 2015.*

**TITLE 13. DISCLAIMER OF PROPERTY INTERESTS**

**CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 240.001. SHORT TITLE.**

This chapter may be cited as the Texas Uniform Disclaimer of Property Interests Act.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. Sec. 17 of HB 2428 provides: "Title 13, Property Code, as added by this Act, applies to an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing a disclaimer under former law, including the time for filing a written memorandum of disclaimer under Section 122.055, Estates Code, the time for delivering notice of the disclaimer under Section 122.056, Estates Code, or the time for delivering a written memorandum of disclaimer under Section 112.010, Property Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of a written memorandum of disclaimer under former law has elapsed, the former law applies and is continued in effect for that purpose."*

**Sec. 240.002. DEFINITIONS.**

In this chapter:

(1) "Current beneficiary" and "presumptive remainder beneficiary" have the meanings assigned by Section 112.071.

(2) "Disclaim" means to refuse to accept an interest in or power over property, including an interest or power the person is entitled to:

(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; or

(H) by an instrument creating a trust.

(3) "Disclaimant" means:

(A) the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(B) the estate to which a disclaimed interest or power would have passed had the disclaimer not been made by the personal representative of the estate; or

(C) the trust into which a disclaimed interest or power would have passed had the disclaimer not been made by the trustee of the trust.

(4) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(5) "Disclaimed power" means the power that would have been possessed by the disclaimant had the disclaimer not been made.

(6) "Disclaimer" means the refusal to accept an interest in or power over property.

(7) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(8) "Fiduciary" means a personal representative, a trustee, an attorney in fact or agent acting under a power of attorney, or any other person authorized to act as a fiduciary with respect to the property of another person.

(9) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(10) Notwithstanding Section 311.005, Government Code, "person" means an individual, corporation, including a public corporation, business trust, partnership, limited liability company, association, joint venture, governmental entity, including a political subdivision, agency, or instrumentality, or any other legal entity.

(11) "Personal representative" has the meanings assigned by Sections 22.031 and 1002.028, Estates Code.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(13) "Survivorship property" means property held in the name of two or more persons under an arrangement in which, on the death of one of the persons, the property passes to and is vested in the other person or persons. The term includes:

(A) property held by an agreement described in Section 111.001, Estates Code;

(B) property held by a community property survivorship agreement defined in Section 112.001, Estates Code; and

(C) property in a joint account held by an agreement described in Section 113.151, Estates Code.

(14) "Trust" has the meaning assigned by Section 111.003.

(15) "Ward" has the meaning assigned by Section 22.033, Estates Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.003. APPLICABILITY OF CHAPTER.**

This chapter applies to disclaimers of any interest in or power over property, whenever created.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.004. CHAPTER SUPPLEMENTED BY OTHER LAW.**

(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.005. 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.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.006. POWER TO DISCLAIM BY PERSON OTHER THAN FIDUCIARY.**

(a) A person other than a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(b) A person other than a fiduciary may disclaim an interest or power under this section even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.007. POWER TO DISCLAIM POWER HELD IN FIDUCIARY CAPACITY BY PERSON DESIGNATED TO SERVE AS OR SERVING AS FIDUCIARY.**

(a) Subject to Subsection (b) and except to the extent the person's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a person designated to serve or serving as a fiduciary may disclaim, in whole or in part, any power over property, including a power of appointment and the power to disclaim, held in a fiduciary capacity.

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(b) If a power being disclaimed under Subsection (a) by a person designated to serve or serving as a trustee affects the distributive rights of any beneficiary of the trust:

(1) the person may disclaim only on or after accepting the trust;

(2) the disclaimer must be compatible with the trustee's fiduciary obligations; and

(3) if the disclaimer is made on accepting the trust, the trustee is considered to have never possessed the power disclaimed.

(c) A person designated to serve or serving as a fiduciary may disclaim a power under this section even if the creator of the power imposed a spendthrift provision or similar restriction on transfer.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

### **Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY.**

(a) Subject to this section and except to the extent the fiduciary's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a fiduciary acting in a fiduciary capacity may disclaim, in whole or in part, any interest in or power over property, including a power of appointment and the power to disclaim, that would have passed to the ward, estate, trust, or principal with respect to which the fiduciary was acting had the disclaimer not been made even if:

(1) the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or

(2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(b) Except as provided by Subsection (c), (d), or (f), a disclaimer by a fiduciary acting in a fiduciary capacity does not require court approval to be effective unless the instrument that created the fiduciary relationship requires court approval.

(c) The following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

(1) a disclaimer by a personal representative who is not an independent administrator or independent executor;

(2) a disclaimer by the trustee of a management trust created under Chapter 1301, Estates Code;

(3) a disclaimer by the trustee of a trust created under Section 142.005; or

(4) a disclaimer that would result in an interest in or power over property passing to the person making the disclaimer.

(d) A trustee acting in a fiduciary capacity may not disclaim an interest in property that would cause the interest in property not to become trust property unless:

(1) a court of competent jurisdiction approves the disclaimer; or

(2) the trustee provides written notice of the disclaimer in accordance with Section 240.0081.

(e) In the absence of a court-appointed guardian, without court approval, a natural guardian as described by Section 1104.051, Estates Code, may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(f) Unless a court of competent jurisdiction approves the disclaimer, a disclaimer by a fiduciary acting in a fiduciary capacity must be compatible with the fiduciary's fiduciary obligations. A disclaimer by a fiduciary acting in a fiduciary capacity is not a per se breach of the fiduciary's fiduciary obligations.

(g) Possible remedies for a breach of fiduciary obligations do not include declaring an otherwise effective disclaimer void or granting other legal or equitable relief that would make the disclaimer ineffective.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

### **Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE.**

(a) A trustee acting in a fiduciary capacity may disclaim an interest in property that would cause the interest in property not to become trust property without court approval if the trustee provides written notice of the disclaimer to all of the current

beneficiaries and presumptive remainder beneficiaries of the trust.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice under Subsection (a), a beneficiary is determined as of the date the notice is sent.

(c) In 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) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the trustee intends to disclaim an interest in property;

(B) if the trustee makes the disclaimer, the property will not become trust property and will not be available to distribute to the beneficiary from the trust;

(C) the beneficiary has the right to object to the disclaimer; and

(D) the beneficiary may petition a court to approve, modify, or deny the disclaimer;

(2) describe the interest in property the trustee intends to disclaim;

(3) specify the earliest date the trustee intends to make the disclaimer;

(4) include the name and mailing address of the trustee;

(5) be given not later than the 30th day before the date the disclaimer is made; and

(6) be sent by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the notice's receipt.

(g) A beneficiary is not considered to have accepted the disclaimed interest solely because the beneficiary acts or does not act on receipt of a notice provided under this section.

