Texas Historical Statutes Project

Texas Probate Code 1984

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Texas Probate Code

WITH TABLE
AND INDEX

As Amended through the 1983 Regular and First Called Sessions of the 68th Legislature

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Texas Probate Code, Twelfth Edition

PREFACE

This Pamphlet contains the text of the Texas Probate Code, enacted by Acts 1955, 54th Leg., p. 88, ch. 55, as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Probate Code as enacted generally included the Chapter and Section headings which appear herein. The analyses of these headings in the Table of Contents and at the beginning of each chapter, coupled with an editorially prepared Index, provide a quick and easy means of finding particular provisions of the Code.

A Disposition Table is included preceding the Code, thus providing a means of tracing former Probate Articles of the Civil Statutes into the Code.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
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1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

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Showing where provisions of former Probate Articles of the Civil Statutes are covered in the Texas Probate Code as incorporated herein.

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TEXAS PROBATE CODE

Acts 1955, 54th Leg., p. 88, ch. 55

Approved April 4, 1955, effective Jan. 1, 1956

CHAPTER I. GENERAL PROVISIONS

§ 1. Short Title

This Act shall be known, and may be cited, as the "Texas Probate Code."

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 2. Effective Date and Application

(a) Effective Date. This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) Rights Not Affected. No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes

prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

(c) Subdivisions Have No Legal Effect. The division of this Code into Chapters, Parts, Sections, Subsections, and Paragraphs is solely for convenience and shall have no legal effect.

(d) Severability. If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable, and the Legislature hereby states that it would have enacted such portions of the Code which can lawfully be given effect regardless of the possible invalidity of other provisions of the Code.

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors, administrators, and guardians.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include an unrecognized, illegitimate child of the father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, liabilities against the estate of a minor or incompetent, and debts due such estates.

(d) "Corporate fiduciary" means a trust company or bank having trust powers, existing or doing business under the laws of this state or of the United States, which is authorized by law to act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, or, although without general depository powers, depository for any moneys paid into court, or to become sole guarantor or surety in or upon any bond required to be given under the laws of this state.

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

(j) "Distributee" denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) "Docket" means the probate docket.

(*l*) "Estate" denotes the real and personal property of a decedent or ward, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) "Exempt property" refers to that property of a decedent's estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) "Habitual drunkard" and "common drunkard" are synonymous and denote one who, by reason of the habitual use of intoxicating liquor or of drugs, is incapable of taking care of himself or managing his property and financial affairs.

(*o*) "Heirs" denote those persons, including the surviving spouse, who are entitled under the stat-

utes of descent and distribution to the estate of a decedent who dies intestate.

(p) "Incompetents" or "Incompetent persons" are persons non compos mentis, idiots, lunatics, insane persons, common or habitual drunkards, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(q) "Independent executor" means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term "independent executor" includes the term "independent administrator."

(r) "Interested persons" or "persons interested" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of a minor or incompetent ward.

(s) "Legacy" includes any gift or devise by will, whether of personalty or realty. "Legatee" includes any person entitled to a legacy under a will.

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

(u) "Minutes" means the probate minutes.

(v) "Mortgage" or "Lien" includes deed of trust, vendor's lien, chattel mortgage, mechanic's, materialman's or laborer's lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

(w) "Net estate" means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) "Person" includes natural persons and corporations.

(y) "Persons of unsound mind" are persons non compos mentis, idiots, lunatics, insane persons, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(z) "Personal property" includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, guardian, and temporary guardian, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to guardianship, as well as a matter or proceeding relating to the estate of a decedent, and proceedings regarding incompetents.

(cc) "Property" includes both real and personal property.

(dd) "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(ee) "Surety" includes both personal and corporate sureties.

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely appoints an executor or guardian, and a testamentary instrument which merely revokes another will.

(gg) The singular number includes the plural; the plural number includes the singular.

(hh) The masculine gender includes the feminine and neuter.

(ii) "Statutory probate court" refers to any statutory court presently in existence or created after the passage of this Act, the jurisdiction of which is limited by statute to the general jurisdiction of a probate court, and such courts whose statutorily designated name contains the word "probate." County courts at law exercising probate jurisdiction are not statutory probate courts under this Code unless their statutorily designated name includes the word "probate."

(jj) "Next of kin" includes an adopted child or his or her descendents and the adoptive parent of the adopted child.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 44, ch. 30, § 2, eff. Aug. 28, 1961; Acts 1969, 61st Leg., p. 1703, ch. 556, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1922, ch. 641, § 1, eff. June 12, 1969; Acts 1975, 64th Leg., p. 104, ch. 45, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1061, ch. 390, §§ 1, 2, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 1, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., ch. 390, which by §§ 1 to 8 amended subsecs. (q) and (aa) of this section, §§ 145, 147, 148, 149A(a), (b), and 150 and added § 154A, provided in §§ 9 and 10:

"Sec. 9. All other laws in conflict with this Act are hereby repealed to the extent they conflict.

"Sec. 10. This Act shall become effective September 1, 1977, and shall apply to estates of decedents who die intestate after September 1, 1977."

§ 4. Jurisdiction of County Court With Respect to Probate Proceedings

The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors and incompetents, grant letters testamentary and of administration

and guardianship, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration or guardianship, including the settlement, partition, and distribution of such estates. It may also appoint guardians for other persons where it is necessary that a guardian be appointed to receive funds from any governmental source or agency.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 5. Jurisdiction of District Court and Other Courts of Record With Respect to Probate Proceedings and Appeals from Probate Orders

(a) The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, limited guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion, or shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court, and it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, incapacitated persons, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, incapacitated persons, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons and to apprentice minors, as provided by law. Upon resolution of all pending contested matters, the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court. If a proceeding is transferred to a district court under this subsection, the clerk of the district court may perform in relation to the transferred proceeding any function a county clerk may perform in that type of proceeding.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, limited guardianships, and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In contested probate matters, the judge of the constitutional county court may on his own motion, and shall on the motion of any party to the proceeding, transfer the proceeding to the statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, which may then hear the proceeding as if originally filed in such court.

(d) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate. When a surety is called on to perform in place of an administrator or guardian, all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

(e) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 1684, ch. 610, § 1; Acts 1975, 64th Leg., p. 2195, ch. 701, § 2, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4122, ch. 647, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5434, ch. 1015, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1973 Act amended Section 21; § 3 thereof provided:

"Sec. 3. This Act takes effect only if a constitutional amendment [Acts 1973, 63rd Leg., p. 2471, S.J.R. No. 26, amending Const. art. 5, § 8] deleting the constitutional requirement that district courts shall have only appellate jurisdiction and general control over probate matters is submitted by the 63rd Legislature and is adopted by the qualified electors of this state."

It was so adopted at election held on November 6, 1973.

Section 2 of Acts 1983, 68th Leg., p. 5435, ch. 1015, provides:

"This Act applies retroactively as an authorization for, and validation of, actions taken before the effective date of this Act by a district clerk if the clerk performed functions in a probate proceeding that would have been permissible for a county clerk to perform."

§ 5A. Matters Appertaining and Incident to an Estate

(a) In proceedings in the constitutional county courts and statutory county courts at law, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills, and generally all matters relating

to the settlement, partition, and distribution of estates of wards and deceased persons.

(b) In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any guardianship, heirship proceeding, or decedent's estate, including estates administered by an independent executor. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. All statutory probate courts shall have the same powers over independent executors that are exercisable by the district courts. In situations where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court rather than in the district court.

[Acts 1979, 66th Leg., p. 1741, ch. 713, § 3, eff. Aug. 27, 1979.]

§ 5B. Transfer of Proceeding

A judge of a statutory probate court on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

[Acts 1983, 68th Leg., p. 5228, ch. 958, § 1, eff. Sept. 1, 1983.]

§ 6. Venue for Probate of Wills and Administration of Estates of Decedents

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

(a) In the county where the deceased resided, if he had a domicile or fixed place of residence in this State.

(b) If the deceased had no domicile or fixed place of residence in this State but died in this State, then either in the county where his principal property was at the time of his death, or in the county where he died.

(c) If he had no domicile or fixed place of residence in this State, and died outside the limits of this State, then in any county in this State where his nearest of kin reside.

(d) But if he had no kindred in this State, then in the county where his principal estate was situated at the time of his death.

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 7. Venue for Appointment of Guardians

A proceeding for the appointment of a guardian shall be begun:

(a) For the person and estate, or either, of a minor, in the county where his parents reside; provided such proceeding shall be begun:

(1) When the parents do not reside in the same county, then in the county where the parent having custody of the minor at the time resides.

(2) If only one parent is living, in the county where the surviving parent resides, if such parent has custody of the minor.

(3) If either or both parents are living, but no parent has custody of the minor, then in the county where such minor is found, or in the county where the principal estate of the minor is situated.

(4) If both parents are dead, but the minor was in the custody of a deceased parent, then in the county where the last surviving parent having custody resided.

(5) If both parents are dead, but, at the time of their death the minor was in the custody of a person other than a parent, then in the county where such minor is found, or in the county where his principal estate is situated.

(6) If both parents of a minor child or children die in a common disaster and there is no evidence that such parents died other than simultaneously, then in the county:

(A) Where both deceased parents resided at the time of their simultaneous deaths; or

(B) Where the bulk of such minor child or children's estate is situated; or

(C) Where such minor child or children are found.

(b) For the person and estate, or either, of an incompetent, in the county where such person resides, or where his principal estate is situated.

(c) Where a guardian has been appointed by will, in the county where the will has been admitted to probate, or in the county of the appointee's residence if he resides in Texas, or in the county in which the ward's principal estate is situated.

(d) For the estate of a person requiring the appointment of a guardian to receive funds from any governmental source or agency, in the county where such person resides.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1989, ch. 678, § 1, eff. June 12, 1969.]

§ 8. Concurrent Venue and Transfer of Proceedings

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

(b) Proceedings in More Than One County. If proceedings for probate are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and proceedings shall thereupon be had in the proper county in the same manner as if the proceedings had originally been instituted therein.

(c) Transfer of Proceeding.

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

(2) Transfer for Convenience of the Estate. If it appears to the court at any time before the final decree that it would be for the best interest of the estate, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State. The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the entries in the minutes that relate to the proceeding.

(d) Validation of Prior Proceedings. When a proceeding is transferred to another county under any provision of this Section of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 4754, ch. 833, § 1, eff. Sept. 1, 1983.]

§ 9. Defects in Pleading

No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 10. Persons Entitled to Contest Proceedings

Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 11. Applications and Other Papers to be Filed With Clerk

All applications for probate proceedings, complaints, petitions and all other papers permitted or required by law to be filed in the court in probate matters, shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number, and his official signature.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 12. Costs and Security Therefor

(a) Applicability of Laws Regulating Costs. The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

(b) Security for Costs Required, When. When any person other than the personal representative of an estate files an application, complaint, or opposition in relation to the estate, he may be required by the clerk to give security for the probable cost of such proceeding before filing the same; or any one interested in the estate, or any officer of the court, may, at any time before the trial of such application, complaint, or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the probable costs of such proceeding. The rules governing civil suits in the county court respecting this subject shall control in such cases.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 13. Judge's Probate Docket

The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator or guardian of such estate or person, or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 14. Claim Docket

The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator or guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 15. Probate Minutes and Papers to be Recorded Therein

The county clerk shall keep a record book styled "Probate Minutes," and shall enter therein in full all orders, judgments, decrees, and proceedings of the court, together with the following:

(a) All applications for the probate of wills and for the granting of administration or guardianship.

(b) All citations and notices, whether published or posted, with the returns thereon.

(c) All wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded.

(d) All bonds and official oaths.

(e) All inventories, appraisements, and lists of claims.

(f) All exhibits and accounts.

(g) All reports of hiring, renting, or sale.

(h) All applications for sale or partition of real estate and reports of sale and of commissioners of partition.

(i) All applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money.

(j) All reports of lending or investing money.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 16. Probate Fee Book

The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable therefor, and the date on which any such costs or fees are paid.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 17. Index

The county clerk shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his custody.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 18. Use of Records as Evidence

The record books described in preceding Sections of this Code, or certified copies thereof, shall be evidence in any court of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 19. Call of the Dockets

The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents, minors and incompetents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 20. Clerk May Set Hearings

Whenever, on account of the county judge's absence from the county seat, or his being on vacation, disqualified, ill, or deceased, such judge is unable to designate the time and place for hearing a probate matter pending in his court, authority is hereby vested in the county clerk of the county in which such matter is pending to designate such time and place, entering such setting on the judge's docket and certifying thereupon why such judge is not acting by himself. If, after service of such notices and citations as required by law with reference to such time and place of hearing has been perfected, no qualified judge is present for the hearing, the same shall automatically be continued from day to day until a qualified judge is present to hear and determine the matter.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 21. Trial by Jury

In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 1685, ch. 610, § 2.]

For effectiveness of 1973 Act, see note set out under § 5.

§ 22. Evidence

In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 23. Decrees and Signing of Minutes

All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court except in cases where it is otherwise specially provided. The probate minutes shall be approved and signed by the judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, such approval shall be entered on the preceding or succeeding day.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 24. Enforcement of Orders

The county or probate judge may enforce obedience to all his lawful orders against executors, administrators and guardians by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 25. Executions

Executions in probate matters shall be directed "to any sheriff or any constable within the State of Texas," made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 26. Attachments for Property

Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent, minor or incompetent that the executor or administrator or guardian is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further

orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator or guardian of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided, however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 27. Enforcement of Specific Performance

When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 28. Personal Representative to Serve Pending Appeal of Appointment

Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975.]

§ 29. Appeal Bonds of Personal Representatives

When an appeal is taken by an executor, administrator, or guardian, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 30. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

§ 31. Bill of Review

Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment. Persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to apply for a bill of review.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 32. Common Law Applicable

The rights, powers and duties of executors, administrators, and guardians shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 33. Issuance, Contents, Service, and Return of Citation, Notices, and Writs in Probate Matters

(a) When Citation or Notice Necessary. No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice; provided, however, that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require that notice be given, and prescribe the form and manner of service and return thereof.

(b) Issuance by the Clerk or by Personal Representative. The county clerk shall issue necessary citations, writs, and process in probate matters, and all notices not required to be issued by personal representatives, without any order from the court,

unless such order is required by a provision of this Code.

(c) Contents of Citation, Writ, and Notice. Citation and notices issued by the clerk shall be signed and sealed by him, and shall be styled "The State of Texas." Notices required to be given by a personal representative shall be in writing and shall be signed by the representative in his official capacity. All citations and notices shall be directed to the person or persons to be cited or notified, shall be dated, and shall state the style and number of the proceeding, the court in which it is pending, and shall describe generally the nature of the proceeding or matter to which the citation or notice relates. No precept directed to an officer is necessary. A citation or notice shall direct the person or persons cited or notified to appear by filing a written contest or answer, or to perform other acts required of him or them and shall state when and where such appearance or performance is required. No citation or notice shall be held to be defective because it contains a precept directed to an officer authorized to serve it. All writs and other process except citations and notices shall be directed "To any sheriff or constable within the State of Texas," but shall not be held defective because directed to the sheriff or any constable of a specific county if properly served within the named county by such officer.

(d) Where No Specific Form of Notice, Service, or Return is Prescribed, or When Provisions Are Insufficient or Inadequate. In all situations in which this Code requires that notice be given, or that a person be cited, and in which a specific method of giving such notice or of citing such person, or a specific method of service and return of such citation or notice is not given, or an insufficient or inadequate provision appears with respect to any of such matters, or when any interested person so requests, such notice or citation shall be issued, served, and returned in such manner as the court, by written order, shall direct in accordance with this Code and the Texas Rules of Civil Procedure, and shall have the same force and effect as if the manner of service and return had been specified in this Code.

(e) Service of Citation or Notice Upon Personal Representatives. Except in instances in which this Code expressly provides another method of service, any notice or citation required to be served upon any personal representative or receiver shall be served by the clerk issuing such citation or notice. The clerk shall serve the same by sending the original thereof by registered or certified mail to the attorney of record for the personal representative or receiver, but if there is no attorney of record, to the personal representative or receiver.

(f) Methods of Serving Citations and Notices.

(1) Personal Service. Where it is provided that personal service shall be had with respect to a citation or notice, any such citation or notice must be served upon the attorney of record for the person to be cited. Notwithstanding the requirement of personal service, service may be made upon such attorney by any of the methods hereinafter specified for service upon an attorney. If there is no attorney of record in the proceeding for such person, or if an attempt to make service upon the attorney was unsuccessful, a citation or notice directed to a person within this State must be served by the sheriff or constable upon the person to be cited or notified, in person, by delivering to him a true copy of such citation or notice at least ten (10) days before the return day thereof, exclusive of the date of service. Where the person to be cited or notified is absent from the State, or is a nonresident, such citation or notice may be served by any disinterested person competent to make oath of the fact. Said citation or notice shall be returnable at least ten (10) days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to same; it shall show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer, and returned to the county clerk who issued same. If in either case such citation or notice is returned with the notation that the person sought to be served, whether within or without this State, cannot be found, the clerk shall issue a new citation or notice directed to the person or persons sought to be served and service shall be by publication.

(2) Posting. When citation or notice is required to be posted, it shall be posted by the sheriff or constable at the courthouse door of the county in which the proceedings are pending, or at the place in or near the courthouse where public notices customarily are posted, for not less than ten (10) days before the return day thereof, exclusive of the date of posting. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or any constable of the proper county, who shall post said copy as herein prescribed and return the original to the clerk, stating in a written return thereon the time when and the place where he posted such copy. The date of posting shall be the date of service. When posting of notice by a personal representative is authorized or required, the method herein prescribed shall be followed, such notices to be issued in the name of the representative, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

(3) Publication. When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceedings are pending,

and said publication shall be not less than ten (10) days before the return day thereof, exclusive of the date of publication. The date of publication which said newspaper bears shall be the date of service. If no newspaper is published, printed, or of general circulation, in the county where citation or notice is to be had, service of such citation or notice shall be by posting.

(4) Mailing.

(A) When any citation or notice is required or permitted to be served by registered or certified mail, other than notices required to be given by personal representatives, the clerk shall issue such citation or notice and shall serve the same by sending the original thereof by registered or certified mail. Any notice required to be given by a personal representative by registered or certified mail shall be issued by him, and he shall serve the same by sending the original thereof by registered or certified mail. In either case the citation or notice shall be mailed with instructions to deliver to the addressee only, and with return receipt requested. The envelope containing such citation or notice shall be addressed to the attorney of record in the proceeding for the person to be cited or notified, but if there is none, or if returned undelivered, then to the person to be cited or notified. A copy of such citation or notice, together with the certificate of the clerk, or of the personal representative, as the case may be, showing the fact and date of mailing, shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When any citation or notice is required or permitted to be served by ordinary mail, the clerk, or the personal representative when required by statute or by order of the court, shall serve the same by mailing the original to the person to be cited or notified. A copy of such citation or notice, together with a certificate of the person serving the same showing the fact and time of mailing, shall be filed and recorded.

(C) When service is made by mail, the date of mailing shall be the date of service. Service by mail shall be made not less than twenty (20) days before the return day thereof, exclusive of the date of service.

(D) If a citation or notice served by mailing is returned undelivered, a new citation or notice shall be issued, and such citation or notice shall be served by posting.

(g) Return of Citation or Notice. All citations and notices issued by the clerk and served by personal service, by mail, by posting, or by publication, shall be returnable to the court from which issued on the first Monday after the service is perfected.