(h) If the trustee makes the disclaimer for which notice is provided under this section, the beneficiary does not lose the beneficiary's right, if any, to sue the trustee for breach of the trustee's fiduciary obligations in connection with making the disclaimer. Section 240.008(g) applies to remedies sought in connection with the alleged breach.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.**

(a) To be effective, a disclaimer must:

(1) be in writing;

(2) declare the disclaimer;

(3) describe the interest or power disclaimed;

(4) be signed by the person making the disclaimer; and

(5) be delivered or filed in the manner provided by Subchapter C.

(b) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(c) A disclaimer is irrevocable on the later of the date the disclaimer:

(1) is delivered or filed under Subchapter C; or  
(2) takes effect as provided in Sections 240.051-240.056.

(d) A disclaimer made under this chapter is not a transfer, assignment, or release.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER**

**Sec. 240.0501. DEFINITION.**

In this subchapter, "future interest" means an interest that:

(1) takes effect in possession or enjoyment, if at all, later than the time at which the instrument creating the interest becomes irrevocable; and

(2) passes to the holder of the interest at the time of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY.**

(a) This section and Sections 240.0511 and 240.0512 apply to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(b) If an interest in property passes because of the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect as of the time of the decedent's death; and

(B) relates back for all purposes to the time of the decedent's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) If an interest in property passes because of an event not related to the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect:

(i) as of the time the instrument creating the interest became irrevocable; or

(ii) in the case of an irrevocable transfer made without an instrument, at the time of the irrevocable transfer; and

(B) relates back for all purposes to the time the instrument became irrevocable or the time of the irrevocable transfer, as applicable; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(d) A disclaimed interest passes according to any provision in the instrument creating the interest that provides for:

(1) the disposition of the interest if the interest were to be disclaimed; or

(2) the disposition of disclaimed interests in general.

(e) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (d) and:

(1) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; or

(2) if the disclaimant is an individual:

(A) except as provided by Section 240.0511, if the interest is passing because of the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (b); or

(B) except as provided by Section 240.0512, if the interest is passing because of an event not related to the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (c).

(f) A disclaimed interest that passes by intestacy passes as if the disclaimant died immediately before the decedent.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL.**

(a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of the death of a



decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(A), the disclaimed interest passes only to the descendants of the disclaimant who survive the decedent; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(A), the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the decedent.

(b) If no descendant of the disclaimant survives the decedent, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the decedent, except that if the transferor's surviving spouse is living but remarried before the decedent's death, the transferor is considered to have died unmarried immediately before the decedent's death.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the decedent, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.0512. DISPOSITION OF INTEREST PASSING BECAUSE OF EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL.**

(a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of an event not related to the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(B), the disclaimed interest passes only to the descendants of the disclaimant living at the time of the event that causes the interest to pass; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(B), the disclaimed interest instead passes by representation to the descendants of the disclaimant living at the time of the event that causes the interest to pass.

(b) If no descendant of the disclaimant is living at the time of the event described by Subsection (a)(1), the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the event described by Subsection (a)(1), except that if the transferor's surviving spouse is living but remarried before the event, the transferor is considered to have died unmarried immediately before the event.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the time the disclaimer takes effect under Section 240.051(c)(1)(A), but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP PROPERTY.**

(a) On the death of a holder of survivorship property, a surviving holder may disclaim, in whole or in part, an interest in the property of the deceased holder that would have otherwise passed to the surviving holder by reason of the deceased holder's death.

(b) If an interest in survivorship property is disclaimed by a surviving holder of the property:

(1) the disclaimer:

(A) takes effect as of the time of the deceased holder's death; and

(B) relates back for all purposes to the time of the deceased holder's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) An interest in survivorship property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE.**

(a) If a trustee disclaims an interest in property that otherwise would have become trust property:

- (1) the interest does not become trust property;
- (2) the disclaimer:

(A) takes effect as of the time the trust became irrevocable; and

(B) relates back for all purposes to the time the trust became irrevocable; and

(3) the disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.

(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.

(c) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (b), the disclaimed interest passes as if:

(1) all of the current beneficiaries, presumptive remainder beneficiaries, and contingent beneficiaries of the trust affected by the disclaimer who are individuals died before the trust became irrevocable; and

(2) all beneficiaries of the trust affected by the disclaimer who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.

(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.054. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.**

(a) If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, this section applies.

(b) If the holder:

(1) has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable; or

(2) has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(c) The instrument creating the power is construed as if the power had expired when the disclaimer became effective.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.055. DISCLAIMER BY APPOINTEE OF, OR OBJECT OR TAKER IN DEFAULT OF EXERCISE OF, POWER OF APPOINTMENT.**

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.**

(a) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer subject to this section is effective as to another person designated to serve or serving as a fiduciary if:

(1) the disclaimer provides that it is effective as to another person designated to serve or serving as a fiduciary; and

(2) the person disclaiming has the authority to bind the estate, trust, or other person for whom the person is acting.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.057. TAX QUALIFIED DISCLAIMER.**

(a) In this section, "Internal Revenue Code" has the meaning assigned by Section 111.004.

(b) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the Internal Revenue Code as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.058. PARTIAL DISCLAIMER BY SPOUSE.**

A disclaimer by a decedent's surviving spouse of an interest in property transferred as the result of the death of the decedent is not a disclaimer by the surviving spouse of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**SUBCHAPTER C. DELIVERY OR FILING**

**Sec. 240.101. DELIVERY OR FILING GENERALLY.**

(a) Subject to applicable requirements of this subchapter, a disclaimant may deliver a disclaimer by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the disclaimer's receipt.

(b) If a disclaimer is mailed to the intended recipient by certified mail, return receipt requested, at an address the disclaimant in good faith believes is likely to result in the disclaimer's receipt, delivery is considered to have occurred on the date of mailing regardless of receipt.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER INTESTATE SUCCESSION OR WILL.**

In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST.**

In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer must be delivered to the personal representative of the decedent's estate; or

(3) if no trustee or personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST.**

In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving, or, if no trustee is then serving, a disclaimer must be filed:

(A) with a court having jurisdiction to enforce the trust; or

(B) in the official public records of the county in which:

(i) the situs of administration of the trust is maintained; or

(ii) the settlor is domiciled or was domiciled on the date of the settlor's death; and

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY DESIGNATION.**

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) In the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(c) In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

(1) a disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) a disclaimer of an interest in real property must be recorded in the official public records of the county where the real property that is the subject of the disclaimer is located.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF SURVIVORSHIP PROPERTY.**

In the case of a disclaimer by a surviving holder of survivorship property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.107. DISCLAIMER BY OBJECT OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.**

In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.108. DISCLAIMER BY CERTAIN APPOINTEES.**

In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate, or the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES.**

In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided by Section 240.102, 240.103, or 240.104 as if the power disclaimed were an interest in property.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.110. DISCLAIMER OF POWER BY AGENT.**

In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*

**Sec. 240.111. RECORDING OF DISCLAIMER.**

If an instrument transferring an interest in or power over property subject to a disclaimer is required or authorized by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as that instrument. Except as otherwise provided by Section 240.105(c)(2), failure to file, record, or register the disclaimer does not affect the disclaimer's validity between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

**SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED**

**Sec. 240.151. WHEN DISCLAIMER BARRED OR LIMITED.**

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed by:

(A) taking possession of the interest; or

(B) exercising dominion and control over the interest;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) the interest sought to be disclaimed is sold under a judicial sale.

(c) The acceptance of an interest in property by a person in the person's fiduciary capacity is not an acceptance of the interest in the person's individual capacity and does not bar the person from disclaiming the interest in the person's individual capacity.

(d) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

(e) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of:

(1) a power over property that is barred by this section is ineffective; and

(2) an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under Subchapter B had the disclaimer not been barred.

(g) A disclaimer by a child support obligor is barred as to disclaimed property that could be applied to satisfy the disclaimant's child support obligations if those obligations have been:

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

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

(h) If Subsection (g) applies, the child support obligee to whom child support arrearages are owed may enforce the child support obligation against the disclaimant as to disclaimed property by a lien or by any other remedy provided by law.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015. See transitional note following Sec.240.001.*



Attachment 8 – 2015 Selected Amendments to the Texas Health & Safety Code

[The following excerpts reflect amendments made by HB 1337, HB 3070, HB 3074, SB 219, SB 988 and SB 1129.]

**Sec. 166.002. DEFINITIONS.**

In this chapter:

(1) [No change.]

(2) "Artificially administered [~~Artificial~~] nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the [~~stomach~~] (gastrointestinal tract[~~}]~~).

(3) – (9) [No change.]

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered [~~artificial~~] nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) [No change.]

(12) "Physician" means:

(A) a physician licensed by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~]; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) – (15) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015.*

**Sec. 166.003. WITNESSES.**

In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

(1) each witness must be a competent adult; and

(2) at least one of the witnesses must be a person who is not:

(A) a person designated by the declarant to make a health care or treatment decision;

(B) a person related to the declarant by blood or marriage;

(C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(D) the attending physician;

(E) an employee of the attending physician;

(F) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant 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

(G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015.*

**Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE.**

(a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) an assisted living [~~a personal care~~] facility; and

(5) a special care facility.

(b) – (g) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE.**

(a) – (b) [No change.]

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN.**

In this chapter:

(a) – (b) [No change.]

(c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a health care or treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

(d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015.*

**Sec. 166.033. FORM OF WRITTEN DIRECTIVE.**

A written directive may be in the following form:

**DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES**

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance

planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

**DIRECTIVE**

I, \_\_\_\_\_, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

- \_\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
- \_\_\_\_\_ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

- \_\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
- \_\_\_\_\_ I request that I be kept alive in this irreversible condition using available life-



sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered [~~artificial~~] nutrition and hydration [~~fluids~~], intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make health care or treatment decisions with my physician compatible with my personal values:

1. \_\_\_\_\_
2. \_\_\_\_\_

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed \_\_\_\_\_ Date \_\_\_\_\_ City, County, State of Residence \_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against

the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 \_\_\_\_\_ Witness 2 \_\_\_\_\_

Definitions:

"Artificially administered [~~Artificial~~] nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the [~~stomach~~] (~~gastrointestinal tract~~).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and [~~artificial~~] hydration [~~and nutrition~~]. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to

provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015.*

**Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION.**

(a) – (f) [No change.]

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Chapter 1251, Estates [Section 875, Texas Probate] Code. The court may waive applicable fees in that proceeding.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.046. WITNESSES.**

(a) [No change.]

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;

(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;

(3) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department [Texas Health Care Information Council] under Section 166.053; and

(4) is entitled to:

(A) attend the meeting; ~~and~~

(B) receive a written explanation of the decision reached during the review process;

(C) receive a copy of the portion of the patient's medical record related to the treatment received by the patient in the facility for the lesser of:

(i) the period of the patient's current admission to the facility; or

(ii) the preceding 30 calendar days;  
and

(D) receive a copy of all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (C).

(c) The written explanation required by Subsection (b)(4)(B) [(b)(2)(B)] must be included in the patient's medical record.

(d) [No change.]

(e) If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee [review process] has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after both the written decision and the patient's medical record required under Subsection (b) are [is] provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g), except that

artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1) hasten the patient's death;

(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment;

(3) result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment;

(4) be medically ineffective in prolonging life;

or

(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(f) – (h) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015. Sec. 8 of HB 3074 provides: "The change in law made by this Act applies only to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after April 1, 2016. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before April 1, 2016, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

### **Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER.**

(a) In cases in which the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment[;]\* for yourself as the patient or on behalf of the patient, as applicable, which the attending physician believes is not medically appropriate. This information is being provided to help

you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, [~~of the~~] Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services [~~Texas Health Care Information Council~~]. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until the patient [~~he or she~~] can be transferred to a willing provider for up to 10 days from the time you were given both the committee's written decision that life-sustaining treatment is not appropriate and the patient's medical record. The patient will continue to be given after the 10-day period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition

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and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 10-day period if the court finds that there is a reasonable expectation that you may find a physician or health care facility willing to provide life-sustaining treatment [~~will be found~~] if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

\*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered [~~artificial~~] nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment\* for yourself as the patient or on behalf of the patient, as applicable, and the attending physician disagrees with and refuses to comply with that request. The information is being provided to help

you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, [~~of the~~] Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services [~~Texas Health Care Information Council~~]. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

\*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered [~~artificial~~] nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to

provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 435 (HB 3074), effective September 1, 2015.*

**Sec. 166.053. WITNESSES.**

(a) The department [~~Texas Health Care Information Council~~] shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the department [~~council~~] they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) [No change.]

(c) The department [~~Texas Health Care Information Council~~] shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients [~~and shall provide a clearly identifiable link from its home page to the registry page~~]. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Department of State Health Services [~~Texas Health Care Information Council~~] their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Department of State Health Services [~~Texas Health Care Information Council~~] nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.081. DEFINITIONS.**

In this subchapter:

(1) [No change.]

(2) "DNR identification device" means an identification device specified by department rule [~~the board~~] under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.

(3) – (5) [No change.]

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule [~~the board~~] under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by department rule [~~the board~~] under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) – (9) [No change.]

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the executive commissioner [~~board~~] under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS.**

(a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule [~~the board~~].

In this subchapter:

(b) – (e) [No change.]

(f) The executive commissioner [~~board~~], on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER.**

(a) A written out-of-hospital DNR order shall be in the standard form specified by department [~~board~~] rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by department rule [~~the board~~] must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner [~~board~~] determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The executive commissioner [~~board~~] may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION.**

(a) – (d) [No change.]

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by department rule [~~the board~~].

(f) [No change.]

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Chapter 1251, Estates [~~Section 875, Texas Probate~~] Code. The court may waive applicable fees in that proceeding.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER.**

(a) – (g) [No change.]

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified

relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] be initiated or continued.

(i) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.090. DNR IDENTIFICATION DEVICE.**

(a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by department [~~board~~] rule adopted under Section 166.101.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER.**

(a) [No change.]