(h) Sufficiency of Return in Cases of Posting. In any probate matter where citation or notice is required to be served by posting, and such citation or notice is issued in conformity with the applicable provision of this Code, the citation or notice and the service and return thereof shall be sufficient and valid if any sheriff or constable posts a copy or copies of such citation or notice at the place or places prescribed by this Code on a day which is sufficiently prior to the return day named in such citation or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day of such citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time elapses for which such citation or notice is required to be posted, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof, even though such return is made, and such citation or notice is returned into court, on the same day it is issued.

(i) Proof of Service. Proof of service in all cases requiring notice or citation, whether by publication, posting, mailing, or otherwise, shall be filed before the hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the affidavit of the person. Proof of service by publication shall be made by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied in it a copy of the published notice or citation. In the case of service by mail, proof shall be made by the certificate of the clerk, or the affidavit of the personal representative or other person making such service, stating the fact and time of mailing. In the case of service by registered or certified mail, the return receipt shall be attached to the certificate, if a receipt has been returned.

(j) Request for Notice. At any time after an application is filed for the purpose of commencing any proceeding in probate, including, but not limited to, a proceeding for the probate of a will, grant of letters testamentary or of administration, determination of heirship, and the grant of letters of guardianship, any person interested in the estate or welfare of a ward, may file with the clerk a request in writing that he be notified of any and all, or of any specifically designated, motions, applications, or pleadings filed by any person, or by any particular persons specifically designated in the request. The fees and costs for such notices shall be borne by the person requesting them, and the clerk may require a deposit to cover the estimated costs of furnishing such person with the notice or notices requested. The clerk shall thereafter send to such person by ordinary mail copies of any of the documents speci-

fied in the request. Failure of the clerk to comply with the request shall not invalidate any proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 1, eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 967, ch. 173, § 1, eff. Jan. 1, 1972.]

§ 34. Service on Attorney

If any attorney shall have entered his appearance of record for any party in any proceeding in probate, all citations and notices required to be served on the party in such proceeding shall be served on the attorney, and such service shall be in lieu of service upon the party for whom the attorney appears. All notices served on attorneys in accordance with this section may be served by registered or certified mail or by delivery to the attorney in person. They may be served by a party to the proceeding or his attorney of record, or by the proper sheriff or constable, or by any other person competent to testify. A written statement by an attorney of record, or the return of the officer, or the affidavit of any other person showing service shall be prima facie evidence of the fact of service.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 970, ch. 173, § 2, eff. Jan. 1, 1972.]

§ 34A. Guardians and Attorneys Ad Litem

The judge of a probate court may appoint a guardian ad litem, an attorney ad litem, or, if necessary, both, to represent the interests of a person having a legal disability, a nonresident, or an unknown heir in any probate proceeding. Each guardian ad litem and attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

[Acts 1983, 68th Leg., p. 747, ch. 178, § 1, eff. Aug. 29, 1983.]

§ 35. Waiver of Notice

Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A guardian of the estate or a guardian ad litem may make such a waiver on behalf of his ward, and a trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 36. Duty and Responsibility of Judge

It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estate and guardians of persons. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate or ward, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975.]

§ 36A. When Power of Attorney not Terminated by Disability

When a principal designates another his attorney in fact or agent by power of attorney in writing and the writing contains the words "this power of attorney shall not terminate on disability of the principal" or similar words showing the intent of the principal that the power shall not terminate on his disability, then the powers of the attorney in fact or agent shall be exercisable by him on behalf of the principal notwithstanding later disability or incompetence of the principal. All acts done by the attorney in fact or agent, pursuant to the power, during any period of disability or incompetence of the principal, shall have the same effect and shall inure to the benefit of and bind the principal as if the principal were not disabled or incompetent. If a guardian shall thereafter be appointed for the principal, the powers of the attorney in fact or agent shall terminate upon the qualification of the guardian, and the attorney in fact or agent shall deliver to the guardian all assets of the estate of the ward in his possession and shall account to the guardian as he would to his principal had the principal himself terminated his powers.

[Acts 1971, 62nd Leg., p. 971, ch. 173, § 3, eff. Jan. 1, 1972.]

§ 36B. Examination of Documents or Safe Deposit Box With Court Order

(a) A judge of a court having probate jurisdiction of a decedent's estate may order a person to permit a court representative named in the order to exam-

ine a decedent's documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain a will of the decedent, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's documents or safe deposit box in the presence of:

(1) the judge ordering the examination or an agent of the judge; and

(2) the person who has possession or control of the documents or who leased the safe deposit box or, if the person is a corporation, an officer of the corporation or an agent of an officer.

[Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36C. Delivery of Document With Court Order

(a) A judge who orders an examination by a court representative of a decedent's documents or safe deposit box under Section 36B of this code may order the person who possesses or controls the documents or who leases the safe deposit box to permit the court representative to take possession of the following documents:

(1) a will of the decedent;

(2) a deed to a burial plot in which the decedent is to be buried; or

(3) an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall deliver:

(1) the will to the clerk of a court that has probate jurisdiction and that is located in the same county as the court of the judge who ordered the examination;

(2) the burial plot deed to the person designated by the judge in the order for the examination; or

(3) the insurance policy to a beneficiary named in the policy.

(c) A court clerk to whom a will is delivered under Subsection (b) of this section shall issue a receipt for the will to the court representative who delivers it.

[Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36D. Examination of Document or Safe Deposit Box Without Court Order

(a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit any of the following persons to examine the document or the contents of the safe deposit box:

(1) the spouse of the decedent;

(2) a parent of the decedent;

(3) a descendant of the decedent who is at least 18 years old; or

(4) a person named as executor of the decedent's estate in a copy of a document that the person has and that appears to be a will of the decedent.

(b) The examination shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation.

[Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36E. Delivery of Document Without Court Order

(a) A person who permits an examination of a decedent's document or safe deposit box under Section 36D of this code may deliver:

(1) a document appearing to be the decedent's will to the clerk of a court that has probate jurisdiction and that is located in the county in which the decedent resided or to the person named in the document as an executor of the decedent's estate;

(2) a document appearing to be a deed to a burial plot in which the decedent is to be buried or appearing to give burial instructions to the person making the examination; or

(3) a document appearing to be an insurance policy on the decedent's life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document appearing to be a will that the person delivers under Subsection (a) of this section. The person shall keep the copy for four years after the day of delivery.

(c) A person may not deliver a document under Subsection (a) of this section unless requested to do so by the person examining the document and unless the person examining the document issues a receipt for the document to the person who is to deliver it.

[Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36F. Restriction on Removal of Contents of Safe Deposit Box

A person may not remove the contents of a decedent's safe deposit box except as provided by Section 36C or 36E of this code or except as provided by another law.

[Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

CHAPTER II. DESCENT AND DISTRIBUTION

Sec.
37. Passage of Title Upon Intestacy and Under a Will.
37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by an Inheritance.
38. Persons Who Take Upon Intestacy.
39. No Distinction Because of Property's Source.
40. Inheritance By and From an Adopted Child.
41. Matters Affecting and Not Affecting the Right to Inherit.
42. Inheritance Rights of Legitimated Children.
43. Determination of Per Capita and Per Stirpes Distribution.
44. Advancement Brought Into Hotchpotch.
45. Community Estate.
46. Joint Tenancies Abolished.
47. Requirement of Survival by 120 Hours.

§ 37. Passage of Title Upon Intestacy and Under a Will

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate and the delinquent child support payments; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with the law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1703, ch. 556, § 2, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2537, ch. 674, § 3, eff. Sept. 1, 1981.]

Section 5 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981. Section 3 of this Act applies to the estates of persons who die on or after the effective date of this Act, and Section 37, Probate Code, as in effect before the effective date of this Act, applies to the estates of persons who die before the effective date of this Act."

§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by an Inheritance

Any person, or the personal representative of an incompetent, deceased, or minor person, with prior court approval of the court having, or which would have, jurisdiction over such personal representative or any independent executor of a deceased person, without prior court approval, who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent unless decedent's will provides otherwise. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation." Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer. The following shall apply to such disclaimers:

(a) Written Memorandum of Disclaimer and Filing Thereof. In the case of property receivable under a will or by inheritance or by an insurance contract, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate. A written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the dece-

dent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(b) Notice of Disclaimer. Copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the date on which the transfer creating the interest in the disclaiming person is made.

(c) Power of Testator to Provide for Disclaimer. Nothing herein shall prevent a testator from providing in a will for the making of disclaimers by legatees, devisees, and beneficiaries and for the disposition of disclaimed property in a manner different from the provisions hereof.

(d) Irrevocability of Disclaimer. Any disclaimer filed and served under this section shall be irrevocable.

(e) Partial Disclaimer. Any person who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(f) Disclaimer After Acceptance. No disclaimer shall be effective after the acceptance of the property by the heir, legatee, devisee, or beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of heir, legatee, devisee, or beneficiary.

[Acts 1971, 62nd Leg., p. 2954, ch. 979, § 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1918, ch. 769, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1741, ch. 713, § 4, eff. Aug. 27, 1979.]

§ 38. Persons Who Take Upon Intestacy

(a) Intestate Leaving No Husband or Wife. Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.

2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(b) Intestate Leaving Husband or Wife. Where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants.

The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 39. No Distinction Because of Property's Source

There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 40. Inheritance By and From an Adopted Child

For purposes of inheritance under the laws of descent and distribution, an adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendants inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural legitimate child of such parent or parents by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such child were the natural legitimate child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents. Nothing herein shall prevent any parent by adoption from disposing of his property by will according to law. The presence of this Section specifically relating to the rights of adopted children shall in no way diminish the rights of such children, under the laws of descent and distribution or otherwise, which they acquire by virtue of their inclusion in the definition of "child" which is contained in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 41. Matters Affecting and Not Affecting the Right to Inherit

(a) Persons Not in Being. No right of inheritance shall accrue to any persons other than to children or lineal descendants of the intestate, unless they are in being and capable in law to take as heirs at the time of the death of the intestate.

(b) Heirs of Whole and Half Blood. In situations where the inheritance passes to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part be of the half blood only, of the intestate, each of those of half blood shall inherit only half so much as each of those of the whole blood; but if all be of the half blood, they shall have whole portions.

(c) Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

(d) Convicted Persons and Suicides. No conviction shall work corruption of blood or forfeiture of estate, except in the case of a beneficiary in a life insurance policy or contract who is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, in which case the proceeds of such insurance policy or contract shall be paid as provided in the Insurance Code of this State, as same now exists or is hereafter amended; nor shall there be any forfeiture by reason of death by casualty; and the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 2, eff. June 12, 1969.]

§ 42. Inheritance Rights of Legitimated Children

(a) Maternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) Paternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided by Chapter 13 of the Family Code, or if the father executed a statement of paternity as provided by Section 13.22 of the Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(c) Homestead Rights, Exempt Property, and Family Allowances. A legitimate child as provided by Subsections (a) and (b) of this section is a legiti-

mate child of his mother, and a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) Marriages Null in Law. The issue also of marriages deemed null in law shall nevertheless be legitimate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 762, ch. 290, § 1, eff. May 28, 1977; Acts 1979, 66th Leg., p. 40, ch. 24, § 25, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1743, ch. 713, § 5, eff. Aug. 27, 1979.]

§ 43. Determination of Per Capita and Per Stirpes Distribution

When the intestate's children, or brothers, sisters, uncles, and aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 44. Advancement Brought Into Hotchpotch

Where any of the heirs of a person dying intestate shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless proved to be an advancement. If an advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to had he survived the intestate, then the heir shall be charged only with such portion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited had there been no advancement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 45. Community Estate

Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. In every case, the community estate passes charged with the debts against it.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 46. Joint Tenancies Abolished

(a) Where two (2) or more persons hold an estate, real, personal, or mixed, jointly, and one (1) joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. Provided, however, that by an agreement in writing of joint owners of property the interest of any joint owner who dies may be made to survive to the surviving joint owner or joint owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

(b) A written agreement between spouses and a bank, savings and loan, credit union, or other financial institution may provide that existing funds or securities on deposit and funds and securities to be deposited in the future and interest and income thereon shall by that agreement be partitioned into separate property and may further provide that the property partitioned by that agreement be held in joint tenancies and pass by right of survivorship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 233, ch. 120, § 1, eff. May 15, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 3, eff. June 12, 1969; Acts 1981, 67th Leg., p. 895, ch. 319, § 1, eff. Sept. 1, 1981.]

§ 47. Requirement of Survival by 120 Hours

(a) Survival of Heirs. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly, except as otherwise provided in this section. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the dece-

dent by 120 hours, it is deemed that the person failed to survive for the required period. This subsection does not apply where its application would result in the escheat of an intestate estate.

(b) Disposal of Community Property. When a husband and wife have died, leaving community property, and neither the husband nor wife survived the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

(c) Survival of Devisees or Beneficiaries. A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, the beneficiary shall be deemed not to have survived unless he or she survives the person by 120 hours. However, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

(d) Joint Owners. If any stocks, bonds, bank deposits, or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and neither survives the other by 120 hours, these assets shall be distributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and all have died within a period of less than 120 hours, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

(e) Insured and Beneficiary. When the insured and a beneficiary in a policy of life or accident insurance have died within a period of less than 120 hours, the insured shall be deemed to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such. The provisions of this subsection shall not prevent the application of subsection (b) above to the proceeds of life or accident insurance which are community property.

(f) Instruments Providing Different Disposition. When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 279, ch. 119, § 1, eff. Aug. 30, 1965; Acts 1979, 66th Leg., p. 1743, ch. 713, § 6, eff. Aug. 27, 1979.]

CHAPTER III. DETERMINATION OF HEIRSHIP

Sec.

§ 48. Proceedings to Declare Heirship. When and Where Instituted

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which any of the real property belonging to such estate is situated, or if there is no such real estate, then of the county in which any personal property belonging to such estate is found, may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and proceedings therefor shall be known as proceedings to declare heirship.

(b) If an application for determination of heirship is filed within four (4) years from the date of the death of the decedent, the applicant may request that the court determine whether a necessity for

administration exists. The court shall hear evidence upon the issue and make a determination thereof in its judgment.

(c) Notwithstanding any other provision of this section, a probate court in which the proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward may, if there is no administration pending in the estate, determine and declare who are the heirs and only heirs of the ward, and their respective shares and interests, under the laws of this State, in the estate of the ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 1521, ch. 616, § 1, eff. Aug. 29, 1977.]

§ 49. Who May Institute Proceedings to Declare Heirship

(a) Such proceedings may be instituted and maintained in any of the instances enumerated above by the qualified personal representative of the estate of such decedent, by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

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

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

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

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

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

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

(7) a general description of all the real and personal property belonging to the estate of the decedent; and

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

(b) Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 1522, ch. 616, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1744, ch. 713, § 7, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 629, ch. 139, § 1, eff. Sept. 1, 1983.]

§ 50. Notice

(a) Citation shall be served by registered or certified mail upon all distributees whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application.

(b) Unknown heirs, and known heirs whose addresses cannot be ascertained, shall be served by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of his last residence.

(c) Except in proceedings in which there is service of citation by publication as provided by Subsection (b) of this section, citation shall also be posted in the county in which the proceedings are commenced and in the county of the decedent's last residence.

(d) A party to the proceedings who has executed the application need not be served by any method.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1745, ch. 713, § 8, eff. Aug. 27, 1979.]

§ 51. Transfer of Proceeding When Will Probated or Administration Granted

If an administration upon the estate of any such decedent shall be granted in the State, or if the will of such decedent shall be admitted to probate in this State, after the institution of a proceeding to declare heirship, the court in which such proceeding is pending shall, by an order entered of record therein,

transfer the cause to the court of the county in which such administration shall have been granted, or such will shall have been probated, and thereupon the clerk of the court in which such proceeding was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, docket entries, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court and shall docket such cause, and the same shall thereafter proceed as though originally filed in that court. The court, in its discretion, may consolidate the cause so transferred with the pending proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

§ 52. Recorded Instruments as Prima Facie Evidence

Any statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent shall be received in a proceeding to declare heirship, or in any suit involving title to real or personal property, as prima facie evidence of the facts therein stated, when such statement is contained in either an affidavit or any other instrument legally executed and acknowledged, or any judgment of a court of record, if such affidavit or instrument has been of record for five years or more in the deed records of any county in this state in which such real or personal property is located at the time the suit is instituted, or in the deed records of any county of this state in which the decedent had his domicile or fixed place of residence at the time of his death. If there is any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by anyone interested in the proceeding in which said affidavit or instrument is offered in evidence. This statute shall be cumulative of all other statutes on the same subject, and shall not be construed as abrogating any right to present evidence conferred by any other statute or rule of law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 4, eff. June 12, 1969.]

§ 53. Evidence; Unknown Parties

(a) The court in its discretion may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing, and subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court.

(b) If it appears to the court that there are or may be living heirs whose names or whereabouts are unknown, or that any defendant is a minor or an incompetent, the court may, in its discretion, appoint an attorney to represent the interests of any such persons, but no attorney shall be appointed except when the court finds that such appointment is necessary to protect the interests of the persons for whom the attorney is appointed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

§ 54. Judgment

The judgment of the court in a proceeding to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent. If the proof is in any respect deficient, the judgment shall so state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

§ 55. Effect of Judgment

(a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

(b) Although such judgment may later be modified, set aside, or nullified, it shall nevertheless be conclusive in any suit between any heir omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted heir. Similarly, any person who has delivered funds or property of the decedent to the persons declared to be heirs in the judgment, or has engaged in any other transaction with them, in good faith, after entry of such judgment, shall not be liable therefor to any person.

(c) If the court states in its judgment that there is no necessity for administration on the estate, such recital shall constitute authorization to all persons owing any money to the estate of the decedent, or having custody of any property of such estate, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the heirs as determined in the judgment, to pay, deliver, or transfer such property or evidence of property rights to such

heirs, or to purchase property from such heirs, without liability to any creditor of the estate or other person. Such heirs shall be entitled to enforce their right to payment, delivery, or transfer by suit. Nothing in this chapter shall affect the rights or remedies of the creditors of the decedent except as provided in this subsection.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1746, ch. 713, § 9, eff. Aug. 27, 1979.]

§ 56. Filing of Certified Copy of Judgment

A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Sec.

§ 57. Who May Execute a Will

Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 801, ch. 334, § 1, eff. Aug. 28, 1967.]

§ 58. Interests Which May Pass Under a Will

Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in possession, expectancy, reversion, or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments, or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, including choses in action, subject to the limitations prescribed by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 58a. Devises or Bequests to Trustees

By a will duly executed pursuant to the provisions of this Code, a testator may devise or bequeath property to the trustee of any trust (including an unfunded life insurance trust, even though the trustor has reserved any or all rights of ownership in the insurance contracts) the terms of which are evidenced by a written instrument in existence before or concurrently with the execution of such will and which is identified in such will, even though such trust is subject to amendment, modification, revocation or termination. The property so devised or bequeathed shall be added to the corpus of such trust to be administered as a part thereof and shall thereafter be governed by the terms and provisions of the instrument establishing such trust, including written amendments or modifications thereto made before the death of the testator. An entire revocation of the trust prior to the testator's death shall cause the devise or bequest to lapse.

[Acts 1961, 57th Leg., p. 43, ch. 29, § 1.]

§ 59. Requisites of a Will

Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two (2) or more credible witnesses above the age of fourteen (14) years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this State. Provided that nothing shall require an affidavit, acknowledgment or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed,

of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

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

_____
Testator

_____
Witness

_____
Witness

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

(SEAL)

(Signed) _____
(Official Capacity of Officer)

A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 936, ch. 412, § 1, eff. June 17, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 5, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 974, ch. 173, § 5, eff. Jan. 1, 1972.]