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner [~~board~~] and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY**

**RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES.**

(a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE.**

A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] from a person in accordance with this subchapter.

**Sec. 166.097. CRIMINAL PENALTY; PROSECUTION.**

(a) [No change.]

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person,

with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule [~~the board~~] to be withheld from the other person with the result that the other person's death is hastened.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.098. PREGNANT PERSONS.**

A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] under this subchapter from a person known by the responding health care professionals to be pregnant.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.**

This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~].

**Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER [BOARD].**

(a) The executive commissioner [~~board~~] shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.



(b) The rules adopted [~~by the board~~] under Subsection (a) are not effective until approved by the Texas Medical [State] Board [of Medical Examiners].

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the executive commissioner [board].

(d) The executive commissioner [board] by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the executive commissioner [board] from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the executive commissioner [board] for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1 (SB 219), effective April 2, 2015.*

**Sec. 242.019. GUARDIANSHIP ORDERS.**

An institution shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An institution that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 724 (HB 1337), effective September 1, 2015. Sec. 4(a) of HB 1337 provides: "An institution is not required to comply with Section 242.019, Health and Safety Code, as added by this Act, before January 1, 2016."*

**Sec. 247.070. GUARDIANSHIP ORDERS.**

An assisted living facility shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An assisted living facility that receives a copy of a court order appointing a guardian

of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 724 (HB 1337), effective September 1, 2015. Sec. 4(b) of HB 1337 provides: "An assisted living facility is not required to comply with Section 247.070, Health and Safety Code, as added by this Act, before January 1, 2016."*

**Sec. 260A.007. INVESTIGATION AND REPORT OF DEPARTMENT.**

(a) – (d) [No change.]

(e) In investigating the report of abuse, neglect, exploitation, or other complaint, the investigator for the department shall:

(1) make an unannounced visit to the facility to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;

(2) interview each available witness, including the resident who suffered the alleged abuse, neglect, or exploitation if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse, neglect, exploitation, or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse, neglect, exploitation, or other complaint and that may be objectively observed;

(4) make a photographic record of any injury to a resident, subject to Subsection (n); [~~and~~]

(5) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse, neglect, or exploitation and any other resident interviewed in the investigation; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation; and

(6) for a resident of an institution or assisted living facility, inspect any court order appointing a guardian of the resident who was the subject of the alleged abuse, neglect, or exploitation that is

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maintained in the resident's medical records under Section 242.019 or 247.070.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 724 (HB 1337), effective September 1, 2015.*

**Sec. 574.045. TRANSPORTATION OF PATIENT.**

(a) – (k) [No change.]

(l) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 674 (SB 1129), effective June 17, 2015.*

**Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER.**

(a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-1) are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings; ~~[or]~~
- (6) any one or more of the duly qualified executors or administrators of the decedent's estate; or
- (7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(a-1) – (a-2) [No change.]

(a-3) A person exercising the right to control the disposition of remains under Subsection (a), other than a duly qualified executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate. When an executor or administrator exercises the right to control the

disposition of remains under Subsection (a)(6), the decedent's estate is liable for the reasonable cost of interment, and the executor or administrator is not individually liable for that cost.

(b) The written instrument referred to in Subsection (a)(1) may ~~[shall]~~ be in substantially the following form:

**APPOINTMENT FOR ~~[OF AGENT TO CONTROL]~~ DISPOSITION OF REMAINS**

I, \_\_\_\_\_ (your name and address) being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_ (name of agent) in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

**SPECIAL DIRECTIONS:**

Set forth below are any special directions limiting the power granted to my agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AGENT:**

Name:  
Address:  
Telephone Number:  
~~[Acceptance of Appointment:]~~  
~~[(signature of agent)]~~  
~~[Date of Signature:]~~

**SUCCESSORS:**

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if I divorce my agent or successor agent and this instrument does not state that the divorced agent or successor agent continues to serve after my divorce from that agent or successor agent, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

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

1. First Successor

Name:

Address:

Telephone Number:

~~[Acceptance of Appointment:~~

~~[(signature of first successor)~~

~~[Date of Signature:]~~

2. Second Successor

Name:

Address:

Telephone Number:

~~[Acceptance of Appointment:~~

~~[(signature of second successor)~~

~~[Date of Signature:]~~

**DURATION:**

This appointment becomes effective upon my death.

**PRIOR APPOINTMENTS REVOKED:**

I hereby revoke any prior appointment of any person to control the disposition of my remains.

**RELIANCE:**

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

**ASSUMPTION:**

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

**SIGNATURES:**

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate

acceptance of the appointment by signing below before acting as my agent.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 [19]\_\_\_\_.

(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:

**ACCEPTANCE AND ASSUMPTION BY AGENT:**

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment:

(signature of agent)

Date of Signature:

Acceptance of Appointment:

(signature of first successor)

Date of Signature:

Acceptance of Appointment:

(signature of second successor)

Date of Signature:

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as

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an agent or successor agent in the instrument is revoked on the divorce of the decedent and the spouse appointed as an agent or successor agent [wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged]. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) – (f) [No change.]

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) – (k) [No change.]

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19, Penal Code, that involves family violence against the decedent. A person regulated under Chapter 651, Occupations Code, who knowingly allows the person charged with a crime to control the disposition of the decedent's remains in violation of this subsection commits a prohibited practice under Section 651.460, Occupations Code, and the Texas Funeral Service Commission may take disciplinary action or assess an administrative penalty against the regulated person under that chapter.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1103 (HB 3070), effective September 1, 2015. Secs. 2 and 3 of HB 3070 provide:*

*SECTION 2. Section 711.002, Health and Safety Code, as amended by this Act, applies only to the validity of a document executed on or after the effective date of this Act. The validity of a document executed before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.*

*SECTION 3. (a) Except as otherwise provided in this section, the changes in law made by this Act apply to:*

*(1) an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, created before, on, or after the effective date of this Act; and*

*(2) a judicial proceeding concerning an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, that:*

*(A) commences on or after the effective date of this Act; or*

*(B) is pending on the effective date of this Act.*

*(b) If the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, that is pending on the effective date of this Act or prejudice the rights of a party to the proceeding, the provision of this Act does not apply, and the law in effect immediately before the effective date of this Act applies in those circumstances.*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 619 (SB 988), effective June 16, 2015.*

Attachment 9 – Other Selected 2015 Amendments

[The following excerpts reflect amendments made by HB 634, HB 831, HB 1438, HB 1692, HB 1923, SB 478, SB 512, SB 534, SB 752, SB 859, SB 1116, SB 1369, SB 1876.]

**BUSINESS & COMMERCE CODE**

**Sec. 24.002. DEFINITIONS.**

In this chapter:

(1) – (11) [No change.]

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Chapter 240, ~~[Section 37A, Texas Probate Code, or Section 112.010,]~~ Property Code.