Section 2 of Acts 1961, 57th Leg., ch. 412 provided: "All wills self-proved prior to the passage of this Act which were executed in compliance with Section 59, of the Texas Probate Code are in all things relating to self-proving hereby ratified."

§ 59A. Contracts Concerning Succession

(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

[Acts 1979, 66th Leg., p. 1746, ch. 713, § 10, eff. Aug. 27, 1979.]

§ 60. Exception Pertaining to Holographic Wills

Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 6, eff. June 12, 1969.]

§ 61. Bequest to Witness

Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 62. Corroboration of Testimony of Interested Witness

In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing

witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 63. Revocation of Wills

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 64. Capacity to Make a Nuncupative Will

Any person who is competent to make a last will and testament may dispose of his personal property by a nuncupative will made under the conditions and limitations prescribed in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 65. Requisites of a Nuncupative Will

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his home or where he has resided for ten days or more next preceding the date of such will, except when the deceased is taken sick away from home and dies before he returns to such home; nor when the value exceeds Thirty Dollars, unless it be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 66. Repealed by Acts 1979, 66th Leg., p. 1746, ch. 713, § 11, eff. Aug. 27, 1979

§ 67. After-Born or After-Adopted Children

(a) Where a Child Was Living When Will Was Executed. If a testator having a child or children born or adopted at the time of making his last will and testament shall, at his death, leave a child or children born or adopted after the making of such last will and testament, the child or children so after-born or after-adopted and pretermitted shall, unless provided for by settlement, succeed to the same portion of the testator's estate as they would have been entitled to if the testator had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving husband or wife is the father or mother of all of testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(b) Where No Child Was Living When Will Was Executed. Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, either born to him or adopted by him, or shall leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born or after-adopted child, and shall be void, unless such child dies within one year after the death of the testator; provided, however, that where a surviving husband or wife is the father or mother of all of the testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(c) Definition of "Children." As used in this Section and in the preceding Section, the term "children" includes descendants of whatever degree they may be, it being understood that they are counted only for the child they represent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 68. Prior Death of Legatee

Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of such testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death, but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 69. Voidness Arising From Divorce

(a) If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

(b) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 12, eff. Aug. 27, 1979.]

§ 70. Provision in Will for Management of Separate Property

The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep testator's separate property together until each of the several distributees shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and subject to such other restrictions as are imposed by such will; provided, that any child or distributee entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 71. Deposit of Will With Court During Testator's Lifetime

(a) Deposit of Will. A will may be deposited by the person making it, or by another person for him, with the county clerk of the county of the testator's residence. Before accepting any will for deposit, the clerk may require such proof as shall be satisfactory to him concerning the testator's identity and residence. The clerk, on being paid a fee of Three Dollars therefor, shall receive and keep the will, and shall give a certificate of deposit for it. All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

(b) How Will Shall Be Enclosed. Every will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper, which shall have indorsed thereon "Will of," followed by the name, address and signature of the testator. The wrapper must also be indorsed with the name and current address of each person who shall be notified of the deposit of the will after the death of the testator.

(c) Index To Be Kept of All Wills Deposited. Each county clerk shall keep an index of all wills so deposited with him.

(d) To Whom Will Shall Be Delivered. During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order. Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

(e) Proceedings Upon Death of Testator. If there shall be submitted to the clerk an affidavit to the effect that the testator of any will deposited with the clerk has died, or if the clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince him that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the indorsement of the wrapper of the will that the will is on deposit in his office, and, upon request, he shall deliver the will to such person or persons, taking a receipt therefor. If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. If no executor is named in the will, or if the person so named is deceased, or fails to take the will within thirty days after the clerk's notice to him is mailed, or if notice to the person so named is returned undelivered, the clerk shall give notice by registered mail, with return receipt requested, to the devisees and legatees named in the will that the will is on deposit, and, upon request, the clerk shall deliver the will to any or all of such devisees and legatees.

(f) Depositing Has No Legal Significance. These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

(g) Depositing Does Not Constitute Notice. The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

PART 1. ESTATES OF DECEDENTS

Sec.

PART 1. ESTATES OF DECEDENTS

§ 72. Proceedings Before Death; Administration in Absence of Direct Evidence of Death; Distribution; Limitation of Liability; Restoration of Estate; Validation of Proceedings

(a) The probate of a will or administration of an estate of a living person shall be void; provided, however, that the court shall have jurisdiction to determine the fact, time and place of death, and where application is made for the grant of letters testamentary or of administration upon the estate of a person believed to be dead and there is no direct evidence that such person is dead but the death of such person shall be proved by circumstantial evidence to the satisfaction of the court, such letters shall be granted. Distribution of the estate to the persons entitled thereto shall not be made by the personal representative until after the expiration of three (3) years from the date such letters are granted. If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; and provided further, that such

person shall be entitled to restoration of said estate or the residue thereof with the rents and profits therefrom, except real or personal property sold by the personal representative or any distributee, his successors or assigns, to bona fide purchasers for value, in which case the right of such person to the restoration shall be limited to the proceeds of such sale or the residue thereof with the increase thereof. In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which were done in compliance with or approved by an order of the court. Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated insofar as the court's finding of death of such person is concerned.

(b) In any case in which the fact of death must be proved by circumstantial evidence, the court, at the request of any interested person, may direct that citation be issued to the person supposed to be dead, and served upon him by publication and by posting, and by such additional means as the court may by its order direct. After letters testamentary or of administration have been issued, the court may also direct the personal representative to make a search for the person supposed to be dead by notifying law enforcement agencies and public welfare agencies in appropriate locations that such person has disappeared, and may further direct that the applicant engage the services of an investigative agency to make a search for such person. The expenses of search and notices shall be taxed as costs and shall be paid out of the property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 950, ch. 442, § 1, eff. May 30, 1959; Acts 1971, 62nd Leg., p. 975, ch. 173, § 7, eff. Jan. 1, 1972.]

§ 73. Period for Probate

(a) No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

(b) If any person shall purchase real or personal property from the heirs of a decedent more than four years from the date of the death of the decedent, for value, in good faith, and without knowledge of the existence of a will, such purchaser shall be held to have good title to the interest which such heir or heirs would have had in the absence of a will, as against the claims of any devisees or legatees under any will which may thereafter be offered for probate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972.]

§ 74. Time to File Application for Letters Testamentary or Administration

All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; provided, that this section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due to the estate of the decedent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972.]

§ 75. Duty and Liability of Custodian of Will

Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate. On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. Any person refusing to deliver such will or papers shall also be liable to any person aggrieved for all damages sustained as a result of such refusal, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 76. Persons Who May Make Application

An executor named in a will or any interested person may make application to the court of a proper county:

(a) For an order admitting a will to probate, whether the same is written or unwritten, in his possession or not, is lost, is destroyed, or is out of the State.

(b) For the appointment of the executor named in the will.

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will. An application for probate may be combined with an applica-

tion for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 77. Order of Persons Qualified to Serve

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

(b) To the surviving husband or wife.

(c) To the principal devisee or legatee of the testator.

(d) To any devisee or legatee of the testator.

(e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(f) To a creditor of the deceased.

(g) To any person of good character residing in the county who applies therefor.

(h) To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1763, ch. 713, § 34, eff. Aug. 27, 1979.]

§ 78. Persons Disqualified to Serve as Executor or Administrator

No person is qualified to serve as an executor or administrator who is:

(a) A minor; or

(b) An incompetent; or

(c) A convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia, unless such person has been duly pardoned, or his civil rights restored, in accordance with law; or

(d) A non-resident (natural person or corporation) of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or

(e) A corporation not authorized to act as a fiduciary in this State; or

(f) A person whom the court finds unsuitable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2a, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1922, ch. 641, § 7, eff. June 12, 1969.]

§ 79. Waiver of Right to Serve

The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 80. Prevention of Administration

(a) Method of Prevention. When application is made for letters of administration upon an estate by a creditor, and other interested persons do not desire an administration thereupon, they can defeat such application:

(1) By the payment of the claim of such creditor; or

(2) By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal, or barred by limitation; or

(3) By executing a bond payable to, and to be approved by, the judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court in the county having jurisdiction of the amount.

(b) Filing of Bond. The bond provided for, when given and approved, shall be filed with the county clerk, and any creditor for whose protection it was executed may sue thereon in his own name for the recovery of his debt.

(c) Bond Secured by Lien. A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 81. Contents of Application for Letters Testamentary

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

(1) The name and domicile of each applicant.

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

(3) Facts showing that the court has venue.

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

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

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

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

(8) Whether the decedent was ever divorced, and if so, when and from whom.

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

(b) For Probate of Written Will Not Produced. When a written will cannot be produced in court, in addition to the requirements of Subsection (a) hereof, the application shall state:

(1) The reason why such will cannot be produced.

(2) The contents of such will, as far as known.

(3) The date of such will and the executor appointed therein, if any, as far as known.

(4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

(c) Nuncupative Wills. An application for probate of a nuncupative will shall contain all applicable statements required with respect to written wills in the foregoing subsections and also:

(1) The substance of testamentary words spoken.

(2) The names and residences of the witnesses thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 82. Contents of Application for Letters of Administration

An application for letters of administration when no will, written or oral, is alleged to exist shall state:

(a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator;

(b) The name and intestacy of the decedent, and the fact, time and place of death;

(c) Facts necessary to show venue in the court to which the application is made;

(d) Whether the decedent owned real or personal property, with a statement of its probable value;

(e) The name, age, marital status and address, if known, and the relationship, if any, of each heir to the decedent;

(f) If known by the applicant at the time of the filing of the application, whether children were born to or adopted by the decedent, with the name and the date and place of birth of each;

(g) If known by the applicant at the time of the filing of the application, whether the decedent was ever divorced, and if so, when and from whom; and

(h) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 13, eff. Aug. 27, 1979.]

§ 83. Procedure Pertaining to a Second Application

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

(b) Where First Will Has Been Admitted to Probate. If, after a will has been admitted to probate, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall determine whether the former probate should be set aside, and whether such other will should be admitted to probate, or whether the decedent died intestate.

(c) Where Letters of Administration Have Been Granted. Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a

lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall neglect or otherwise fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 84. Proof of Written Will Produced in Court

(a) Self-Proved Will. If a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

(b) Attested Written Will. If not self-proved as provided in this Code, an attested written will produced in court may be proved:

(1) By the sworn testimony or affidavit of one or more of the subscribing witnesses thereto, taken in open court.

(2) If all the witnesses are non-residents of the county, or those who are residents are unable to attend court, by the sworn testimony of any one or more of them by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if no opposition in writing to such will is filed on or before the date set for hearing thereon, then by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition in the manner provided herein, to the signature or the handwriting evidenced thereby of one or more of the attesting witnesses, or of the testator, if he signed the will; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(3) If none of the witnesses is living, or if all of such witnesses are members of the armed forces of the United States of America or of any auxiliary thereof, or of the armed forces reserve of the United States of America or of any auxiliary thereof, or of the Maritime Service, and are beyond the jurisdiction of the court, by two witnesses to the handwriting of one or both of the subscribing witnesses thereto, or of the testator, if signed by him, and such proof may be either by sworn testimony or affidavit taken in open court, or by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(b) Holographic Will. If not self-proved as provided in this Code, a will wholly in the handwriting of the testator may be proved by two witnesses to his handwriting, which evidence may be by sworn testimony or affidavit taken in open court, or, if such witnesses are non-residents of the county or are residents who are unable to attend court, by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions.

(c) Depositions if No Contest Filed. If no contest has been filed, depositions for the purpose of establishing a will may be taken in the same manner as provided in this Code for the taking of depositions where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served; and, in such event, this Subsection, rather than the preceding portions of this Section which provide for the taking of depositions under the same rules as depositions in other civil actions, shall be applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 85. Proof of Written Will Not Produced in Court

A written will which cannot be produced in court shall be proved in the same manner as provided in the preceding Section for an attested written will or an holographic will, as the case may be, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court; but, in addition thereto, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 86. Proof of Nuncupative Will

(a) Notice and Proof of Nuncupative Will. No nuncupative will shall be proved within fourteen days after the death of the testator, or until those who would have been entitled by inheritance, had

there been no will, have been summoned to contest the same, if they desire to do so.

(b) Testimony Pertaining to Nuncupative Wills. After six months have elapsed from the time of speaking the alleged testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will.

(c) When Value of Estate Exceeds Thirty Dollars. When the value of the estate exceeds Thirty Dollars, a nuncupative will must be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 87. Testimony to Be Committed to Writing

All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk; provided, however, that in any contested case, the court may, upon agreement of the parties, and in the event of no agreement on its own motion, dismiss this requirement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 88. Proof Required for Probate and Issuance of Letters Testamentary or of Administration

(a) General Proof. Whenever an applicant seeks to probate a will or to obtain issuance of letters testamentary or of administration, he must first prove to the satisfaction of the court:

(1) That the person is dead, and that four years have not elapsed since his decease and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

(4) That the person for whom letters testamentary or of administration are sought is entitled thereto by law and is not disqualified.

(b) Additional Proof for Probate of Will. To obtain probate of a will, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least eighteen years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries thereof, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

(c) Additional Proof for Issuance of Letters Testamentary. If letters testamentary are to be granted, it must appear to the court that proof required for the probate of the will has been made, and, in addition, that the person to whom the letters are to be granted is named as executor in the will.

(d) Additional Proof for Issuance of Letters of Administration. If letters of administration are to be granted, the applicant must also prove to the satisfaction of the court that there exists a necessity for an administration upon such estate.

(e) Proof Required Where Prior Letters Have Been Granted. If letters testamentary or of administration have previously been granted upon the estate, the applicant need show only that the person for whom letters are sought is entitled thereto by law and is not disqualified.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 8, eff. June 12, 1969.]

§ 89. Action of Court on Probated Will

Upon the completion of hearing of an application for the probate of a will, if the Court be satisfied that such will should be admitted to probate, an order to that effect shall be entered. Certified copies of such will and the probate of the same, or of the record thereof, and the record of testimony, may be recorded in other counties, and may be used in evidence, as the original might be, on the trial of the same matter in any other court, when taken there by appeal or otherwise.

Probate of Wills as Muniments of Title. In each instance where the Court is satisfied that a will should be admitted to probate, and where the Court is further satisfied that there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate, or for other reason finds that there is no necessity for administration upon such estate, the Court may admit such will to probate as a Muniment of Title.

The order admitting a will to probate as a Muniment of Title shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons

described in such will as entitled to receive the particular asset without administration. The person or persons entitled to property under the provisions of such wills shall be entitled to deal and treat with the properties to which they are so entitled in the same manner as if the record of title thereof were vested in their names.

Unless waived by the Court, before the 181st day, or such later day as may be extended by the Court, after the date a will is admitted to probate as a Muniment of Title, the applicant for probate of the will shall file with the clerk of the Court a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms of the will that have been unfulfilled. Failure of the applicant for probate of the will to file such affidavit shall not otherwise affect title to property passing under the terms of the will.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 1072, ch. 480, § 1; Acts 1983, 68th Leg., p. 1155, ch. 260, § 1, eff. Sept. 1, 1983.]

§ 90. Custody of Probated Wills

All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 91. When Will Not in Custody of Court, or Oral

If for any reason a written will is not in the custody of the court, or if the will is oral, the court shall find the contents thereof by written order, and certified copies of same as so established by the court may be recorded in other counties, and may be used in evidence, as in the case of certified copies of written wills in the custody of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 92. Period for Probate Does Not Affect Settlement

Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 93. Period for Contesting Probate

After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to institute such contest.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 94. No Will Effectual Until Probated

Except as hereinafter provided with respect to foreign wills, no will shall be effectual for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until such will has been admitted to probate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

§ 95. Probate of Foreign Will Accomplished by Filing and Recording

(a) Foreign Will May Be Probated. The written will of a testator who was not domiciled in Texas at the time of his death which would affect any real or personal property in this State, may be admitted to probate upon proof that it stands probated or established in any of the United States, its territories, the District of Columbia, or any foreign nation.

(b) Application and Citation.

(1) Will probated in domiciliary jurisdiction. If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, the application need state only that probate is requested on the basis of the authenticated copy of the foreign proceedings in which the will was probated or established. No citation or notice is required.

(2) Will probated in non-domiciliary jurisdiction. If a foreign will has been admitted to probate or established in any jurisdiction other than the domicile of the testator at the time of his death, the application for its probate shall contain all of the information required in an application for the probate of a domestic will, and shall also set out the name and address of each devisee and each person who will be entitled to a portion of the estate as an heir in the absence of a will. Citations shall be issued and served on each such devisee and heir by registered or certified mail.

(c) Copy of Will and Proceedings To Be Filed. A copy of the will and of the judgment, order, or decree by which it was admitted to probate or otherwise established, attested by the clerk of the court or by such other official as has custody of such will or is in charge of probate records, with the seal of the court affixed, if there is a seal, together with a certificate of the judge or presiding magistrate of such court that the said attestation is in due form, shall be filed with the application.

(d) Probate Accomplished by Recording.

(1) Will admitted in domiciliary jurisdiction. If the will has been probated or established in the jurisdiction in which the testator was domiciled at the time of his death, it shall be the ministerial duty of the clerk to record such will and the evidence of its probate or establishment in the minutes of the court. No order of the court is necessary. When so filed and recorded, the will shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereinafter provided.

(2) Will admitted in non-domiciliary jurisdiction. If the will has been probated or established in another jurisdiction not the domicile of the testator, its probate in this State may be contested in the same manner as if the testator had been domiciled in this State at the time of his death. If no contest is filed, the clerk shall record such will and the evidence of its probate or establishment in the minutes of the court, and no order of the court shall be necessary. When so filed and recorded, it shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereafter provided.

(e) Effect of Foreign Will on Local Property. If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, such will, when probated as herein provided, shall be effectual to dispose of both real and personal property in this State irrespective of whether such will was executed with the formalities required by this Code.

(f) Protection of Purchasers. When a foreign will has been probated in this State in accordance with the procedure prescribed in this section for a will that has been admitted to probate in the domicile of the testator, and it is later proved in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate was not in fact the domicile of the testator, the probate in this State shall be set aside. If any person has purchased property from the personal representative or any legatee or devisee, in good faith and for value, or otherwise dealt with any of them in good faith, prior to the commencement of the proceeding, his title or rights shall not be affected by the fact that the probate in this State is subsequently set aside.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 96. Filing and Recording Foreign Will in Deed Records

When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that the validity of such a will or testamentary instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 97. Proof Required for Recording in Deed Records

A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the deed records in the proper county or counties in this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 98. Effect of Recording Copy of Will in Deed Records

Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the county clerk of the proper county in this State to be recorded in the deed records, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of land from the time when such instrument is

delivered to the clerk to be recorded, and from that time only.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 99. Recording in Deed Records Serves as Notice of Title

The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and filed for recording in the deed records of the proper county, shall be notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 100. Contest of Foreign Wills

(a) Will Admitted in Domiciliary Jurisdiction. A foreign will that has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, and either admitted to probate in this State or filed in the deed records of any county of this State, may be contested by any interested person but only upon the following grounds:

(1) That the foreign proceedings were not authenticated in the manner required for ancillary probate or recording in the deed records.

(2) That the will has been finally rejected for probate in this State in another proceeding.

(3) That the probate of the will has been set aside in the jurisdiction in which the testator died domiciled.