(13) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**BUSINESS ORGANIZATIONS CODE**

**Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY.**

(a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a limited liability company; or

(2) a power of attorney granted by:

(A) a person as a member of or assignee of a membership interest in a limited liability company; or

(B) a person seeking to become a member of or assignee of a membership interest in a limited liability company.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 23 (SB 859), effective September 1, 2015.*

**Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY.**

(a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or

(2) a power of attorney granted by:

(A) a person as a partner of or a transferee or assignee of a partnership interest in a partnership; or

(B) a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the partnership, a partner of the partnership, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 23 (SB 859), effective September 1, 2015.*

**CIVIL PRACTICE & REMEDIES CODE**

**Sec. 71.051. FORUM NON CONVENIENS.**

In this chapter:

(a) – (d) [No change.]

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state or a derivative claimant of a legal resident of this state. The determination of whether a claim may be stayed or dismissed under Subsection (b) shall be made with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed under Subsection (b) and without regard to a plaintiff's country of citizenship or national origin. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court shall consider the factors provided by Subsection (b) and determine whether to deny the motion or to [may not] stay or dismiss the claim of any plaintiff who is not a [action under Subsection (b) if the plaintiffs who are] legal resident [residents] of this state [are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state].

(f) – (g) [No change.]

(h) For purposes of Subsection (e) [In this section]:

(1) "Derivative claimant" means a person whose damages were caused by personal injury to or the wrongful death of another ["Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section].

(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death. [In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery.] The term does not include;

(A) a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury; or

(B) a representative, administrator, guardian, or next friend who is not otherwise a derivative claimant of a legal resident of this state [~~or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section].~~

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 537 (HB 1692), effective June 16, 2015. Sec. 2 of HB 1692 provides: "The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

**Sec. 151.003. QUALIFICATIONS OF JUDGE.**

The special judge must be a retired or former district court, statutory county court, statutory probate court, or appellate court judge who:

(1) has served as a judge for at least four years in a district court, statutory county court, statutory probate court, or appellate court;

(2) has developed substantial experience in the judge's [his] area of specialty;

(3) has not been removed from office or resigned while under investigation for discipline or removal; and

(4) annually demonstrates completion [that he has completed] in the past calendar year of at least five days of continuing legal education in courses approved by the state bar or the supreme court.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1049 (HB 1923), effective September 1, 2015. Sec. 2 of HB 1923 provides: "This Act applies only to a referral of a case to a special judge under Chapter 151, Civil Practice and Remedies Code, made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law applicable to the referral immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

**CODE OF CRIMINAL PROCEDURE**

**Art. 26.041. PROCEDURES RELATED TO GUARDIANSHIPS.**

(a) In this article:

(1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.

(b) A guardian who provides a court with letters of guardianship for a defendant may:

(1) provide information relevant to the determination of indigency; and

(2) request that counsel be appointed in accordance with this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 688 (HB 634), effective September 1, 2015. Sec. 6 of HB 634 provides: "Article 26.041, Code of Criminal Procedure, as added by this Act, applies to a defendant for whom indigency is at issue, regardless of whether the defendant is arrested before, on, or after the effective date of this Act."*

## **FINANCE CODE**

### **Sec. 59.006. DISCOVERY OF CUSTOMER RECORDS.**

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of:

(A) the investigation or prosecution of a criminal offense;

(B) the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code; or

(C) the assessment for or provision of guardianship services under Subchapter E, Chapter 161, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;

(5) a record request by a duly appointed receiver for the customer;

(6) an investigative demand or inquiry from a state legislative investigating committee;

(7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; [Ø]

(8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law; or

(9) a record request in connection with an investigation conducted under Section 1054.151, 1054.152, or 1102.001, Estates Code.

(b) – (g) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) of HB 1438 provides: "(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act."*

### **Sec. 343.103. DISCLOSURE OF MORTGAGE INFORMATION TO SURVIVING SPOUSE.**

(a) In this section:

(1) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(2) "Heir" has the meaning assigned by Section 22.015, Estates Code.

(3) "Mortgage servicer" and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) Not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from the surviving spouse of a mortgagor of the home loan, accompanied by the proof required under Subsection (c), the mortgage servicer shall provide the surviving spouse with information that the

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mortgagor would have received in a standard monthly statement, including:

(1) the current balance information, including the due dates and the amount of any installments;

(2) whether the loan is current and any amounts that are delinquent;

(3) any loan number; and

(4) the amount of any escrow deposit for taxes and insurance purposes.

(c) A surviving spouse must prove the person's status by providing:

(1) a death certificate of the mortgagor;

(2) an affidavit of disinterested witnesses that is in the form referenced in Section 203.002, Estates Code, including language stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death; and

(3) an affidavit signed by the surviving spouse stating that the surviving spouse is currently residing in the underlying mortgaged property as the primary residence.

(d) The request from the surviving spouse must also include a notice to the mortgage servicer that states in bold-faced, capital, or underlined letters: "THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8)."

(e) A mortgage servicer that provides the information as required under this section is not liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor as a result of providing this information to the surviving spouse.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 511 (HB 831), effective September 1, 2015.*

### **GOVERNMENT CODE**

#### **Sec. 22.019. PROMULGATION OF CERTAIN LANDLORD-TENANT FORMS.**

(a) The supreme court shall, as the court finds appropriate, promulgate forms for use by individuals representing themselves in residential landlord-tenant matters and instructions for the proper use of each form or set of forms.

(b) The forms and instructions must:

(1) be written in plain language that is easy to understand by the general public;

(2) clearly and conspicuously state that the form is not a substitute for the advice of an attorney;

(3) be made readily available to the general public in the manner prescribed by the supreme court; and

(4) be translated into the Spanish language, and the Spanish language translation of the form must either:

(A) state that the Spanish language-translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court, and that the English version of the form must be submitted to the court; or

(B) be incorporated into the English language form in a manner that is understandable to both the court and members of the public.

(c) The clerk of a court shall inform members of the public of the availability of the form as appropriate and make the form available free of charge.

(d) A court shall accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 600 (SB 478), effective September 1, 2015.*

#### **Sec. 22.020. PROMULGATION OF CERTAIN PROBATE FORMS.**

(a) In this section:

(1) "Probate court" has the meaning assigned by Section 22.007, Estates Code.

(2) "Probate matter" has the meaning assigned by Section 22.029, Estates Code.

(b) The supreme court shall, as the court considers appropriate, promulgate:

(1) forms for use by individuals representing themselves in certain probate matters, including forms for use in:

(A) a small estate affidavit proceeding under Chapter 205, Estates Code; and

(B) the probate of a will as a muniment of title under Chapter 257, Estates Code;

(2) a simple will form for:



(A) a married individual with an adult child;

(B) a married individual with a minor child;

(C) a married individual with no children;

(D) an unmarried individual with an adult child;

(E) an unmarried individual with a minor child; and

(F) an unmarried individual with no children; and

(3) instructions for the proper use of each form or set of forms.

(c) The forms and instructions:

(1) must be written in plain language that is easy to understand by the general public;

(2) shall be made readily available to the general public in the manner prescribed by the supreme court; and

(3) must be translated into the Spanish language as provided by Subsection (d).

(d) The Spanish language translation of a form must:

(1) state:

(A) that the Spanish language translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the probate court; and

(B) that the English language version of the form must be submitted to the probate court; or

(2) be incorporated into the English language version of the form in a manner that is understandable to both the probate court and members of the general public.

(e) Each form and its instructions must clearly and conspicuously state that the form is not a substitute for the advice of an attorney.

(f) The clerk of a probate court shall inform members of the general public of the availability of a form promulgated by the supreme court under this section as appropriate and make the form available free of charge.

(g) A probate court shall accept a form promulgated by the supreme court under this section

unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 602 (SB 512), effective September 1, 2015.*

**Sec. 25.0022 ADMINISTRATION OF STATUTORY PROBATE COURTS.**

(a) – (c) [No change.]

(d) The presiding judge shall:

(1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;

(2) advise local statutory probate court judges on case flow management practices and auxiliary court services;

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

(5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;

(7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;

(8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; ~~and~~

(9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case under Section 25.002201(a) or 25.00255, as applicable [the circumstances described by Section 25.002201(b)]; and

(10) require the local administrative judge for statutory probate courts in a county to ensure that all statutory probate courts in the county comply with Chapter 37.

(e) – (g) [No change.]

(h) Subject to Section 25.002201, a judge or a former or retired judge of a statutory probate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1) a statutory probate judge requests assignment of another judge to the judge's court;

(2) a statutory probate judge is absent, disabled, or disqualified for any reason;

(3) a statutory probate judge is present or is trying cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;

(4) the office of a statutory probate judge is vacant;

(5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to hear a probate matter in a county court or statutory county court;

(6) the statutory probate ~~[presiding]~~ judge is ~~[of the administrative judicial district fails to timely assign a judge to replace a]~~ recused or disqualified ~~[statutory probate court judge]~~ as described by Section 25.002201(a) ~~[Section 25.002201(b)]~~;

(7) a county court judge requests the assignment of a statutory probate judge to hear a probate matter in the county court; or

(8) a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court.

(i) – (u) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) and (i) of HB 1438 provide: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.*

*(i) Sections 25.0022, 25.002201, 25.00255, and 26.012, Government Code, as amended by this Act, apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by*

*the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.”*

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015.*

**Sec. 25.002201. ASSIGNMENT OF JUDGE ON RECUSAL OR DISQUALIFICATION.**

(a) Except as provided by Subsection (b), not ~~[Not]~~ later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge ~~[of the administrative judicial district]~~ shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1) the judge of the statutory probate court recused himself or herself under Section 25.00255(g)(1)(A);

(2) the judge of the statutory probate court disqualified himself or herself under Section 25.00255(g-1);

(3) the order was issued under Section 25.00255(i-3)(1); or

(4) the presiding judge ~~[of the administrative judicial district]~~ receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(1).

(b) If the [presiding] judge who is the subject of an order of recusal or disqualification is [of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection,] the presiding judge of the statutory probate courts, the chief justice of the supreme court shall [may] assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case [instead of the presiding judge of the administrative judicial district making the assignment under that subsection].

(c) [Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 25.0022.*

**Sec. 25.00255. RECUSAL OR DISQUALIFICATION OF JUDGE.**

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

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

(2) may assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; and

(3) may not assign a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification [A party in a hearing or trial in a statutory probate court may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. The grounds may include any disability of the judge to preside over the case].

(a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil Procedure, or any other conflicting provision of the rules, the judge who hears a motion of recusal or disqualification, after notice and hearing, may:

(1) order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by another party if the judge determines that the motion was:

(A) groundless and filed in bad faith or for the purpose of harassment; or

(B) clearly brought for unnecessary delay and without sufficient cause; and

(2) enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

(b) – (f) [Repealed.]

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the

presiding judge order [request that] the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(g-1) A judge who disqualifies himself or herself:

(1) shall enter an order of disqualification and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts; and

(2) may not take other action in the case.

(h) – (i-1) [Repealed.]

(i-2) A judge who hears a motion for recusal or disqualification [~~under Subsection (i) or (i-1)~~] may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) If a motion for recusal or disqualification is granted [~~after a hearing conducted as provided by Subsection (i) or (i-1)~~], the presiding judge [~~who heard the motion~~] shall transfer the case to another court or assign another judge to the case and:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of

one of the other statutory probate courts located in the county.

(i-4) [Repealed.]

(i-5) A judge assigned to hear a motion for recusal or disqualification [~~under Subsection (i)~~] is entitled to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022[~~, except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts~~].

(j) [Repealed.]

(k) [No change.]

(l) If a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B), (g-1)(1)(B), or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, the clerk shall immediately notify the presiding judge [~~of the administrative judicial district~~] and request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case.

(m) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 25.0022.*

**Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE, GUARDIANSHIP, AND MENTAL HEALTH MATTERS.**

If the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, a visiting judge shall be assigned in accordance with Section 25.0022(h).

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. See transitional note following Sec. 25.0022.*

**CHAPTER 36. JUDICIAL REPORTS**

**Sec. 36.001. DEFINITIONS. In this chapter:**

(1) "Competency evaluator" means a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual. The term includes physicians and

psychologists conducting examinations under Sections 1101.103 and 1101.104, Estates Code.

(2) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. See transitional note following Sec. 36.006.*

**Sec. 36.002. APPLICABILITY; CONFLICT OF LAW.**

(a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.

(b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. See transitional note following Sec. 36.006.*

**Sec. 36.003. EXEMPTION.**

The reporting requirements of Section 36.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) information made confidential under state or federal law, including applicable rules;

(3) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code; or

(4) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. See transitional note following Sec. 36.006.*

**Sec. 36.004. REPORT ON APPOINTMENTS.**

(a) In addition to a report required by other state law or rule, the clerk of each court in this state shall prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month. For a court that does not make an appointment in the preceding month, the clerk of the court must file a report indicating that no appointment was made by the court in that month. The report on court appointments must include:

(1) the name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;

(2) the name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;

(3) the number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that month;

(4) the number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that month;

(5) the total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that month and the source of the compensation; and

(6) if the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

(b) Not later than the 15th day of each month, the clerk of a court shall:

(1) submit a copy of the report to the Office of Court Administration of the Texas Judicial System; and

(2) post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

(c) The Office of Court Administration of the Texas Judicial System shall prescribe the format that courts and the clerks of the courts must use to report the information required by this section and shall post the information collected under Subsection (b) on the office's Internet website.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. See transitional note following Sec. 36.006.*

**Sec. 36.005. FAILURE TO REPORT.**

If a court in this state fails to provide to the clerk of the court the information required for the report submitted under Section 36.004, the court is ineligible for any grant money awarded by this state or a state agency for the next state fiscal biennium.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. See transitional note following Sec. 36.006.*