(b) Will Probated in Non-Domiciliary Jurisdiction. A foreign will that has been admitted to probate or established in any jurisdiction other than that of the testator's domicile at the time of his death may be contested on any grounds that are the basis for the contest of a domestic will. If a will has been probated in this State in accordance with the procedure applicable for the probate of a will that has been admitted in the state of domicile, without the service of citation required for a will admitted in another jurisdiction that is not the domicile of the testator, and it is proved that the foreign jurisdiction in which the will was probated was not in fact the domicile of the testator, the probate in this State shall be set aside. If otherwise entitled, the will may be reprobated in accordance with the procedure prescribed for the probate of a will admitted in a non-domiciliary jurisdiction, or it may be admitted to original probate in this State in the same or a subsequent proceeding.

(c) Time and Method. A foreign will that has been admitted to ancillary probate in this State or filed in the deed records in this State may be contested by the same procedures, and within the same time limits, as wills admitted to probate in this State in original proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 101. Notice of Contest of Foreign Will

Within the time permitted for the contest of a foreign will in this State, verified notice may be filed and recorded in the minutes of the court in this State in which the will was probated, or the deed records of any county in this State in which such will was recorded, that proceedings have been instituted to contest the will in the foreign jurisdiction where it was probated or established. Upon such filing and recording, the force and effect of the probate or recording of the will shall cease until verified proof is filed and recorded that the foreign proceedings have been terminated in favor of the will, or that such proceedings were never actually instituted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 102. Effect of Rejection of Will in Domiciliary Proceedings

Final rejection of a will or other testamentary instrument from probate or establishment in the jurisdiction in which the testator was domiciled shall be conclusive in this State, except where the will or other testamentary instrument has been rejected solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State, in which case the will or testamentary instrument may nevertheless be admitted to probate or continue to be effective in this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 103. Original Probate of Foreign Will in This State

Original probate of the will of a testator who died domiciled outside this State which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate or establishment in the jurisdiction where the testator died domiciled, or if it stands rejected from probate or establishment in the jurisdiction where the testator died domiciled solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State. The court may delay passing on the application for probate of a foreign will pending the result

of probate or establishment, or of a contest thereof, at the domicile of the testator.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 104. Proof of Foreign Will in Original Probate Proceeding

If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in an original proceeding in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 105. Executors of Will Probated in Another Jurisdiction

When a foreign will is admitted to ancillary probate in accordance with Section 95 of this Code, the executor named in such will shall be entitled to receive, upon application, letters testamentary upon proof that he has qualified as such in the jurisdiction in which the will was admitted to probate, and that he is not disqualified to serve as executor in this State. After such proof is made, the court shall enter an order directing that ancillary letters testamentary be issued to him. If letters of administration have previously been granted by such court in this State to any other person, such letters shall be revoked upon the application of the executor after personal service of citation upon the person to whom such letters were granted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 105A. Appointment and Service of Foreign Banks and Trust Companies in Fiduciary Capacity

(a) Any bank or trust company organized under the laws of, and having its principal office in, the District of Columbia or any territory or state of the United States of America, other than the State of Texas, and any national bank having its principal office in the District of Columbia or such territory or other state (all such banks or trust companies being hereinafter sometimes called "foreign banks or trust companies"), having the corporate power to so act, may be appointed and may serve in the State of Texas as trustee (whether of a personal or corporate trust), executor, administrator, guardian of the estate, or in any other fiduciary capacity, whether the appointment be by will, deed, agreement, declaration, indenture, court order or decree, or otherwise, when and to the extent that the District of Columbia or territory or other state in which such foreign bank or trust company is organized and has its principal office grants authority to serve in like fiduciary capacity to a bank or trust company organized under the laws of, and having its principal office in, the State of Texas, or to a national bank having its principal office in the State of Texas.

(b) Before qualifying or serving in the State of Texas in any fiduciary capacity, as aforesaid, such a foreign bank or trust company shall file in the office of the Secretary of the State of the State of Texas (1) a copy of its charter, articles of incorporation or of association, and all amendments thereto, certified by its secretary under its corporate seal; (2) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Secretary of State and his successors its agent for service of process upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, fund or other matter within this state with respect to which such foreign bank or trust company is acting in any fiduciary capacity, including the acts or defaults of such foreign bank or trust company with respect to any such trust, estate or fund; and (3) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person to whom such notice or process shall be forwarded by the Secretary of State. Upon receipt of such notice or process, it shall be the duty of the Secretary of State forthwith to forward same by registered or certified mail to the officer, agent or other person so designated. Service of notice or process upon the Secretary of State as agent for such a foreign bank or trust company shall in all ways and for all purposes have the same effect as if personal service had been had within this state upon such foreign bank or trust company.

(c) No foreign bank or trust company shall establish or maintain any branch office, agency or other place of business within this state, or shall in any way solicit, directly or indirectly, any fiduciary business in this state of the types embraced by subdivision (a) hereof. Except as authorized herein or as may otherwise be authorized by the laws of this state, no foreign bank or trust company shall act in a fiduciary capacity in this state. Nothing in this Section shall be construed to authorize foreign banks and trust companies to issue or to sell or otherwise market or distribute in this state any investment certificates, trust certificates, or other types of securities (including without limiting the generality of the foregoing any securities of the types authorized by Chapter 7 of the Insurance

Code of 1951 prior to the repeal thereof), or to conduct any activities or exercise any powers of the type embraced and regulated by the Texas Banking Code of 1943 [1] other than those conducted and exercised in a fiduciary capacity under the terms and conditions hereof.

(d) Any foreign bank or trust company acting in a fiduciary capacity in this state in strict accordance with the provisions of this Section shall not be deemed to be doing business in the State of Texas within the meaning of Article 8.01 of the Texas Business Corporation Act; shall be deemed qualified to serve in such capacity under the provisions of Section 105 of this Code; and shall not be prohibited by the provisions of Chapter 137, Acts of the 55th Legislature, Regular Session, 1957, amending Article 342–902 of the Texas Banking Code of 1943, from using in its name and stationery the terms "bank," "trust," or "bank and trust."

(e) The provisions hereof are in addition to, and not a limitation on, the provisions of Section 2 of Chapter 388, Acts of the 55th Legislature, Regular Session, 1957.[2]

(f) Any foreign bank or trust Company which shall violate any provision of this Section 105a shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not exceeding Five Thousand Dollars ($5,000.00), and may, in the discretion of the court, be prohibited from thereafter serving in this state in any fiduciary capacity.

[Acts 1961, 57th Leg., p. 46, ch. 31, § 1, eff. Aug. 28, 1961.]

1 Civil Statutes, art. 342–101 et seq.

2 Civil Statutes, art. 1513a, § 1.

§ 106. When Foreign Executor to Give Bond

A foreign executor shall not be required to give bond if the will appointing him so provides. If the will does not exempt him from giving bond, the provisions of this Code with respect to the bonds of domestic representatives shall be applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

§ 107. Power of Sale of Foreign Executor or Trustee

When by any foreign will recorded in the deed records of any county in this state in the manner provided herein, power is given an executor or trustee to sell any real or personal property situated in this state, no order of a court of this state shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969.]

§ 107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator

(a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.

(b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.

(c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.

(d) Suit may not be maintained in this state by a foreign executor or administrator if there is an executor or administrator of the decedent qualified by a court of this state or if there is pending in this state an application for appointment as an executor or administrator.

[Acts 1977, 65th Leg., p. 1190, ch. 457, § 1, eff. Aug. 29, 1977.]

PART 3. ESTATES OF MINORS AND INCOMPETENTS

§ 108. Laws Applicable to Guardianships

The provisions, rules, and regulations which govern estates of decedents shall apply to and govern guardianships, whenever the same are applicable and are not inconsistent with any provision of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 109. Persons Qualified to Serve as Guardians

(a) Natural Guardians. If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity.

If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

(b) Guardians of Orphans. These rules shall govern as to orphans who are minors:

(1) If the last surviving parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to guardianship of both the person and estate of such minor.

(2) If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(3) If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin. If there be two or more in the same degree, the guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(4) If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint a qualified person to be such guardian.

(c) Guardians for Persons Other Than Minors. If a person is an incompetent, or one for whom it is necessary that a guardian be appointed to receive funds due from any governmental source, these rules shall govern:

(1) If such person has a spouse who is not disqualified, such spouse shall be entitled to the guardianship in preference to any other person.

(2) If there be no qualified spouse, the nearest of kin to such person, who is not disqualified, or in case of refusal by such spouse or nearest of kin to serve, then any other qualified person shall be entitled to the guardianship.

(3) Where two or more persons are equally entitled, the guardianship shall be given to one or the other, according to the circumstances, only the best interest of the ward being considered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 689, ch. 327, § 1, eff. Aug. 30, 1965; Acts 1979, 66th Leg., p. 39, ch. 24, § 22, eff. Aug. 27, 1979.]

§ 110. Persons Disqualified to Serve as Guardians

The following persons shall not be appointed guardians:

(a) Minors.

(b) Persons whose conduct is notoriously bad.

(c) Incompetents.

(d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.

(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.

(f) [Deleted.]

(g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 2142, ch. 857, § 1, eff. Aug. 29, 1977.]

§ 111. Application for Appointment of Permanent Guardian

A proceeding for the appointment of a guardian shall be begun by written application filed in the court of the county having venue thereof. Any person may make such application. Such application shall state:

(a) The name, sex, date of birth if a minor, and residence, of the person for whom the appointment of a guardian is sought; and

(b) If a minor, the names of the parents and next of kin of such persons, and whether either or both of the parents are deceased; and

(c) A general description of the property comprising such person's estate, if guardianship of the estate is sought; and

(d) The facts which require that a guardian be appointed; and

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

(f) Whether guardianship of the person and estate, or of the person or of the estate, is sought; and

(g) Such other facts as show that the court has venue over the proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 112. Judge May Cause Application to be Filed

Whenever it comes to the knowledge of the county judge that any person whose legal domicile is in his county, or who is found therein, is a minor, a person of unsound mind, or an habitual drunkard,

and is without a guardian of his person or of his estate within this State, and that there is probable cause for the exercise of his jurisdiction, he may cause proper proceedings to be commenced and application to be made as provided in the preceding Section for the appointment of a guardian of the person and of the estate of such person, or of either. Upon the filing of such application, process shall be issued and served as hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 113. Contest of Proceedings

Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he deems beneficial to the ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 113A. Appointment of Attorney Ad Litem

In a proceeding under the provisions of this chapter for the appointment of a guardian of a person who is not a minor, the judge may appoint an attorney ad litem to represent the interests of the person for whom the permanent guardianship is sought and shall allow the attorney ad litem a reasonable fee for his services to be taxed as part of the costs.

[Acts 1977, 65th Leg., p. 1380, ch. 551, § 1, eff. Aug. 29, 1977.]

§ 114. Facts Which Must Be Proved

Before appointing a guardian, the court must find:

(a) That the person for whom a guardian is to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds due such person from any governmental source. In the last case, a certificate of the executive head, or his representative, of the bureau, department, or agency of the government through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due such person, shall be prima facie evidence of the necessity for such appointment.

(b) That the court has venue of the case.

(c) That the person to be appointed guardian is not disqualified to act as such and is entitled to be appointed; or, in case no person who is entitled to appointment applies for it, that the person appointed is a proper person to act as such guardian.

(d) That the rights of persons or property will be protected by the appointment of a guardian.

(e) If the guardian is to be appointed for a minor, that the creation of the guardianship is not for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district in which the student would not otherwise be eligible for enrollment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 410, ch. 83, § 2, eff. Sept. 1, 1983.]

§ 115. Jury Trial Not Prerequisite

A jury trial, verdict, and judgment that a person is of unsound mind or an habitual drunkard shall not be prerequisite to an appropriate finding and adjudication by the court and appointment of a guardian for the person alleged to be of unsound mind or an habitual drunkard; nor shall it be necessary that such person be present at the trial.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 116. Only One Person to Be Appointed Guardian

Only one person can be appointed as guardian of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so; but nothing herein shall be held to prohibit the joint appointment of a husband and wife, or of co-guardians duly appointed under the laws of another state, territory or country, or of the District of Columbia.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 117. Appointment of Guardian by Will

The surviving parent of a minor may, by will or written declaration, appoint any qualified person to be guardian of the person of his or her children after the death of such parent; and, if not disqualified, such person shall also be entitled to be appointed guardian of their estate after the death of such parent, upon compliance with the provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 118. Selection of Guardian by Minor

(a) When No Other Guardian Has Been Appointed. When an application has been filed for the guardianship of the person or estate, or of both, of a minor who has attained the age of fourteen years, such minor may, by writing filed with the clerk, make choice of the guardian, subject to the court's approval of such choice.

(b) When Another Guardian Has Been Appointed. A minor upon attaining the age of fourteen years may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns, or is removed from guardianship; and

the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection shall be made in open court, in person or by attorney, by making application therefor.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 119. Failure of Guardian to Qualify

If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead, upon application, but without further notice or citation.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 120. Term of Appointment of Guardian

Unless sooner discharged according to law, a guardian remains in office until the estate is closed in accordance with the provisions of this Code, as hereinafter set out.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 121. Removal of Guardianship to Another County May Be Had

(a) Application for Removal of Guardianship. When a guardian, or any other person, desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking authority to do so, and shall state in such application his reason for desiring such removal.

(b) Sureties on Bond to Be Cited. Upon the filing of such application, the sureties upon the bond of such guardian shall be cited by personal service to appear and show cause why such application should not be granted.

(c) When Guardian Shall Be Cited. If the application for removal is filed by any person other than the guardian, the guardian also shall be cited by personal service to appear and show cause why such application should not be granted.

(d) Action of the Court. Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the best interest of the ward, the court shall enter an order authorizing such removal upon the payment on behalf of the estate of all costs that have accrued.

(e) Transcript of Record. When such order of removal has been made, the clerk shall record all papers of the guardianship required to be recorded that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments, and proceedings in such guardianship; and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been ordered removed.

(f) When Removal Shall Become Effective. The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of such fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 122. Continuation of Guardianship

When a guardianship has been removed from one county to another in accordance with the foregoing provisions of this Code, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 123. New Guardian May Be Appointed Upon Removal

If it appears to the court that the removal of the guardianship would be to the best interest of the ward, but that, by virtue of such removal, it will be unduly expensive to the estate, or unduly inconvenient, for the guardian of the estate to continue to serve in such capacity, the court may in its order of removal, revoke the letters of guardianship and appoint a new guardian. In such event, the former guardian shall account for and deliver the estate as is provided in this Code in cases where guardians resign.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 124. Nonresidents, Appointment of Guardians for

(a) Appointment of Non-Resident Guardian

A non-resident or non-residents of Texas, being natural persons or corporations, resident of another state or of the District of Columbia, or of any territory, or of any other nation or country, may be appointed and qualified as guardian, or co-guardian of his or its or their non-resident ward's estate situated in Texas in the same manner and by the same procedure provided in this Code for the appointment and qualification of a resident of this State as guardian of the estates of minors, persons of unsound mind, or habitual drunkards; provided that, by proceedings in and decree or decrees of a court of competent jurisdiction in another state, the District of Columbia, a territory, or another nation or country, of his or its or their residence, such non-resident applicant or applicants shall have been

previously duly appointed and are still qualified as guardian, co-guardians, tutor, curator, committee, or fiduciary legal representative by whatever name known in such foreign jurisdiction, of the property or estate of his or its or their ward situated within the jurisdiction of such foreign court, whether such ward be a minor, a person of unsound mind, or an habitual drunkard; and provided further that, with his or its or their written application for appointment in the county court of any county in this state where all or part of such ward's estate is situated in this state, such non-resident applicant or applicants file also a full and complete transcript of the proceedings from the records of the court in which he or it or they were appointed in the jurisdiction of his or its or their residence, evidencing his or its or their due appointment and qualification as such guardian, co-guardians, tutor, curator, committee, or other fiduciary legal representative, of his or its or their ward's property or estate, which transcript shall be certified to and attested by the clerk of such foreign court, if there be a clerk, and, if there be no clerk, then by the officer of said court charged by law with the custody of the records thereof, under the seal of such court, if there be a seal, to which transcript shall be attached the certificate of the judge, chief justice or presiding magistrate, as the case may be, of such foreign court to the effect that the said attestation of such transcript by the clerk or legal custodian of the court records is in due form; and provided further that, without the necessity of notice or citation of any character, an order of appointment be made and entered and that such non-resident applicant or applicants thus appointed, qualify by making and filing oath and bond, subject to the court's approval in all respects the same as required of residents thus appointed, and file with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, whereupon the clerk shall issue the letters of guardianship to such non-resident guardian or co-guardians. Guardians so qualified shall file inventory and appraisement of the estate of the ward in this State subject to the jurisdiction of the court, as in ordinary cases, and shall be subject to and controlled by all applicable provisions of this Code with respect to the handling and settlement of estates by domestic guardians.

(b) Domestic Guardian of Non-Resident

When a non-resident minor or incompetent owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or incompetent resided in this State. The court making the grant of such guardianship shall be in the county in which the principal estate of the ward is situated, and said court shall take all such action and make all such orders with respect to the estate of the ward, for the maintenance, support and care, or the education, if necessary, of the ward, out of the proceeds of such ward's estate, in like manner as if the ward were a resident of this State, and guardianship of the person and estate of the ward had been granted by said court, and the ward had been sent abroad by the court for education or treatment. In the event there be a qualified non-resident guardian of such estate, who later desires to qualify in this State, as hereinabove set out, such non-resident guardian may do so, and it shall be grounds for closing the resident guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 3, eff. Aug. 22, 1957.]

§ 125. Validation of Certain Letters of Guardianship Heretofore Issued

All present existing letters of guardianship heretofore issued to non-resident guardians with or without the procedure, in whole or in part, and with or without notices and citations required in cases of resident guardians, are hereby validated as of their respective dates, in so far as the absence of such procedure, notices, and citations are concerned, as are also all otherwise valid conveyances, mineral leases, and other acts of such guardians so qualified and acting in connection therewith under supporting orders of county and probate courts of this state; provided, however, that this provision shall not be applicable to any letters, conveyance, lease, or other act of such guardian which is involved in any lawsuit pending in this state on the effective date of this Code wherein the absence of such procedure or of such notices or citations is an issue.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 126. Removal of Ward's Property from the State

Upon the recovery of the property of the ward, if it be personal property, any non-resident guardian, whether qualified under provisions of this Code or not, may remove the same out of the state, unless such removal would conflict with the tenure of such property, or with the terms and limitations under which it is held; but there shall be no removal from the state of any of such property until all debts known to exist against the estate in this state have been paid, or until the payment of such debts has been secured by bond payable to and approved by the judge of the court in which the proceedings are pending in this state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 127. Delivery of Property

Any resident executor, administrator, or guardian, having any of the estate of a ward, may be ordered by the court to deliver the same to a duly

qualified and acting non-resident guardian of such ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 127A. Guardianship of Person Missing on Public Service

(a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.

(b) The application shall state:

(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;

(2) the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;

(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;

(4) the reason for the appointment and the interest of the applicant in the appointment; and

(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.

(c) The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed $25, for his services to be taxed as part of the costs.

(d) The attorney appointed to represent the interest of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person of the missing person and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.

(e) Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person, or to contest any guardianship proceeding which he deems to be injurious to the missing person, or to commence a guardianship proceeding which he deems beneficial to the missing person.

(f) Before appointing a guardian, the court must find:

(1) that the person has been reported missing by an executive department of the United States and still is missing;

(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person;

(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; and

(4) that the rights of the missing person will be protected by the appointment of the guardian.

(g) After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.

(h) The jurisdiction of the court over the guardianship is continuing. If the missing person returns, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.

[Acts 1977, 65th Leg., p. 569, ch. 203, § 1, eff. Aug. 29, 1977.]