**Sec. 36.006. TEXAS JUDICIAL COUNCIL RULES.**

The Texas Judicial Council shall, as the council considers appropriate, adopt rules to implement this chapter.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1199 (SB 1369), effective September 1, 2015. Secs. 2 and 3 of SB 1369 provide:*

*“SECTION 2. (a) The Office of Court Administration of the Texas Judicial System shall conduct a study on the feasibility of establishing a statewide uniform attorney ad litem billing system that would allow attorneys appointed by courts in this state to serve as attorneys ad litem in cases before the courts to enter on a standardized form information regarding the appointment type and duration, case information and activities, numbers of hours served under the appointment, and hourly rate or flat fee paid for the appointment.*

*“(b) The study conducted under this section shall examine:*

*“(1) the possible benefits to this state and to counties in this state of establishing a statewide uniform attorney ad litem billing system;*

*“(2) the number of attorneys in this state providing legal representation in court-appointed matters;*

*“(3) the number of hours spent in client representation activities by attorneys serving as attorneys ad litem;*

*“(4) the qualifications of attorneys serving as attorneys ad litem, including training and specialization;*

*“(5) whether using a standardized billing voucher would provide uniformity in the types of vouchers attorneys are currently required to submit to courts for payment; and*

“(6) *the amount of money spent on court-appointed legal representation by year, court, county, and person served, such as parent, child, or other.*

“(c) *Not later than December 31, 2016, the Office of Court Administration of the Texas Judicial System shall submit an electronic copy of the study conducted under this section to the governor, lieutenant governor, and speaker of the house of representatives.*

“(d) *This section expires September 1, 2017.*

“SECTION 3. Chapter 36, Government Code, as added by this Act, applies beginning with the state fiscal year that begins September 1, 2016.”

**CHAPTER 37. APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS**

**Sec. 37.001. APPLICABILITY; CONFLICT OF LAW.**

(a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute that is located in a county with a population of 25,000 or more.

(b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. Sec. 6 of SB 1876 provides: “Chapter 37, Government Code, as added by this Act, and Section 74.092, Government Code, as amended by this Act, apply only to the appointment of an attorney ad litem, guardian ad litem, mediator, or guardian made on or after the effective date of this Act. An appointment made before the effective date of this Act is governed by the law in effect on the date the appointment was made, and the former law is continued in effect for that purpose.”*

**Sec. 37.002. EXEMPTION.**

The appointment requirements of Section 37.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code;

(3) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code; or

(4) a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

**Sec. 37.003. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS.**

(a) In addition to a list required by other state law or rule, each court in this state shall establish and maintain the following lists:

(1) a list of all attorneys who are qualified to serve as an attorney ad litem and are registered with the court;

(2) a list of all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court;

(3) a list of all persons who are registered with the court to serve as a mediator; and

(4) a list of all attorneys and private professional guardians who are qualified to serve as a guardian as defined by Section 1002.012, Estates Code, and are registered with the court.

(b) A court may establish and maintain more than one of a list required under Subsection (a) that is categorized by the type of case and the person's qualifications.

(c) A local administrative judge, at the request of one or more of the courts the judge serves, shall establish and maintain the lists required under Subsection (a) for those courts. The local administrative judge may establish and maintain one set of lists for all of the requesting courts and may maintain for the courts more than one of a list as provided in Subsection (b).

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

**Sec. 37.004. APPOINTMENT OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS; MAINTENANCE OF LISTS.**

(a) Except as provided by Subsections (c) and (d), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person

whose name appears first on the applicable list maintained by the court as required by Section 37.003.

(b) In each case in which the appointment of a mediator is necessary because the parties to the case are unable to agree on a mediator, a court using a rotation system shall appoint the person whose name appears first on the mediator list maintained by the court as required under Section 37.003.

(c) The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court.

(d) On finding good cause, the court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person:

(1) possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case;

(2) has relevant prior involvement with the parties or case; or

(3) is in a relevant geographic location.

(e) A person who is not appointed in the order in which the person's name appears on the applicable list shall remain next in order on the list.

(f) After a person has been appointed as an attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list, the court shall place that person's name at the end of the list.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

### **Sec. 37.005. POSTING OF LISTS.**

A court annually shall post each list established under Section 37.003 at the courthouse of the county in which the court is located and on any Internet website of the court.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

### **Sec. 74.092. DUTIES OF LOCAL ADMINISTRATIVE JUDGE.**

~~[(a)]~~ A local administrative judge, for the courts for which the judge serves as local administrative judge, shall:

(1) implement and execute the local rules of administration, including the assignment, docketing, transfer, and hearing of cases;

(2) appoint any special or standing committees necessary or desirable for court management and administration;

(3) promulgate local rules of administration if the other judges do not act by a majority vote;

(4) recommend to the regional presiding judge any needs for assignment from outside the county to dispose of court caseloads;

(5) supervise the expeditious movement of court caseloads, subject to local, regional, and state rules of administration;

(6) provide the supreme court and the office of court administration requested statistical and management information;

(7) set the hours and places for holding court in the county;

(8) supervise the employment and performance of nonjudicial personnel;

(9) supervise the budget and fiscal matters of the local courts, subject to local rules of administration;

(10) coordinate and cooperate with any other local administrative judge in the district in the assignment of cases in the courts' concurrent jurisdiction for the efficient operation of the court system and the effective administration of justice;

(11) if requested by the courts the judge serves, establish and maintain the lists required by Section 37.003 and ensure appointments are made from the lists in accordance with Section 37.004 [a list of all attorneys qualified to serve as an attorney ad litem]; and

(12) perform other duties as may be directed by the chief justice or a regional presiding judge.

~~[(b) A list of attorneys ad litem maintained under Subsection (a)(11) must contain the names of all attorneys who:~~

~~[(1) meet any statutory or other requirements to serve as an attorney ad litem; and~~

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~~[(2) have registered to serve as attorney ad litem with a court for which the judge maintaining the list serves as local administrative judge.]~~

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

### **Sec. 74.092. DUTIES OF LOCAL ADMINISTRATIVE JUDGE.**

SECTION 4. Section 74.093, Government Code, is amended by adding Subsection (c-1) to read as follows:

(a) – (c) [No change.]

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the person's qualifications.

(d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015. See transitional note following Sec. 37.001.*

### ~~**Sec. 74.098. APPOINTMENT OF ATTORNEYS AD LITEM; MAINTENANCE OF LIST.**~~

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1223 (SB 1876), effective September 1, 2015.*

## **CHAPTER 80. DELIVERY OF NOTICE AND DOCUMENTS**

### **Sec. 80.001. DELIVERY OF NOTICE OR DOCUMENT.**

A court, justice, judge, magistrate, or clerk may send any notice or document by a method authorized by Section 80.002.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 257 (SB 1116), effective September 1, 2015.*

### **Sec. 80.002. AUTHORIZED DELIVERY OF NOTICE OR DOCUMENT.**

A court, justice, judge, magistrate, or clerk may send any notice or document using mail or electronic mail. This section applies to all civil and criminal statutes requiring delivery of a notice or document.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 257 (SB 1116), effective September 1, 2015.*

### **Sec. 80.003. ELECTRONIC MAIL ADDRESS.**

(a) If electronic mail is used to send a notice or document and the person who will receive the notice or document is registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, the court, justice, judge, magistrate, or clerk sending the notice or document must use the electronic mail address on file with the electronic filing system, if the court uses the electronic filing system.