PART 4. CITATIONS AND NOTICES

§ 128. Citations With Respect to Applications for Probate or for Issuance of Letters

(a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application for the probate of a written will produced in court, or for letters of administration, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

(1) That such application has been filed, and the nature of it.

(2) The name of the deceased and of the applicant.

(3) The time when such application will be acted upon.

(4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

(b) Where Application Is for Probate of a Written Will Not Produced or of a Nuncupative Will. When the application is for the probate of a nuncupative will, or of a written will which cannot be produced in court, the clerk shall issue a citation to all parties interested in such estate, which citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon. If the heirs of the testator be residents of this state, and their residence be known, the citation shall be served upon them by personal service. Service of such citation may be made by publication in the following cases:

(1) When the heirs are non-residents of this state; or

(2) When their names or their residences are unknown; or

(3) When they are transient persons.

(c) No Action Until Service Is Had. No application for the probate of a will or for the issuance of letters shall be acted upon until service of citation has been made in the manner provided herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 129. Validation of Prior Modes of Service of Citation

(a) In all cases where written wills produced in court have been probated prior to June 14, 1927, after publication of citation as provided by the then Article 28 of the Revised Civil Statutes of Texas (1925), without service of citation, the action of the courts in admitting said wills to probate is hereby validated in so far as service of citation is concerned.

(b) In all cases where written wills produced in court have been probated or letters of administration have been granted prior to May 18, 1939, after citation, as provided by the then Article 3334, Title 54, of the Revised Civil Statutes of Texas (1925), without service of citation as provided for in the then Article 3336, Title 54, of the Revised Civil Statutes of Texas (1925) as amended by Acts 1935, 44th Legislature, page 659, Chapter 273, Section 1, such service of citation and the action of the court in admitting said wills to probate and granting administration upon estates, are hereby validated in so far as service of citation is concerned.

(c) In all cases where written wills have been probated or letters of administration granted, prior to June 12, 1941, upon citation or notice duly issued by the clerk in conformance with the requirements of the then Article 3333 of Title 54 of the Revised Civil Statutes of Texas (1925), as amended, but not directed to the sheriff or any constable of the county wherein the proceeding was pending, and such citation or notice having been duly posted by the sheriff or any constable of said county and returned for or in the time, manner, and form required by law, such citation or notice and return thereof and the action of the court in admitting said wills to probate or granting letters of administration upon estates, are hereby validated in so far as said citation or notice, and the issuance, service and return thereof are concerned.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 130. Notice and Citation, Estates of Minors and Incompetents

(a) When Notice Issued. Upon the filing of an application for appointment of a guardian, the clerk shall issue a notice setting forth that such application has been filed for the guardianship of the person or estate, or both, as the case may be, of the person for whom such guardian is sought, naming such person, and stating the nature of the disability, and by whom the application is made; which notice shall cite all persons interested in the welfare of such person to appear at the time and place stated therein, and contest such application, if they so desire.

(b) Service of Notice. The notice shall be served by posting, and the sheriff or other officer posting the same shall return the original, signed officially, stating thereon in writing the time and place when and where he posted said copy.

(c) Service of Citation. Except as hereinafter provided, minors who have attained the age of fourteen years, persons alleged to be of unsound mind or habitual drunkards, and persons for whom it is alleged to be necessary to have a guardian appointed to receive funds from any governmental source or agency shall be personally served with citation to appear and answer the application for the appointment of a guardian.

(d) When Service of Citation Not Required. Minors who have attained the age of fourteen years may, in person or by attorney, by writing filed with the clerk, waive the issuance and personal service of such citation. No citation need be issued or served if it is represented under oath in the application that, within six months prior to filing such application, the person for whom or for whose estate such guardian is sought has been adjudged by a court of competent jurisdiction in this State, after due notice, to be a person of unsound mind or an habitual drunkard.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 5. LIMITED GUARDIANSHIP PROCEEDINGS

§ 130A. Limited Guardianship

(a) Limited guardianship for incapacitated persons shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence in the individual, and shall be ordered only to the extent necessitated by the individual's actual mental or physical limitations. An incapacitated person for whom a limited guardian has been appointed shall not be presumed to be incompetent and shall retain all legal and civil rights and powers except those which have by court order been designated as legal disabilities by virtue of having been specifically granted to the limited guardian. An appointment of a limited guardian shall be made pursuant to the provisions of Part 5, Chapter V.

(b) For the purposes of Chapter V, Texas Probate Code, "incapacitated person" means an adult individual who, because of a physical or mental condition, is substantially unable to feed, clothe, or shelter himself, to care for his own physical health, or to manage his property or financial affairs. A determination of incapacity must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130B. Authority to Appoint

(a) The court exercising original probate jurisdiction of the county having venue may appoint limited guardians for incapacitated persons.

(b) A court may terminate a full guardianship in effect on September 1, 1983, and create a limited guardianship on the petition by the ward, the guardian, or any other interested person or entity on behalf of the ward if it is demonstrated that the ward is able to do some but not all of the tasks necessary to feed, clothe, and shelter himself, to care for his own physical health, or to manage his property or financial affairs.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130C. Petition; Contents

The person alleged to be incapacitated or a person interested in his welfare may petition the court for the appointment of a limited guardian. A petition for a limited guardianship shall state:

(1) the name, age, residence, and post-office address of the allegedly incapacitated person;

(2) the nature of his alleged incapacity, in accordance with Section 130A of this code;

(3) the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(4) whether there is, in any state, a guardian or limited guardian of the allegedly incapacitated person;

(5) the nature and description of any existing guardianship or limited guardianship;

(6) the residence and post-office address of the person whom the petitioner asks to be appointed limited guardian;

(7) the names and addresses, so far as is known or can be reasonably ascertained, of the persons most closely related to the allegedly incapacitated person;

(8) the name and address of the person or institution having the care and custody of the allegedly incapacitated person;

(9) the reason for the appointment of a limited guardian and the interest of the petitioner in the appointment;

(10) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation of rights requested to be included in the court's order of appointment; and

(11) the requested term of the limited guardianship to be included in the court's order of appointment.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130D. Filing Fee

A fee of $15 shall be charged for filing a petition for limited guardianship, and a fee of $4 shall be charged for the service of notice and citation. However, no fees shall be charged by the court for filing a petition for limited guardianship unless the allegedly incapacitated person has an estate valued in excess of $3,000. A party may file with the county clerk an affidavit stating that the estate of the allegedly incapacitated person is valued at less than $3,000, and the clerk shall thereupon accept the application and issue process and perform all other services required of him in the same manner as if security had been given.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130E. Notices and Citations in Limited Guardianship Proceedings

(a) On the filing of an application for appointment of a limited guardian, the clerk shall issue a notice

setting forth that the application has been filed for the limited guardianship, the name of the person for whom the guardian is sought and the nature of the incapacity, and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire.

(b) The allegedly incapacitated person and his parents, if the parents can be found within this state, or the conservator or any person having control of the care and welfare of the allegedly incapacitated person shall be personally served with citation to appear and answer the application for the appointment of a limited guardian. Notwithstanding the foregoing, all persons then living who stand in the first degree of consanguinity or affinity to the allegedly incapacitated person shall be given notice if their whereabouts are known or can be reasonably ascertained.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130F. Examination and Report

(a) A court may not create a limited guardianship unless the court has received a physician's written report of a medical examination of the allegedly incapacitated person, which may be filed with the petition. The report must be based on an examination conducted 90 or fewer days before the date the petition is filed. If a medical report is not filed with the petition, the court may appoint a physician to examine the person alleged to be incapacitated, and the physician shall file with the court a report that includes:

(1) a description of the nature and degree of incapacity, including the medical history if reasonably available;

(2) a medical prognosis specifying the estimated severity of incapacity or disability;

(3) a statement as to how or in what manner the person's ability to make or communicate responsible decisions concerning himself is affected by his physical or mental health;

(4) a statement as to whether any current medication affects the demeanor of the person or his ability to participate fully in a court proceeding;

(5) a description of the precise physical conditions underlying a diagnosis of senility; and

(6) any other information required by the court.

(b) If the basis of the alleged incapacity is mental illness, the court may also consider current evaluations of the person's general functioning, including his social, intellectual, physical, and educational condition, adaptive behavior, and social skills. The evaluations may be conducted by a mental health professional who is not a physician but who is knowledgeable concerning the particular incapacity the person is alleged to have or who is knowledgeable concerning the skills required by the person to care for himself or to manage his financial resources.

(c) If the basis of the alleged incapacity is mental retardation, the person alleged to be mentally retarded shall be examined at a facility approved by the Texas Department of Mental Health and Mental Retardation to perform such service. The examination shall be conducted in accordance with rules promulgated by the commissioner of the Texas Department of Mental Health and Mental Retardation. The facility shall submit a written report of its findings and recommendations to the court.

(d) The findings and recommendations contained in the examinations and evaluations are not binding on the court.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130G. Hearing

(a) The person alleged to be incapacitated shall be present at the hearing, unless the court determines that such personal appearance would not be in the person's best interest. He is entitled to be represented by counsel. If after examining the persons's assets the court determines that he is unable to pay for counsel, the county is responsible for costs of counsel. He is entitled, on request, to a jury trial. At the hearing, the court shall:

(1) inquire into the ability of the allegedly incapacitated person to feed, clothe, and shelter himself, to care for his own physical health, and to manage his property or financial affairs; and

(2) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed limited guardian.

(b) The hearing may be closed if the person alleged to be incapacitated or his counsel requests a closed hearing.

(c) The court may not grant an application to create a limited guardianship unless the applicant proves by clear and convincing evidence each element required by this code.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130H. Order of the Court

(a) If it is found that the person possesses the capacity to care for himself and to manage his property as would a reasonably prudent person, the court shall dismiss the petition.

(b) If it is found that the person is totally without capacity as provided by this code to care for himself and to manage his property, the court shall include that finding of fact in its final order in the proceeding, and the court may appoint a plenary guardian of the individual's person or estate, or of both.

(c) If it is found that the person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or to manage his property, the court may appoint a limited guardian so as to permit the person to care for himself or to manage his property commensurate with his ability to do so. However, the powers and duties granted to and imposed on the limited guardian by the court in its order shall not duplicate or be in conflict with the powers and duties of any other limited guardian, and the powers and duties shall not exceed those applicable to full guardians under this code.

(d) An order appointing a limited guardian shall contain findings of fact and shall also specify:

(1) the properties of the person to which the limited guardian is entitled to possession and management, giving the description of the properties that will be sufficient to identify them;

(2) the debts, rentals, wages, or other claims due the person which the limited guardian is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage;

(3) the contractual or other obligations which the limited guardian may incur on behalf of the person;

(4) the claims against the person which the limited guardian may pay, compromise, or defend, if necessary; and

(5) any other powers, limitations, or duties with respect to the care of the person or the management of his property by the limited guardian which the court shall specifically and explicitly specify.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130I. Who May be Guardians

(a) Only a person, institution, or corporation found by the court to be suitable may be appointed limited guardian. The court shall not customarily or ordinarily appoint the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center, or any other agency, public or private, that is directly providing services to the incapacitated person, except as a last resort.

(b) Prior to appointment, the court shall make reasonable effort to question the incapacitated person concerning his preference of the person to be appointed limited guardian, and a preference indicated shall be given due consideration by the court.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130J. Certain Duties of Limited Guardian

(a) It is the duty of the limited guardian to file annually within 30 days after the anniversary date of his appointment and also within 30 days after termination of his appointment as the limited guardian a written verified account of his administration. The court in its discretion may also allow such accounts to be filed at intervals of up to 36 months, with instructions to the limited guardian that any substantial increase in income or assets or substantial change in the incapacitated person's condition shall be reported within 30 days of the substantial increase or change.

(b) It is the duty of the limited guardian who is managing properties to prepare and file within three months after his appointment a verified inventory of all the property of the incapacitated person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(c) To the extent that the order of the court gives the limited guardian control of any property of an incapacitated person, the limited guardian must take care of and manage the property as a prudent man would manage his own property.

(d) Pursuant to the orders of the court, the limited guardian may expend funds of the limited guardianship in order to care for and maintain the incapacitated person. The limited guardian may apply for residential care and services provided by public or private facilities if the incapacitated person agrees to be placed in such a facility. The limited guardian is required to report the condition of the person to the court at regular intervals or otherwise as the court may direct. If the person is receiving residential care in a public or private residential care facility, the limited guardian shall report to the court the necessity for continued care in the facility. A limited guardian may not voluntarily admit an incapacitated person to a residential facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment unless the person is able and willing to give his informed consent to the admission. If care and treatment in such a residential facility is necessary, the person or the person's limited guardian may apply to a court to commit the person under the Mentally Retarded Persons Act of 1977, as amended (Article 5547-300 et seq., Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130K. Oath and Bond of Limited Guardian

The limited guardian shall take and subscribe an oath required by Section 191 of this code. Unless dispensed with by order of the court, the limited guardian shall file a bond in accordance with the provisions of Section 194 of this code, except that in a limited guardianship of the person and in a limited guardianship of the estate in which the inventory filed with the court shows that the person has total accumulated assets of a value of less than $3,000, the court may dispense with the requirement of a bond. If the court dispenses with a bond, the limited guardian shall report to the court any known changes in the accumulated assets of the person that increase the value to more than $3,000.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130L. Authority of Limited Guardian

On the filing of the oath and bond, if any, the order of the court appointing the limited guardian shall become effective without the necessity for issuance of letters of guardianship. The order shall be evidence of the authority of the limited guardian to act within the scope of the powers and duties set forth in the order.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130M. Termination, Removal, or Resignation of Limited Guardian; Appointment of Successor Guardian

(a) The limited guardianship shall be settled and closed when the incapacitated person has died, or when he has been found by the court to have full capacity to care for himself and to manage his property, or when a full guardian of the person or estate of such individual has been appointed in this state and has qualified, or being married, when such individual's spouse has qualified as survivor in community.

(b) On petition of the incapacitated person or any person interested in his welfare and on such notice as the court may direct, the court may remove the limited guardian if the court finds that to be in the best interest of the person. On petition of the limited guardian, the court may accept his resignation.

(c) At any hearing under this chapter the court may appoint one or more successor guardians who shall assume the position of limited guardian without additional judicial proceedings on the death, incapacity, or resignation of the preceding limited guardian. The limited guardian serving at the time a successor guardian is appointed shall furnish each successor guardian with a copy of the court order establishing or modifying the initial guardianship and a copy of the order appointing the successor guardian. A successor guardian who assumes the position of guardian without a court proceeding shall notify the court having jurisdiction of the guardianship of the change in guardians before the 11th day after the date the successor guardian assumes the position.

(d) Unless provision for a successor has been made under Subsection (c) of this section, if a limited guardian dies, resigns, or is removed, the court may, on application and on such notice as the court may direct, appoint a successor limited guardian.

(e) A successor limited guardian shall have all of the powers and rights and shall be subject to all of the duties of the prior limited guardian.

(f) An order appointing a limited guardian or a successor limited guardian may specify a minimum period, not exceeding one year, during which no petition for adjudication that the incapacitated person no longer requires the limited guardianship may be filed without special leave. Subject to this restriction, the person or any person interested in his welfare may petition the court for an order that he is no longer in need of the limited guardianship and that requires the removal or resignation of the limited guardian. A request for this order may be made by informal letter to the court or judge, and a person who knowingly interferes with the transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130N. Venue

A proceeding for the appointment of a limited guardian of an incapacitated person shall begin in the county where the incapacitated person resides or is located on the date the petition is filed, or where his principal estate is situated.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

§ 130O. Transfer of Venue

A court having venue of a limited guardianship proceeding may transfer venue of the limited guardianship proceeding to the court of any other county of the state on application of the limited guardian and with such notice to the incapacitated person or other interested party as the court may require. A transfer of a limited guardianship proceeding shall be made to the court of the county in which either the limited guardian or the person resides, as the court may deem appropriate, at the time of making application for the transfer. The original order providing for a transfer shall be retained as the permanent record by the clerk of the court in which the order is entered, and a certified copy thereof,

together with the original file in the limited guardianship proceeding and a certified transcript of all record entries up to and including the order for the change, shall be transmitted to the clerk of the court to which the proceeding is transferred.

[Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4110, ch. 647, § 1, eff. Sept. 1, 1983.]

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP

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PART 1. TEMPORARY ADMINISTRATION IN THE INTEREST OF (A) ESTATES OF DECEDENTS, AND (B) PERSONS OR ESTATES OF MINORS AND INCOMPETENTS

§ 131. Procedure

(a) Necessity of Appointment. Whenever it appears to the county judge that the interest of a decedent's estate, or the interest of any minor, person of unsound mind, or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) Manner of Appointment. Such appointment may be made with or without written application and without notice or citation. The order shall designate the appointee appropriately, as "temporary administrator" of the decedent's estate, or as "temporary guardian" of the person or of the estate, or both, of such minor, person of unsound mind, or common or habitual drunkard, fix the bond to be given and define the powers conferred on the appointee. When any such appointee has taken and filed his oath and filed with the county clerk a bond approved by the court, the clerk shall issue to the appointee letters which shall set forth the powers to be exercised by the appointee.

(c) Perpetuation of Appointment. The order making the appointment shall state that, unless the same is contested after service of citation, it shall be continued in force for such period of time as the court shall deem in the interest of the estate or person involved, or it shall be made permanent, if found by the court to be necessary.

(d) Citation Relative to Perpetuation. Immediately after such appointment the clerk shall issue and cause to be posted a notice, and if necessary issue citations, to all interested persons to appear at the time stated in such writ and contest said appointment if they so desire; and such notice or citation shall state that, if no contest is made, the appointment will be continued for such time as appears to the interest of the estate or person involved, or that, if found necessary by the court, it shall be made permanent.

(e) Contest. If the appointment is contested, the court shall hear and determine the same, and, during the pendency of such contest, the temporary appointee shall continue to act as such. If the appointment is set aside, the court shall require the appointee to prepare and file, under oath, a complete exhibit of the condition of the estate which has come into his possession, and show what disposition he has made of the same or any portion thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 132. Temporary Administration Pending Contest of a Will or Administration

(a) Appointment of Temporary Administrator. Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers.

(b) Additional Powers Relative to Claims. When temporary administration has been granted pending a will contest, or pending a contest on an application for letters of administration, the court may, at any time during the pendency of the contest, confer upon the temporary administrator all the power and authority of a permanent administrator with respect to claims against the estate, and in such case the court and the temporary administrator shall act in the same manner as in permanent administration in connection with such matters as the approval or disapproval of claims, the payment of claims, and the making of sales of real or personal property for the payment of claims; provided, however, that in the event such power and authority is conferred upon a temporary administrator, he shall be required to give bond in the full amount required of a permanent administrator. The provisions of this Subsection are cumulative and shall not be construed to exclude the right of the court to order a temporary administrator to do any and all of the things covered by this Subsection in other cases where the doing of such things shall be necessary or expedient to preserve the estate pending final determination of the contest.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 133. Powers of Temporary Appointees

(a) Temporary Administrators. Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void.