(b) If electronic mail is used to send a notice or document and the person who will receive the notice or document is not registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, or the court does not use the electronic filing system, the court, justice, judge, magistrate, or clerk must use the electronic mail address provided by the person.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 257 (SB 1116), effective September 1, 2015.*

### **Sec. 80.004. MAIL.**

(a) The definition of mail in this chapter includes:

- (1) first-class mail;
- (2) first-class United States mail;
- (3) ordinary or regular mail; and
- (4) international first-class mail.

(b) The definition of mail in this chapter does not include:

- (1) any form of mail that requires proof of delivery;
- (2) certified mail;
- (3) certified mail or a comparable mailing method that provides proof of delivery;
- (4) certified mail, restricted delivery;
- (5) certified mail, return receipt requested;
- (6) delivery by the United States Postal Service using a signature confirmation service;
- (7) documents delivered by common or contract carriers, including Federal Express or United Parcel Service;



(8) express mail offered by the United States Postal Service;

(9) first-class mail, return receipt requested;

(10) freight mail;

(11) interagency mail;

(12) international registered mail, return receipt requested;

(13) mail, return receipt requested;

(14) personal service or hand delivery;

(15) prepaid registered mail;

(16) registered mail;

(17) registered mail, return receipt requested;

and

(18) certified or registered mail, restricted delivery, return receipt requested.

**Sec. 80.005. ELECTRONIC MAIL.**

(a) Authorized methods of delivering a notice or document by electronic mail include:

(1) electronic notice sent through the electronic filing system under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013;

(2) electronic notice;

(3) electronic mail messages;

(4) e-mail; and

(5) secure electronic mail.

(b) Authorized methods of delivering a notice or document by electronic mail do not include:

(1) facsimiles;

(2) instant messaging;

(3) messages on a social network website, including Facebook and Twitter;

(4) telegraphs;

(5) telephone messages;

(6) text messages;

(7) videoconferencing;

(8) voice messages; or

(9) webcams.

*Added by Acts 2015, 84<sup>th</sup> Legislature, Ch. 257 (SB 1116), effective September 1, 2015.*

**Sec. 82.037. OATH OF ATTORNEY.**

(a) Each person admitted to practice law shall, before receiving a license, take an oath that the person will:

(1) support the constitutions of the United States and this state;

(2) honestly demean oneself [~~himself~~] in the practice of law; [~~and~~]

(3) discharge the attorney's duty to the attorney's [~~his~~] client to the best of the attorney's ability; and

(4) conduct oneself with integrity and civility in dealing and communicating with the court and all parties.

(b) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 17 (SB 534), effective May 15, 2015.*

**Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY SERVICES; GUARDIANSHIPS.**

(a) Except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code, shall obtain from the department criminal history record information maintained by the department that relates to:

(1) a private professional guardian;

(2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;

(3) each person employed by a private professional guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate;

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or

(5) any other person proposed to serve as a guardian under Title 3, Estates [~~Chapter XIII, Texas~~]

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~~Probate~~] Code, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.

(a-1) – (d) [No change.]

(e) The court, as that term is defined by Section 1002.008, Estates ~~[601, Texas Probate]~~ Code, shall use the information obtained or provided under Subsection (a), (a-4)(1), (a-5), or (a-6) only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services; or

(2) appoint any other person proposed to serve as a guardian under Title 3, Estates ~~[Chapter XIII, Texas Probate]~~ Code, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.

(f) – (i) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1031 (HB 1438), effective September 1, 2015. Sec. 38(a) of HB 1438 provides: “(a) Except as otherwise provided by this section, the changes in law made by this Act apply to:*

*(1) a guardianship created before, on, or after the effective date of this Act; and*

*(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.”*

### **Sec. 501.010. VISITORS.**

(a) In this section:

(1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.

(a-1) The institutional division shall allow the governor, members of the legislature, and members of the executive and judicial branches to enter at proper hours any part of a facility operated by the division where inmates are housed or worked, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with inmates away from institutional division employees.

(b) [No change.]

(b-1) The uniform visitation policy must:

(1) allow visitation by a guardian of an inmate to the same extent as the inmate's next of kin, including placing the guardian on the inmate's approved visitors list on the guardian's request and providing the guardian access to the inmate during a facility's standard visitation hours if the inmate is otherwise eligible to receive visitors; and

(2) require the guardian to provide the warden with letters of guardianship before being allowed to visit the inmate.

(c) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 688 (HB 634), effective September 1, 2015.*

### **Sec. 507.030. VISITORS.**

(a) In this section:

(1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.

(a-1) The state jail division shall allow the governor, members of the legislature, and officials of the executive and judicial branches to enter during business hours any part of a facility operated by the division, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with defendants away from division employees.

(b) The state jail division shall establish a visitation policy for persons confined in state jail felony facilities. The visitation policy must:

(1) allow visitation by a guardian of a defendant confined in a state jail felony facility to the same extent as the defendant's next of kin, including placing the guardian on the defendant's approved visitors list on the guardian's request and providing the guardian access to the defendant during a facility's standard visitation hours if the defendant is otherwise eligible to receive visitors; and

(2) require the guardian to provide the director of the facility with letters of guardianship before being allowed to visit the defendant.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 688 (HB 634), effective September 1, 2015.*

### **Sec. 511.009. GENERAL DUTIES.**

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant; ~~and~~

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; and

(20) adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a

guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 688 (HB 634), effective September 1, 2015.*

**Sec. 814.005. WAIVER OF BENEFITS.**

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. The retirement system also shall give effect as a waiver to a full or partial disclaimer executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code, unless the benefit to be disclaimed is a lifetime annuity. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

(b) – (d) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 834.005. DISCLAIMER OF BENEFITS.**

The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code, unless the benefit to be disclaimed is a lifetime annuity.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**Sec. 839.004. DISCLAIMER OF BENEFITS.**

The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code, unless the benefit to be disclaimed is a lifetime annuity.

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**INSURANCE CODE**

**Sec. 1551.259 ORDER OF PRECEDENCE OF PAYMENT TO SURVIVORS.**

(a) – (d) [No change.]

(e) The board of trustees shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code.

(f) – (g) [No change.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 562 (HB 2428), effective September 1, 2015.*

**TAX CODE**

**~~CHAPTER 211. INHERITANCE TAXES.~~**

[Repealed.]

*Amended by Acts 2015, 84<sup>th</sup> Legislature, Ch. 1161 (SB 752), effective September 1, 2015. Sec. 3 of SB 752 provides: "The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes."*