(b) Temporary Guardianships. All the provisions of this Code relating to the guardianship of persons and estates of minors, persons of unsound mind, and habitual drunkards shall apply to temporary guardianship of the persons and estates of such persons, in so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 134. Accounting

At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate which has come into his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such appointee.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 135. Closing Temporary Administration or Guardianship

The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 2. RECEIVERSHIP FOR MINORS AND INCOMPETENTS

§ 136. Receivership

(a) Appointment of Receiver. When from any cause the estate of a minor or an incompetent, or any portion thereof, appears in danger of injury, loss, or waste, and in need of a representative, there being no guardian of such estate qualified in this state and no necessity for one, the county judge of the county where such minor or incompetent resides, or where the endangered estate is situated, shall by order, with or without application, appoint a suitable person as receiver to take charge of such endangered estate, requiring bond of such person as

in ordinary receiverships in such sum as the judge deems necessary to protect the estate, and specifying such duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall forthwith enter such order upon the minutes of the court; and the person so appointed shall forthwith make his bond, submit same to the judge for approval, file same, when approved, with the clerk, and proceed to take charge of such endangered estate pursuant to the duties and powers vested in him by the order of appointment and by such subsequent orders as the judge shall make from time to time.

(b) Expenditures by the Receiver. Whenever, during the pendency of such receivership, the needs of the minor or incompetent shall require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or incompetent, the judge shall, with or without application, by order entered upon the minutes of his court, appropriate an amount of such income or corpus sufficient for such purpose; and the same shall be used by the receiver to pay such claims for such education, clothing, or subsistence as are presented to the judge and approved and ordered by him to be paid.

(c) Investments, Loans and Contributions by the Receiver. Whenever, during the pendency of such receivership, the receiver shall have on hand an amount of money belonging to such minor or incompetent in excess of the amount needed for current necessities and expenses, he may, under direction of the judge, invest, lend, or contribute such excess money or any portion or portions thereof in the manner, for the security, and on the terms and conditions provided in this Code for investments, loans, or contributions by guardians, and he shall report to the judge all such transactions in the manner that reports are required of guardians.

(d) Receiver's Expenses, Account, and Compensation. All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account, including a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of such danger. If the judge is satisfied that such statement is correct and reasonable in all respects, he shall promptly enter his order approving the same and authorizing the receiver to reimburse himself out of the funds of the estate in his hands. For his official services rendered, the receiver shall be compensated in the same manner and amount as provided by this Code for similar services rendered by guardians of estates.

(e) Closing Receivership. When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste for want of a representative, the receiver shall so report to the judge, filing with the clerk a full and final sworn account of all estate received into his hands, all sums paid out, all acts performed by him with respect to such estate, and all estate remaining in his hands; whereupon the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of such minor or incompetent, and shall give personal notice to the person having custody of such minor or incompetent, to appear before the judge at a time and place specified in such notices and contest such report and account if they so desire.

(f) Action of the Judge. If upon hearing such report and account, the judge is satisfied that the danger of injury, loss, or waste has abated and that said report and account are correct, he shall enter an order so finding and shall direct the receiver to deliver said estate to the person from whom he took possession as receiver, or to the person having custody of the minor or incompetent, or to such other person as the judge may find to be entitled to possession of the estate, which person in turn shall execute and file with the clerk an appropriate receipt for the estate thus delivered. The order of the judge shall discharge the receiver and his sureties. If the judge is not satisfied that the danger has abated, or if he is not satisfied with the report and account, he shall enter an order continuing the receivership in effect until he is so satisfied.

(g) Recordation of Proceedings. All orders, bonds, reports, accounts, and notices in the receivership proceedings shall be recorded in the minutes of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 3. SMALL ESTATES

§ 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed $50,000; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses and by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be examined by the judge of

the court having jurisdiction and venue; the judge may find, in his discretion, that the affidavit conforms to the terms of this section; if the judge approves the affidavit, the affidavit is to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, including a list of the assets and liabilities of the estate, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

This section does not affect the disposition of property under the terms of a will or other testamentary document nor does it transfer title to real property.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 4, eff. Aug. 23, 1957; Acts 1969, 61st Leg., p. 1978, ch. 670, § 1, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 1747, ch. 713, § 14, eff. Aug. 29, 1979; Acts 1983, 68th Leg., p. 4560, ch. 757, § 1, eff. Sept. 1, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to subsections (d) and (e) of this section.

§ 138. Effect of Affidavit

The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if made to a personal representative of the decedent, and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 139. Application for Order of No Administration

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 140. Hearing and Order Upon the Application

Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no

administration be had of the estate and shall assign to the surviving spouse and minor children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse and minor children.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 141. Effect of Order

The order that no administration be had on the estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 142. Proceeding to Revoke Order

At any time within one year after the entry of an order of no administration, and not thereafter, any interested person may file an application to revoke the same, alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property described in the application was incorrectly valued, and that if said property were added, included, or correctly valued, as the case may be, the total value of the property would exceed that necessary to justify the court in ordering no administration. Upon proof of any of such grounds, the court shall revoke the order of no administration. In case of any contest as to the value of any property, the court may appoint two appraisers to appraise the same in accordance with the procedure hereinafter provided for inventories and appraisements, and the appraisement of such appraisers shall be received in evidence but shall not be conclusive.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 143. Summary Proceedings for Small Estates After Personal Representative Appointed

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 144. Payment of Claims Without Guardianship

(a) To Residents. Whenever a resident minor, or whenever a resident person legally adjudged to be of unsound mind or to be an habitual or common drunkard sometimes referred to in this Section as "creditor," being without a legal guardian of his person or estate, shall be entitled to money in an amount not exceeding Ten Thousand Dollars, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay same to the County Clerk of the county in which such creditor resides in this state, for the account of such creditor, giving his name, the nature of his disability, and if a minor his age, and his post-office address, and the receipt for such money signed by the clerk shall be forever binding on such creditor as of the date and to the extent of such payment. Upon receipt of such payment by the clerk, he shall forthwith call same to the attention of the court and shall invest such money as authorized by the Probate Code pursuant to the orders of the court in the name and for the account of such minor or other person entitled to same, and by letter mailed to the address given by the debtor, shall apprise such creditor of the fact that such deposit has been made. Any increase, dividend or income from such investments shall be credited to the account of such minor or other person entitled to such investment. Any money heretofore deposited under the terms of this section which has not been paid out shall within thirty (30) days after the effective date of this Act be subject to the provisions of this Act as amended.

Within sixty (60) days from the first day of each calendar year the clerk of the court shall make a report to the court in writing of the status of such investments. Such report shall contain the following:

(1) The amount of the original investment or the amount of the investment at the last annual report, whichever is later.

(2) Any increase, dividend or income from such investment since the last annual report.

(3) The total amount of the investment and all increases, dividends or income at the date of the report.

(4) The name of the depository or the type of investment.

The father or mother or unestranged spouse of such creditor, priority being given to such spouse, residing in this state or if there be no such spouse and both father and mother be dead or nonresidents of this state, then the person residing in this state who has actual custody of such creditor, may as custodian, upon filing with such clerk written application and bond approved by the County Judge of such county, withdraw such money from the clerk for the use and benefit of such creditor, such bond to be in double the amount of said money and to be payable to the judge or his successors in office and to be conditioned that such custodian will use said money for the benefit of such creditor under directions of the court and that he will, when legally called upon to do so, faithfully account to such creditor, his heirs or legal representatives for such money and any increase thereof upon removal of the disability to which such creditor is subject, or upon his death or the appointment of a guardian. No fees or commissions shall be allowed to such custodian for taking care of, handling or expending such money so withdrawn by him.

When such custodian shall have expended such money in accordance with directions of the court or shall have otherwise complied with the terms of his bond by accounting for said money and any increase, he shall file with the County Clerk of said county his sworn report of his accounting, the filing of which report, when approved by the court shall operate as a discharge of said person as custodian and his sureties from all further liability under said bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

(b) To Non-Resident. Whenever a non-resident minor or whenever a non-resident person duly adjudged by a court of competent jurisdiction to be of unsound mind or to be an habitual drunkard, having no legal guardian qualified in this state, is entitled to money in an amount, not exceeding Ten Thousand Dollars owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay such money to the guardian of such creditor duly qualified in his domiciliary jurisdiction or to the county clerk of any county in this state in which real property owned by such non-resident person is situated. If such person is not known to own any real property in any county in this state such debtor shall have the right to pay such money to the county clerk of the county of this state in which the debtor resides. In either case, such payment to the clerk shall be for the use and benefit and for the account of such non-resident creditor, and the receipt for such payment signed by the clerk, reciting the name of such creditor and his post-office address, if known, shall be forever binding against such creditor as of the date and to the extent of such payment. Such money so paid to such clerk shall be handled by him in the same manner as above provided for in cases of payments to the clerk for the accounts of residents of this state, and all applicable provisions of Subsection (a) above shall apply to the handling and disposition of money or any increase, dividend, or income herefrom so paid to the clerk for the use, benefit, and account of such non-resident creditor.

(c) When the Deposit Is Not Withdrawn by Another Person. If no person authorized hereunder withdraws such money from the clerk as provided for in this Section, then the creditor himself, after termination of his disability, or his subsequent personal representatives or heirs, as the case may be, may at any time, without special bond for the purpose, withdraw such money upon simply exhibiting to the clerk an order of the county or probate court of the county where such money is held by the clerk, directing the clerk to deliver such money to such creditor or to his personal representative or heirs named in such order, the identity of such persons and their credentials being first proved to the satisfaction of the court.

(d) Money in the Registry of a Court and Belonging to an Inmate of a State Eleemosynary Institute. Whenever it is made to appear to the judge of a county court, district court, or other court of the State of Texas, by an affidavit executed by the superintendent, business manager or field representative of any eleemosynary institution of the State of Texas, that a certain inmate therein is a lunatic, idiot, person of unsound mind or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, and there is no known legal guardian appointed for the estate of such inmate, and that there is on deposit in the registry of the court a certain sum of money belonging to the inmate and not exceeding the sum of Ten Thousand Dollars, the judge of the court may order the disposition of the funds as herein provided. The judge of the court, upon satisfactory proof by affidavit or otherwise, that the inmate is a lunatic, idiot, person of unsound mind, or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, without a legally appointed guardian of his estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The State institution to which the payment is made shall not be required to give bond or security for receiving the fund from the registry of the court, and the receipt from the State institution for such payment, or the cancelled check or warrant by which the payment was made, shall be sufficient evidence of the disposition thereof and the clerk of the court shall be relieved of further responsibility therefor. Upon receipt of the money the institution shall deposit all of the amount received to the trust

account of the inmate, to be used by or for the personal use of the owner thereof under the regulations or custom of the institution in the expenditure of such funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. The provisions of this subdivision shall be cumulative of all other laws affecting the rights of lunatics, idiots, persons of unsound mind or of mental illness, and moneys belonging to such persons as inmates of a state eleemosynary institution.

Should such inmate become deceased leaving a balance in his trust account, such balance may be applied on the burial expenses of said inmate, or applied on his care, support and treatment account at said institution. After the expenditure of all funds in such trust account or after the death of such inmate the responsible officer shall furnish a statement of expenditures of such funds to nearest relative entitled to such statement; and, a copy of such statement shall be filed with the court which first granted the order to dispose of the funds in accordance with the provisions of this Act.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 1304, ch. 437, § 1, eff. June 6, 1957; Acts 1969, 61st Leg., p. 1978, ch. 671, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2993, ch. 988, § 5, eff. June 15, 1971; Acts 1979, 66th Leg., p. 1747, ch. 713, § 15, eff. Aug. 27, 1979.]

PART 4. INDEPENDENT ADMINISTRATION

§ 145. Independent Administration

(a) Independent administration of an estate may be created as provided in Subsections (b) through (e) of this section.

(b) Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement, and list of claims of his estate.

(c) In situations where an executor is named in a decedent's will, but the will does not provide for independent administration of the decedent's estate as provided in Subsection (b) of this section, 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 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 county 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, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) 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 his 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 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 county 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, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) 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 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 county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

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

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

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(k) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Subsections (c) through (e) of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(*l*) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this section, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(*o*) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county court shall waive bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. This subsection does not repeal any other section of this Code.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Subsections (c), (d), and (e) of this section.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2(b); Acts 1977, 65th Leg., p. 1061, ch. 390, § 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 16, eff. Aug. 27, 1979.]

§ 146. Payment of Claims and Delivery of Exemptions and Allowances

An independent executor, in his administration of an estate, although free from the control of the court, shall nevertheless, independently of and without application to, or any action in or by the court,

receive presentation of and classify, allow, and pay, or reject, claims against the estate in the same order of priority, classification, and proration prescribed in this Code, and set aside and deliver to those entitled thereto exempt property and allowances for support, and in lieu of homestead, as prescribed in this Code, to the same extent and result as if his actions had been accomplished in, and under orders of, the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2(c), eff. Aug. 21, 1957.]

§ 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, § 4, eff. Sept. 1, 1977.]

§ 148. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, § 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 17, eff. Aug. 27, 1979.]

§ 149. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray his trust, or has in some other way become disqualified, in which case, upon proper proceedings had for that purpose, as in the case of executors or administrators acting under orders of the court, such executor may be required to give bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 149A. Accounting

(a) Interested Person May Demand Accounting. At any time after the expiration of fifteen months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.

2. The disposition that has been made of such property.

3. The debts that have been paid.

4. The debts and expenses, if any, still owing by the estate.

5. The property of the estate, if any, still remaining in his hands.

6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.

7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Enforcement of Demand. Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the county court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

(c) Subsequent Demands. After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than twelve months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) Remedies Cumulative. The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor thereof.

[Acts 1971, 62nd Leg., p. 980, ch. 173, § 10, eff. Jan. 1, 1972. Amended by Acts 1973, 63rd Leg., p. 412, ch. 184, § 1, eff. May 25, 1973; Acts 1977, 65th Leg., p. 1065, ch. 390, § 6, eff. Sept. 1, 1977.]

§ 149B. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of 12 months after all estate and all inheritance taxes are paid or three years from the date that an independent administration was created and the order appointing an independent executor was entered, whichever date is later, a person interested in the estate may petition the court for an accounting and distribution. The proceeding for an accounting and distribution may be brought in the county court if the county judge is licensed to practice law in the State of Texas or may be brought in a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court may order its distribution by the independent executor to the persons entitled to the property.

(c) If all the property in the estate is ordered distributed by the executor and the estate is fully administered, the court also may order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

[Acts 1979, 66th Leg., p. 1751, ch. 713, § 18, eff. Aug. 27, 1979.]

§ 149C. Removal of Independent Executor

(a) The county court, if the county judge is licensed to practice law in the State of Texas, or a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county, on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

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

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

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

(4) he is proved to have been guilty of gross misconduct or gross mismanagement in the performance of his duties; or

(5) he becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing his fiduciary duties.

(b) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 154A of this code.

(c) An independent executor who defends an action for his removal in good faith, whether successful or not, shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

[Acts 1979, 66th Leg., p. 1751, ch. 713, § 19, eff. Aug. 27, 1979.]

§ 150. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent

executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for either partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both; and the same either shall be partitioned and distributed or shall be sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in estates administered under the direction of the county court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, § 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1751, ch. 713, § 20, eff. Aug. 27, 1979.]

§ 151. Closing Independent Administration by Affidavit

(a) Filing of Affidavit. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a final account verified by affidavit. Such account shall show:

(1) The property of the estate which came into the hands of the independent executor; and

(2) The debts that have been paid; and

(3) The debts, if any, still owing by the estate; and

(4) The property of the estate, if any, remaining on hand after payment of debts; and

(5) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Effect of Filing the Affidavit. The filing of such an affidavit shall terminate the independent administration and the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the affidavit. When such an affidavit has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such affidavit.

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 21, eff. Aug. 27, 1979.]

§ 152. Closing Independent Administration Upon Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order closing the administration and terminating the power of the independent executor to act as such.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 22, eff. Aug. 27, 1979.]

§ 153. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in the preceding Sections, the clerk shall issue such number of letters testamentary as the independent executor shall request.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 154. Powers of an Administrator Who Succeeds an Independent Executor

(a) Grant of Powers by Court. Whenever a person has died, or shall die, testate, owning property in Texas, and such person's will has been or shall be admitted to probate by the proper court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the court having jurisdiction of the estate, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred upon such administrator under other provisions of the laws of Texas, authorize, direct, and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent portions of this Section.

(b) Power to Borrow Money and Mortgage or Pledge Property. The court, upon application, citation, and hearing, may, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, upon application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage upon property or assets of the estate, real, personal, or mixed, upon such terms and conditions, and for such duration of time, as the court shall deem to be to the best interest of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in his official capacity.

(c) Powers Limited to Those Granted by the Will. The court may order and authorize such administrator to have and exercise the powers and privileges set forth in the preceding Subsections hereof only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property. The court, in addition, may, upon application, citation, and hearing, order, authorize and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be to the best interest of the estate and shall, from time to time, order and direct.

(e) Application for Grant of Powers. The granting to such administrator by the court of some, or all, of the powers and authorities set forth in this Section shall be upon application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) Citation. Upon the filing of such application, the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Such citation shall be served by posting.

(g) Hearing and Order. The court shall hear such application and evidence thereon, upon the return day named in the citation, or thereafter, and, if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, the court shall so order; otherwise, the court shall refuse said application.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 154A. Court-Appointed Successor Independent Executor

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration his inability or unwillingness to

serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the minor or incompetent, then, notwithstanding anything to the contrary in subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee who is a minor or incompetent has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

[Acts 1977, 65th Leg., p. 1066, ch. 390, § 8, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 23, eff. Aug. 27, 1979.]

PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

§ 155. Administration of Community Property

When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon, community or otherwise, shall be necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 156. Liability of Community Property for Debts

The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. In the administration of community estates, the survivor or personal representative shall keep a separate, distinct account of all community debts allowed or paid in the administration and settlement of such estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 157. When Spouse Incompetent

Whenever a husband or wife is judicially declared to be incompetent, the other spouse, in the capacity of surviving partner of the marital partnership, thereupon acquires full power to manage, control, and dispose of the entire community estate, including the part which the incompetent spouse would legally have power to manage in the absence of such incompetency, and no administration, community or otherwise, shall be necessary. Guardianship of the estate of the incompetent spouse shall not be necessary when the other spouse is competent unless the incompetent spouse owns separate property, and then as to such separate property only. The qualification of a guardian of the estate of an incompetent spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 5.]

§ 158. Duty of Guardians

A guardian of the estate of an incompetent married person who, as guardian, is administering community property as part of the estate of such ward, shall forthwith deliver such community property to the sane spouse upon demand.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 159. Recovery of Competency

The special powers of management, control, and disposition vested in the same spouse by this Code shall terminate whenever the decree of a court of competent jurisdiction finds that the mental competency of the other spouse has been recovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 160. Powers of Surviving Spouse When No Administration Is Pending

When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership, without qualifying as community administrator as hereinafter provided, has power to sue and be sued for the recovery of community property; to sell, mortgage, lease, and otherwise dispose of community property for the purpose of paying community debts; to collect claims due to the community estate; and has such other powers as shall be necessary to preserve the community property, discharge community obligations, and wind up community affairs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 161. Community Administration

Whenever an interest in community property passes to someone other than the surviving spouse, the surviving spouse may qualify as community administrator in the manner hereinafter provided if

(a) The deceased spouse failed to name an executor in his will, or

(b) If the executor named in the will of the deceased spouse is for any reason unable or unwilling to qualify as such, or

(c) If the deceased spouse died intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 162. Application for Community Administration

A surviving spouse who desires to qualify as a community administrator shall, within four years after the death of the other spouse, file a written application in the court having venue over the estate of the deceased spouse, stating:

(a) That the other spouse is dead, setting forth the time and place of such death; and

(b) The name and residence of each person to whom an interest in community property has passed by the will of the decedent or by intestacy; and

(c) That there is a community estate between the deceased spouse and the applicant, and the facts that authorize the applicant to be appointed as community administrator; and

(d) That, by virtue of facts set forth in the application, the court has venue over the estate of the deceased spouse; and

(e) If the applicant desires that appraisers be appointed, that not less than one nor more than

three appraisers should be appointed to appraise such estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 163. Appointment of Appraisers

If the appointment of appraisers is requested by the applicant, or by any interested person, the judge shall, without notice or citation, enter an order appointing appraisers to appraise such estate as in other administrations.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 164. Inventory, Appraisement, and List of Claims

The surviving spouse, with the assistance of the appraisers, if any be appointed, shall make out a full, fair, and complete inventory, appraisement, and list of claims of the community estate as in other administrations, shall attach thereto a list of all indebtedness owing by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is owing, and his or their postoffice address, and shall return same to the court within ninety (90) days after the date of the order appointing appraisers, if any be appointed, unless a longer time shall be granted by the court. If no appraisers be appointed, such return shall be made within ninety (90) days after the date of the application for community administration, unless a longer time shall be granted by the court. In either event, the court may, for good cause shown, require the filing of the inventory and appraisement within a shorter period of time. Such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said surviving spouse, and said inventory, appraisement, and list of claims owing said community estate shall be sworn to by said appraisers, if any appraisers have been appointed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

§ 165. Bond of Community Administrator

The community administrator shall at the time the inventory, appraisement, and list of claims are returned, present to the court a bond with two or more good and sufficient sureties, payable to and to be approved by the judge and his successors in a sum as is found by the judge to be adequate under all the circumstances, or a bond with one surety in a sum as is found by the judge to be adequate under all the circumstances, if the surety is an authorized corporate surety. The condition of the bond shall be that such surviving spouse will faithfully administer such community estate and will, after the payment of debts with which such property is properly chargeable, deliver to such person or persons as shall be entitled to receive the same the portion of the community estate devised or bequeathed to them under the terms of the will of the deceased spouse, or which passes to them under the laws of descent and distribution. Either spouse may by will apportion community indebtedness as between the devisees and legatees of such testator and the surviving spouse, but this shall not include the power to charge the community share of the surviving spouse with more than the portion of the community debts for which it would otherwise be liable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 717, ch. 339, § 1, eff. June 9, 1965; Acts 1971, 62nd Leg., p. 982, ch. 173, § 12, eff. Jan. 1, 1972.]

§ 166. Order of the Court

When such inventory, appraisement, list of claims, and bond are returned to the judge, he shall examine the same and approve or disapprove them by an order to that effect and, when approved, the order approving them shall also authorize the survivor as community administrator to control, manage, and dispose of the community property in accordance with the provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 167. Powers of Community Administrator

When the order mentioned in the preceding section has been entered, the survivor, without any further action in the court, shall have the power to control, manage, and dispose of the community property, as provided in this Code, as fully and completely as if he or she were the sole owner thereof, and to sue and be sued with regard to the same; and a certified copy of the order of the court shall be evidence of the qualification and right of such survivor. After paying community debts outstanding at the death of the deceased spouse, the qualified community administrator may carry on as statutory trustee for the owners of the community estate, investing and reinvesting the funds of the estate and continuing the operation of community enterprises until the termination of the trust as provided in this Code. The qualified community administrator is not entitled to mortgage community property to secure debts incurred for his individual benefit, or otherwise to appropriate the community estate to his individual benefit; but he may transfer or encumber his individual interest in the community estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

§ 168. Accounting by Survivor

The survivor, whether qualified as community administrator or not, shall keep a fair and full

account and statement of all community debts and expenses paid by him, and of the disposition made of the community property; and, upon final partition of such estate, shall deliver to the heirs, devisees or legatees of the deceased spouse their interest in such estate, and the increase and profits of the same, after deducting therefrom the proportion of the community debts chargeable thereto, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. Neither the survivor nor his bondsmen shall be liable for losses sustained by the estate, except when the survivor has been guilty of gross negligence or bad faith.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

§ 169. Payment of Debts

The community administrator shall pay all just and legal community debts within the time, and according to the classification, and in the order prescribed for the payment of debts in other administrations. Where there is a deficiency of assets to pay all claims of the same class, such claims shall be paid pro rata.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 170. New Appraisement or New Bond

Any person interested in a community estate may cause a new appraisement to be made of the same, or may cause a new bond to be required of the survivor, for the same causes and in like manner as provided in other administrations.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 171. Creditor May Require Exhibit

Any creditor of the community estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisement, list of claims, and bond by the survivor, may by written application to the court cause such survivor to be cited by personal service to appear and make an exhibit to the court in writing and under oath, showing fully and specifically:

(a) The debts that have been presented to him against such community estate and their class; and

(b) The debts that have been paid by him and those that remain unpaid, and the class of each; and

(c) The property that has been disposed of by him, and the amount received therefor; and

(d) The property remaining on hand; and

(e) An account of losses, expenses, and commissions.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 172. Action of Court Upon Exhibit

When such exhibit has been returned to the court and filed, the court shall examine the same and hear exceptions and objections thereto, and evidence in support of or against same. Should it appear to the court from such exhibit or from other evidence that such community estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, the court shall enter an order requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect the same for thirty days after the date of such order, the following proceedings shall be had:

(a) If said debt be for the amount of One Thousand Dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them by personal service to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

(b) If the amount due and payable to such creditor exceeds One Thousand Dollars, exclusive of interest, the creditor may have his action against such survivor and the sureties upon his bond in the District Court of the county where the survivor's bond is filed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 173. Approval of Exhibit

If, after examining the exhibit and after receiving evidence in support of or against the same, the court is satisfied that the estate has been fairly administered in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order approving such exhibit and directing the same to be recorded, and shall also in such order declare the community administration closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 174. Failure to File Exhibit

Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed as if the creditor's right to the payment of his claim had been fully established.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 175. Termination of Community Administration

After the lapse of twelve months from the filing of the bond of the survivor, the community administration may be terminated whenever termination is desired by either the survivor or the persons enti-

tled to the share of the deceased spouse, or to any portion thereof. Partition and distribution of the community estate may be had and the administration closed either by proceedings as in other independent administration or by proceedings in the appropriate District Court. When the community administration is closed, the community administrator shall be discharged and his bondsmen released from further liability.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 176. Remarriage of Surviving Spouse

The remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community administrator or administratrix; nor shall it terminate his or her powers as a surviving partner.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 23, eff. Aug. 27, 1979.]

§ 177. Distribution of Powers Among Personal Representatives and Surviving Spouse

(a) When Community Administrator Has Qualified. The qualified community administrator is entitled to administer the entire community estate, including the part which was by law under the management of the deceased spouse during the continuance of the marriage.

(b) When No Community Administrator Has Qualified. When an executor of the estate of a deceased spouse has duly qualified, such executor is authorized to administer, not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage and all of the community property that was by law under the joint control of the spouses during the continuance of the marriage. The surviving spouse, as surviving partner of the marital partnership, is entitled to retain possession and control of all community property which was legally under the sole management of the surviving spouse during the continuance of the marriage and to exercise over that property all the powers elsewhere in this part of this Code authorized to be exercised by the surviving spouse when there is no administration pending on the estate of the deceased spouse. The surviving spouse may by written instrument filed with the clerk waive any right to exercise powers as community survivor, and in such event the executor or administrator of the deceased spouse shall be authorized to administer upon the entire community estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS

PART 1. APPOINTMENT AND ISSUANCE OF LETTERS

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

PART 3. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL

PART 1. APPOINTMENT AND ISSUANCE OF LETTERS

§ 178. When Letters Testamentary or of Administration Shall Be Granted

(a) Letters Testamentary. When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(b) Letters of Administration. When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the distributees, but mention of these two instances of necessity for administration shall not prevent the court from finding other instances of necessity upon proof before it.

(c) Failure to Issue Letters Within Prescribed Time. Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 179. Opposition to Grant of Letters of Administration

When application is made for letters of administration, any person may at any time before the application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 180. Effect of Finding That No Necessity for Administration Exists

When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 181. Orders Granting Letters Testamentary or of Administration

When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

(a) The name of the testator or intestate; and

(b) The name of the person to whom the grant of letters is made; and

(c) If bond is required, the amount thereof; and

(d) If any interested person shall apply to the court for the appointment of an appraiser or appraisers, or if the court deems an appraisal necessary, the name of not less than one nor more than three disinterested persons appointed to appraise the estate and return such appraisement to the court; and

(e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1922, ch. 641, § 10, eff. June 12, 1969.]

§ 182. When Clerk Shall Issue Letters

Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 183. What Constitutes Letters

Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 184. Order Appointing Guardian

The order of the court appointing a guardian shall specify:

(a) The name of the person appointed.

(b) The name of the ward.

(c) Whether the guardian is of the person, or the estate, or of both the person and estate, of such ward, or of a person for whom it is necessary to have a guardian appointed to receive money or funds from a governmental source.

(d) The amount of bond required, if any; and

(e) If it be the guardianship of the estate, and if the court deems an appraisal necessary, the order shall also appoint not less than one nor more than three disinterested persons to appraise such estate, and to return such appraisement to the Court.

(f) That the clerk shall issue letters of guardianship to the person appointed when such person has qualified according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

§ 185. Issuance of Letters of Guardianship

When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, if bond be required, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and the date thereof, which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 186. Letters or Certificate Made Evidence

Letters testamentary, of administration, or of guardianship, or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate or ward and of the date of qualification.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 187. Issuance of Other Letters

When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 188. Rights of Third Persons Dealing With Executors or Administrators

When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and the law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled, and declared invalid.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

§ 189. How Executors, Administrators, and Guardians Shall Qualify

A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor or guardian who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 190. Oaths of Executors and Administrators

(a) Executor, or Administrator With Will Annexed. Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor, or appointed administrator with the will annexed, shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of _____, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said _____."

(b) Administrator. Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that _____, deceased, died without leaving any lawful will (or that the named executor in any such will is dead or has failed or neglected to offer the same for probate, or to accept and qualify as executor, within the time required, as the case may be), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased."

(c) Temporary Administrator. Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _____, deceased, in accordance with the law, and with the order of the court appointing me such administrator."

(d) Filing and Recording of Oaths. All such oaths may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 191. Oath of Guardian

The guardian shall take an oath to discharge faithfully the duties of guardian of the person, or of the estate, or of the person and estate, of the ward or of a person for whom it is necessary to have a guardian to receive funds or money from a governmental source, as the case may be, according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 192. Time for Taking Oath and Giving Bond

The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration or of guardianship, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 193. Bond of Guardian of Person

The bond of a guardian of the person shall be in an amount to be fixed by the Court granting such guardianship, payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. The bond shall be conditioned that the guardian will faithfully discharge the duties of guardian of the person of his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(a); Acts 1979, 66th Leg., p. 1753, ch. 713, § 24, eff. Aug. 27, 1979.]

§ 194. Bonds of Personal Representatives of Estates

Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary, or of administration or guardianship of estates, the recipient of letters shall enter into bond conditioned as required by law, payable to the county judge or probate judge of the county in which the probate proceedings are pending and to his successors in office. Such bonds shall bear the written approval of either of such judges in his official capacity, and shall be executed and approved in accordance with the following rules:

1. Court to Fix Penalty.

The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

2. Bond to Protect Creditors Only, When.

If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

3. Before Fixing Penalty, Court to Hear Evidence.

In any case where a bond is, or shall be, required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

(a) The amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm or ranch owned by the estate, and expenses of administration for one (1) year; and

(b) The revenue anticipated to be received in the succeeding twelve (12) months from dividends, interest, rentals, or use of real or personal property belonging to the estate and the aggregate amount of any installments or periodical payments to be collected; and

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

4. Penalty of Bond.

The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

5. Agreement as to Deposit of Assets.

It shall be lawful, and the court may require such action when deemed in the best interest of an estate or ward, for a personal representative to agree with the surety or sureties, either corporate or personal, for the deposit of any or all cash, and safekeeping of other assets of the estate in a domestic state or national bank, trust company, savings and loan association, or other domestic corporate depository, duly incorporated and qualified to act as such under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

6. Deposits Authorized or Required, When.

Cash or securities or other personal assets of an estate or ward or which an estate or ward is entitled to receive may, and if deemed by the court in the best interest of such estate or ward shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate or ward may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond.

It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.

8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond.

(a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing

the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may on its own motion, or upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless the same be filed within twenty (20) days after being personally served with notice of the filing of an application by another, or entry of the court's motion, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

9. Withdrawal of Deposits when Estate Closed.

Upon the closing of an estate, any such deposit or portion thereof remaining on hand, whether of the assets of the representative, or of the assets of the estate, or of the surety, shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards, and then only in the event distribution has been ordered by the court, and to the extent only of such distribution as shall have been ordered.

10. Who May Act as Sureties.

The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

11. Procedure When Bond Exceeds Fifty Thousand Dollars ($50,000).

When any such bond shall exceed Fifty Thousand Dollars ($50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

12. Qualifications of Personal Sureties.

If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, a personal surety, instead of making affidavit, or creating a lien on specific real estate when such is required, may, in the same manner as a personal representative, deposit his own cash or securities, in lieu of pledging real property as security, subject, so far as applicable, to the provisions covering such deposits when made by personal representatives.

13. Bonds of Temporary Appointees.

In case of a temporary administrator or guardian, the bond shall be in such sum as the judge shall direct.

14. Only One Bond for Guardian of Person and Estate.

Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by the guardian, in the same amount that would be required from a guardian of the estate only.

15. Increased or Additional Bonds When Property Sold, Rented, Leased for Mineral Development, or Money Borrowed or Invested.

The provisions in this Section with respect to deposit of cash and safekeeping of securities shall cover, so far as they may be applicable, the orders to be entered by the court when real or personal property of an estate has been authorized to be sold or rented, or money borrowed thereon, or when real property, or an interest therein, has been authorized to be leased for mineral development or subjected to unitization, the general bond having been found insufficient, or when money is borrowed or invested on behalf of a ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(b); Acts 1971, 62nd Leg., p. 983, ch. 173, § 14, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1754, ch. 713, § 25, eff. Aug. 27, 1979.]

§ 195. When No Bond Required

(a) By Will. Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, or when such a will is made by a surviving parent and directs that the guardian or guardians therein appointed serve without bond, the court finding that such person or persons are qualified, letters testamentary or of guardianship, as is proper, shall be issued to the persons so named, without requirement of bond.

(b) Corporate Fiduciary Exempted From Bond. If a personal representative is a corporate fiduciary, as said term is defined in this Code, no bond shall be required.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 196. Form of Bond

The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of _____

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of _____, and his successors in office, in the sum of _____ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of _____ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of _____ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of _____ County, temporary administrator of the estate of J. C., deceased, as the case may be, or has been appointed by the judge of said county as guardian or temporary guardian of the estate, or of the person or person and estate of _____, stating in each case whether or not such person is a minor or a person of unsound mind or an habitual drunkard or a person for whom a guardian is necessary to receive funds or money from a governmental source), shall well and truly perform all of the duties required of him by law under said appointment."

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 197. Bonds to Be Filed

All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, when approved by the court, be filed with the clerk.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 198. Bonds of Joint Representatives

When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 199. Bonds of Married Persons

When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 24, eff. Aug. 27, 1979.]

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975.]

§ 201. (a) Affidavit of Personal Surety; (b) Lien on Specific Property, When Required; (c) Subordination of Lien Authorized

(a) Affidavit of Personal Surety. Before the judge may consider a bond with personal sureties, each person offered as surety shall execute an affidavit stating the amount of his assets, reachable by creditors, of a value over and above his liabilities, the total of the worth of such sureties to be equal to at least double the amount of the bond, and such affidavit shall be presented to the judge for his consideration and, if approved, shall be attached to and form part of the bond.

(b) Lien on Specific Property, When Required. If the judge finds that the estimated value of personal property of the estate which cannot be deposited or held in safekeeping as hereinabove provided is such that personal sureties cannot be accepted without the creation of a specific lien on real property of such sureties, he shall enter an order requiring that each surety designate real property owned by him within this State subject to execution, of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of such property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and be attached to and form part of the bond. If compliance with such

order is not had, the judge may in his discretion require that the bond be signed by an authorized corporate surety, or by such corporate surety and two (2) or more personal sureties.

(c) **Subordination of Lien Authorized.** If a personal surety who has been required to create a lien on specific real estate desires to lease such property for mineral development, he may file his written application in the court in which the proceedings are pending, requesting subordination of such lien to the proposed lease, and the judge of such court may, in his discretion, enter an order granting such application. A certified copy of such order, filed and recorded in the deed records of the proper county, shall be sufficient to subordinate such lien to the rights of a lessee, in the proposed lease.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(c).]

§ 202. Bond as Lien on Real Property of Surety

When a personal surety has been required by the court to create a lien on specific real property as a condition of his acceptance as surety on a bond, a lien on the real property of the surety in this State which is described in the affidavit of the surety, and only upon such property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(d).]

§ 203. When New Bond May Be Required

A personal representative may be required to give a new bond in the following cases:

(a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or

(b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or

(c) When, in the opinion of the court, any such bond is defective; or

(d) When the amount of any such bond is insufficient; or

(e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or

(f) When the bond and the record thereof have been lost or destroyed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 204. Demand for New Bond by Interested Person

Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 205. Judge to Require New Bond

When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall without delay cause the representative to be cited to show cause why he should not give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 206. Order Requiring New Bond

Upon the return of a citation ordering a personal representative to show cause why he should not give a new bond, the judge shall, on the day named therein for the hearing of the matter, proceed to inquire into the sufficiency of the reasons for requiring a new bond; and, if satisfied that a new bond should be required, he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 207. Order Suspends Powers of Personal Representative

When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 208. Decrease in Amount of Bond

A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate, and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 209. Discharge of Sureties Upon Execution of New Bond

When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 210. Release of Sureties Before Estate Fully Administered

The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 211. Release of Lien Before Estate Fully Administered

If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 212. Release of Recorded Lien on Surety's Property

A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 213. Revocation of Letters for Failure to Give Bond

If at any time a personal representative fails to give bond as required by the court, within the time fixed by this Code, another person may be appointed in his stead.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 214. Executor or Guardian Without Bond Required to Give Bond

Where no bond is required of an executor or guardian appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor or guardian to appear and show cause why he should not be required to give bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 215. Order Requiring Bond

Upon hearing such complaint, if it appears to the court that such executor or guardian is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor or guardian to give bond within ten days from the date of such order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 216. Bond in Such Case

Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor or guardian will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 217. Failure to Give Bond

Should the executor or guardian fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor or guardian and appoint some competent person in his

stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon the administration of said estate, shall take the oath required of an administrator with the will annexed or of a guardian as the case may be, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration or guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 218. Bonds Not Void Upon First Recovery

The bonds of personal representative shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 219. Repealed by Acts 1957, 55th Leg., p. 53, ch. 31, § 13, eff. Aug. 22, 1957

PART 3. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL

§ 220. Appointment of Successor Representative

(a) Because of Death, Resignation or Removal. When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order. Upon the finding that a necessity for the immediate appointment of a successor representative exists, the court may appoint such successor without citation or notice.

(b) Because of Existence of Prior Right. Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

(c) When Named Executor or Guardian Becomes an Adult. If one named in a will as executor or guardian is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor or guardian, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

(d) Upon Return of Sick or Absent Executor or Guardian. If one named in a will as executor or guardian was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor or guardian within twenty days after the probate of the will, he may accept and qualify as executor or guardian within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

(e) When Will Is Discovered After Administration Granted. If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

(f) When Application and Service Necessary. Except when otherwise expressly provided in this Code, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted.

(g) Payment or Tender of Money Due During Vacancy. Money or other thing of value falling due to an estate or ward while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate or ward, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

§ 221. Resignation

(a) Application to Resign. A personal representative who wishes to resign his trust shall file with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.

(b) Successor Representatives. If the necessity exists, the court may immediately accept a resignation and appoint a successor, but shall not discharge the person resigning, or release him or the sureties

on his bond until final order or judgment shall have been rendered on his final account.

(c) Citation. Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

(d) Hearing. At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it. A guardian of the person shall be required to comply with all lawful orders of the court concerning his ward.

(e) Requisites of Discharge. No resigning personal representative shall be discharged until the application has been heard, the exhibit and account examined, settled, and approved, and until he has satisfied the court that he has delivered the estate, if there be any remaining in his possession, or has complied with all lawful orders of the court with relation to his trust.

(f) Final Discharge. When the resigning applicant has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if he is under bond, his sureties.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 222. Removal

(a) Without Notice. The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

(1) Neglects to qualify in the manner and time required by law; or

(2) Fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge; or

(3) Having been required to give a new bond, fails to do so within the time prescribed; or

(4) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State; or

(5) Cannot be served with notices or other processes by reason of the fact that his whereabouts are unknown, or by reason of the fact that he is eluding service.

(b) With Notice. The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

(1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care; or

(2) He fails to return any account which is required by law to be made; or

(3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties; or

(4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties; or

(5) He becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust; or

(6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

(7) As guardian of the person, he cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of such ward and the condition of his estate permit.

(c) Order of Removal. The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative, and as to the person of a ward, that control be relinquished as required in the order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

PART 4. SUBSEQUENT PERSONAL REPRESENTATIVES

§ 223. Further Administration With or Without Will Annexed

Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments, except that when the court finds that there is a necessity for the immediate appointment of a successor representative, such successor may be appointed upon application but without citation or notice.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

§ 224. Successors Succeed to Prior Rights, Powers, and Duties

When a representative of the estate not administered succeeds another, he shall be clothed with all rights, powers, and duties of his predecessor, except such rights and powers conferred on the predecessor by will which are different from those conferred by this Code on personal representatives generally. Subject to this exception, the successor shall proceed to administer such estate in like manner as if his administration were a continuation of the former one. He shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give in order to enforce the delivery of the estate and the liability of the sureties of his predecessor for so much as is not delivered. He shall be excused from accounting for such of the estate as he has failed to recover after due diligence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 225. Additional Powers of Successor Appointee

In addition, such appointee may make himself, and may be made, a party to suits prosecuted by or against his predecessors. He may settle with the predecessor, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the predecessor in his own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 226. Subsequent Executors and Guardians Also Succeed to Prior Rights and Duties

Whenever an executor or guardian shall accept and qualify after letters of administration shall have been granted upon the estate, such executor or guardian shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any legal directions of the testator contained in the will in relation to the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 227. Successors Return of Inventory, Appraisement, and List of Claims

An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisement, and list of claims of the estate, within ninety days after being qualified, in like manner as is required of original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 228. Powers, Duties, and Obligations of Guardian of Person Entitled to Governmental Funds

(a) A guardian of the estate of a person for whom it is necessary to have a guardian appointed to receive funds from a governmental agency shall have the power to administer only the funds so received from such governmental agency, and all earnings, interest, or profits derived therefrom and all property acquired therewith, and shall not be considered as a general guardian of the estate of such ward. Such guardian shall have the power to receive and receipt for such funds, to pay out under appropriate order of the court the expenses of administering the estate and for the support, maintenance, and education of the ward and his dependents, and to invest under the order of the court the surplus funds as they accumulate in the estate, as authorized by Part 10 of Chapter 8 of this Code. The procedural, administrative, and penal provisions of this Code shall be binding upon the guardian in his original appointment and in the administration of the estate of such ward.

(b) All acts heretofore performed by guardians of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse

funds due such person from a governmental source or agency, performed in conformance with orders of a county or probate court having venue with respect to the support, maintenance, and education of the ward and his dependents, and the investment of surplus funds of the ward under the general guardianship laws of this State, which acts are not in issue as to legality in any probate proceeding or civil suit pending on the effective date of this Act, are hereby validated.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 7, eff. Aug. 22, 1957.]

§ 229. Guardians of the Person

The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated; and, if necessary for his support, to see that he learns a trade or adopts a useful profession.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 230. Care of Property of Estates

(a) Estates of Decedents. The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

(b) Estates of Wards

(1) General Powers and Duties. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

(2) Power to Make Tax-Motivated Gifts. (A) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of (i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest, (ii) the ward's heirs at law who are identifiable at the time of the order, (iii) devisees under the ward's last validly executed will, if there be such a will, (iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

(B) The person making application to the court shall outline the proposed estate plan, setting forth all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of his estate as herein provided.

(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.

(D) Subsequent modifications of an approved plan may be made by similar application to the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975.]

§ 231. Summary of Powers of Guardians of Person and Estate

The guardian of both person and estate has all the rights and powers, and shall perform all the duties, of the guardian of the person and of the guardian of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 232. Representative of Estate Shall Take Possession of Personal Property and Records

The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal property, record books, title papers, and other business papers of the estate, and all such in his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 233. Collection of Claims and Recovery of Property

Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect. Such representatives may enter into contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys and incidental expenses, subject only to approval of the court in which the estate is being administered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 234. Exercise of Powers With and Without Court Order

(a) Powers To Be Exercised Under Order of the Court. The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting authority:

(1) Purchase or exchange property;

(2) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate;

(3) Compound bad or doubtful debts due or owing to the estate;

(4) Make compromises or settlements in relation to property or claims in dispute or litigation;

(5) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim.

(b) Powers To Be Exercised Without Court Order. The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

(1) Release liens upon payment at maturity of the debt secured thereby;

(2) Vote stocks by limited or general proxy;

(3) Pay calls and assessments;

(4) Insure the estate against liability in appropriate cases;

(5) Insure property of the estate against fire, theft, and other hazards;

(6) Pay taxes, court costs, bond premiums.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 984, ch. 173, § 15, eff. Jan. 1, 1972.]

§ 235. Possession of Property Held in Common Ownership

If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 236. Sums Allowable for Education and Maintenance of Ward

(a) Expenditures Directed by the Court

The Court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise, the guardian shall not be allowed, for the education and maintenance of the ward, more than the net income of the estate. When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person such sums as shall be fixed by the Court, at times specified by the Court, for the education and maintenance of the ward, and, on failure to do so, shall be compelled to make such payment by order of the Court, after being duly cited.

(b) Court Approval of Previous Expenditures

When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for the ward, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not ex-

ceed the sum of Two Thousand Dollars ($2,000) during an annual accounting period.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1963, 58th Leg., p. 116, ch. 67, § 1; Acts 1975, 64th Leg., p. 978, ch. 374, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 2, eff. Aug. 29, 1977.]

§ 237. Title of Wards Not to Be Disputed

Neither the guardian nor his heirs, executors, administrators, or assigns shall dispute the right of the ward to any property that came into the possession of such guardian as guardian, except such property as shall have been recovered from the guardian, or except property on account of which there is a personal action pending.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 238. Operation of Farm, Ranch, Factory, or Other Business

If the estate owns a farm, ranch, factory, or other business, the disposition of which has not been specifically directed by will, and if the same be not required to be sold at once for the payment of debts or other lawful purposes, the representative, upon order of the court, shall carry on the operation of such farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interest of the estate. In deciding, the court shall consider the condition of the estate, and the necessity that may exist for future sale of such property or business for the payment of debts, claims, or other lawful expenditures, and shall not extend the time of renting any of the property beyond what appears consistent with the speedy settlement of the estate of a deceased person, or the maintenance and education of a ward or the settlement of his estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 238A. Administration of Partnership Interest by Personal Representative

If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence.

[Amended by Acts 1979, 66th Leg., p. 71, ch. 46, § 1, eff. April 1, 1979.]

§ 239. Payment or Credit of Income

In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate, except as otherwise provided by sections of this Code; provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 407, ch. 182, § 1, eff. May 25, 1973.]

§ 240. Joint Executors or Administrators

Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred. Provided, however, that this Section shall not be construed to authorize one of several executors or administrators to convey real estate, but in such case all the executors or administrators who have qualified as such and are acting as such shall join in the conveyance, unless the court, after due hearing, authorizes less than all to act.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

§ 241. Compensation of Personal Representatives

(a) Compensation of Executors and Administrators. Executors and administrators shall be en-

titled to receive, and may retain in their hands, a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate; provided, no commission shall be allowed for receiving cash belonging to the testator or intestate which was on hand or on deposit to his credit in a bank at the time of his death, nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors.

(b) Compensation of Guardians. A guardian of the person alone is entitled to no compensation. The guardian of the estate, or of the person and estate, shall not be entitled to, or receive, any fee or commission on the estate of the ward when it is first delivered to him; but shall be entitled to a fee of five per cent (5%) on the gross income of the ward's estate and five per cent (5%) on all money paid out. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. If the guardian manages a farm, ranch, factory, or other business of his ward, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 8.]

§ 242. Expenses Allowed

Personal representatives of estates shall also be entitled to all necessary and reasonable expenses incurred by them in the preservation, safekeeping, and management of the estate, and in collecting or attempting to collect claims or debts, and in recovering or attempting to recover property to which the estate has a title or claim, and all reasonable attorney's fees, necessarily incurred in connection with the proceedings and management of such estate, on satisfactory proof to the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 243. Allowance for Defending Will

When any person designated as executor in a will or an alleged will, or as administrator with the will or alleged will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will or alleged will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in such proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 5227, ch. 957, § 1, eff. Sept. 1, 1983.]

§ 244. Expense Accounts

All expense charges shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by affidavit of the representative, filed with the clerk and entered on the claim docket, and shall be acted on by the court in like manner as other claims against the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 245. When Costs Are Adjudged Against Representative

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code, and for reasonable attorney's fees incurred in removing him and in obtaining his compliance regarding any statutory duty he has neglected.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, § 3, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 631, ch. 140, § 1, eff. Aug. 29, 1983.]

§ 246. Exemption From Fees and Costs in Guardianships for Reception of Governmental Funds

Whenever a guardian is appointed for the purpose of enabling a person to receive public assistance which is contingent upon need, from the State or Federal Government, the court may, in its discretion, order that no costs or fees be charged in connection with the proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 247. Costs Against Estates of Incompetents

When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate, or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

PART 2. WITHDRAWING ESTATES OF DECEASED PERSONS FROM ADMINISTRATION

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

PART 4. PRESENTMENT AND PAYMENT OF CLAIMS

PART 5. SALES

PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

§ 248. Appointment of Appraisers

At any time after the grant of letters testamentary or of administration or of guardianship, upon the application of any interested person or if the court shall deem necessary, the court shall

appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 2, eff. Aug. 28, 1967]

§ 249. Failure of Appraiser to Serve

If any appraiser so appointed shall fail or refuse to act, the court shall by a like order or orders remove such appraiser and appoint another appraiser or appraisers, as the case shall require.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 3, eff. Aug. 28, 1967.]

§ 250. Inventory and Appraisement

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

(a) all real property of the estate situated in the State of Texas;

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 4, eff. Aug. 28, 1967.]

§ 251. List of Claims

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

(a) The name of each person indebted to the estate and his address when known.

(b) The nature of such debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract.

(c) The date of such indebtedness, and the date when the same was or will be due.

(d) The amount of each claim, the rate of interest thereon, and time for which the same bears interest.

(e) In the case of decedent's estate, which of such claims are separate property and which are of the community.

(f) What portion of the claims, if any, is held in common with others, giving the names and the relationships, if any, of other part owners, and the interest of the estate therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 252. Affidavit to be Attached

The representative of the estate shall also attach to such inventory and list of claims his affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the said inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to his knowledge.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 253. Fees of Appraisers

Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars ($5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 9.]

§ 254. Repealed by Acts 1967, 60th Leg., p. 1816, ch. 697, § 6, eff. Aug. 28, 1967

Section 6 of Acts 1967, 60th Leg., p. 1815, ch. 697, repealing section 254 of the Probate Code relating to waiver of appraisement, provided further: "In the event that any of the provisions of this Act are in conflict with the provisions of any of the Sections of the Texas Probate Code or with any other law, the provisions hereof shall take precedence and shall prevail to the extent of such conflict."

Section 7 of the 1967 Act provided that "The repeal of any law by this Act shall not affect or impair any act done, obligation or

right accrued or existing under the authority of the act repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action, obligation or right."

§ 255. Action by the Court

Upon return of the inventory, appraisement, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) Order of Approval. Should the judge approve the inventory, appraisement, and list of claims, he shall issue an order to that effect.

(b) Order of Disapproval. Should the judge not approve the inventory, appraisement, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisement, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 256. Discovery of Additional Property

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 5, eff. Aug. 28, 1967.]

§ 257. Additional Inventory or List of Claims Required by Court

Any representative of an estate, on the written complaint of any interested person that property or claims of the estate have not been included in the inventory and list of claims filed, shall be cited to appear before the court in which the cause is pending and show cause why he should not be required to make and return an additional inventory or list of claims, or both. After hearing such complaint, and being satisfied of the truth thereof, the court shall enter its order requiring such additional inventory or list of claims, or both, to be made and returned in like manner as original inventories, and within such time, not to exceed twenty days, from the date of said order, as may be fixed by the court, but to include only property or claims theretofore not inventoried or listed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 258. Correction Required When Inventory, Appraisement, or List of Claims Erroneous or Unjust

Any person interested in an estate who deems an inventory, appraisement, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the alleged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint, the court be satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisement correcting such erroneous or unjust items and requiring the return of said new appraisement within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 259. Effect of Reappraisement

When any reappraisement is made, returned, and approved by the court, it shall stand in place of the original appraisement. Not more than one reappraisement shall be made, but any person interested in the estate may object to the reappraisement either before or after it is approved, and if the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 260. Failure of Joint Personal Representatives to Return an Inventory, Appraisement, and List of Claims

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 261. Use of Inventories, Appraisements, and Lists of Claims as Evidence

All inventories, appraisements, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed

by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims of the estate actually was in excess of that shown in the appraisement and list of claims.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 2. WITHDRAWING ESTATES OF DECEASED PERSONS FROM ADMINISTRATION

§ 262. Executor or Administrator Required to Report on Condition of Estate

At any time after the return of inventory, appraisement, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pending, cause the executor or administrator of the estate to be cited to appear and render under oath an exhibit of the condition of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 263. Bond Required to Withdraw Estate From Administration

When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisement and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the judgment of the court on his exhibit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 264. Court's Order

When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 265. Order of Discharge

When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 266. Lien on Property of Estate Withdrawn From Administration

A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 267. Partition of Estate Withdrawn From Administration

Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 268. Creditors May Sue on Bond

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 269. Creditors May Sue Distributees

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees shall be liable beyond his just proportion according to the amount of the estate he shall have received in the distribution.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

§ 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of both spouses given in the same

manner as required in making a sale and conveyance of the homestead.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 1, eff. Aug. 27, 1979.]

§ 271. Exempt Property to Be Set Apart

Immediately after the inventory, appraisement, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 2, eff. Aug. 27, 1979.]

§ 272. To Whom Delivered

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children and unmarried children, if any, living with the family.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 3, eff. Aug. 27, 1979.]

§ 273. Allowance in Lieu of Exempt Property

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 351, ch. 172, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 35, ch. 24, § 4, eff. Aug. 27, 1979.]

§ 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 5, eff. Aug. 27, 1979.]

§ 275. To Whom Allowance Paid

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows:

(a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the children of whom the survivor is not the parent, or, if they are minors, to their guardian.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 6, eff. Aug. 27, 1979.]

§ 276. Sale to Raise Allowance

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

such allowance, or a part thereof, as the case requires.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 7, eff. Aug. 27, 1979.]

§ 277. Preference of Liens

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 8, eff. Aug. 27, 1979.]

§ 278. When Estate Is Solvent

If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempted property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 279. When Estate Is Insolvent

Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 9, eff. Aug. 27, 1979.]

§ 280. Exempt Property Not Considered in Determining Solvency

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 10, eff. Aug. 27, 1979.]

§ 281. Exempt Property Liable for Certain Debts

The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of the deceased, when claims are presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 282. Nature of Homestead Property Immaterial

The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 11, eff. Aug. 27, 1979.]

§ 283. Homestead Rights of Surviving Spouse

On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 12, eff. Aug. 27, 1979.]

§ 284. When Homestead Not Partitioned

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 13, eff. Aug. 27, 1979.]

§ 285. When Homestead Can Be Partitioned

When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 14, eff. Aug. 27, 1979.]

§ 286. Family Allowance to Surviving Spouses and Minors

Immediately after the inventory, appraisement, and list of claims have been approved, the court shall fix a family allowance for the support of the

surviving spouse and minor children of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 15, eff. Aug. 27, 1979.]

§ 287. Amount of Family Allowance

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 16, eff. Aug. 27, 1979.]

§ 288. When Family Allowance Not Made

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 17, eff. Aug. 27, 1979.]

§ 289. Order Fixing Family Allowance

When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 290. Family Allowance Preferred

The family allowance made for the support of the surviving spouse and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 18, eff. Aug. 27, 1979.]

§ 291. To Whom Family Allowance Paid

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

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

(b) If the surviving spouse is not the parent of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 19, eff. Aug. 27, 1979.]

§ 292. May Take Property for Family Allowance

The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 20, eff. Aug. 27, 1979.]

§ 293. Sale to Raise Funds for Family Allowance

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 21, eff. Aug. 27, 1979.]

PART 4. PRESENTMENT AND PAYMENT OF CLAIMS

§ 294. Notice by Representative of Appointment

(a) Giving of Notice Required. Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against

the estate being administered to present the same within the time prescribed by law. The notice shall state the time of issuance of letters held by the representative, together with his residence and post office address.

(b) Proof of Publication. A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this Code for the service of citation or notice by publication, shall be filed in the court where the cause is pending.

(c) When No Newspaper Printed in the County. When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1981, 67th Leg., p. 243, ch. 102, § 9, eff. Aug. 31, 1981.]

§ 295. Notice to Holders of Recorded Claims

(a) When Notice Required. Within four months after receiving letters, the representative of an estate shall give notice of the issuance of such letters to each and every person having a claim for money against the estate of a decedent, or ward, as the case may be, provided:

(1) That such claim is secured by a deed of trust, mortgage, vendor's, mechanic's or other contractor's lien upon real estate belonging to such estate; and

(2) That the instrument creating, extending, or transferring such lien was duly recorded prior to the death of a testator or intestate in the county in which the real estate covered by such lien is situated, or prior to the time at which title vested in an heir or devisee.

(b) How Notice Shall Be Given. The notice stating the original grant of letters shall be given by mailing same by registered letter, with return receipt requested, addressed to the record holder of such indebtedness or claim at his last known postoffice address.

(c) Proof of Service of Notice. A copy of such notice, together with the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 296. One Notice Sufficient

If the notices required by the two preceding Sections have been given by a former representative, or by one where several are acting, that shall be sufficient, and need not be repeated by any successor or co-representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 297. Penalty for Failure to Give Notice

If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, he and the sureties on his bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 298. Claims Against Estates of Decedents and Wards

(a) Claims Against Decedent's Estate Postponed if not Presented in Six Months. All claims for money against a testator or intestate shall be presented to the executor or administrator within six months after the original grant of letters testamentary or of administration; otherwise the payment thereof shall be postponed until the claims which have been presented within six months and allowed by the executor or administrator and approved by the court have been first entirely paid; provided, however, that the failure of the holder of a secured claim to present his claim within said six month period shall not cause his claim to be postponed, but it shall be treated as a claim to be paid in accordance with subsequent provisions of this Code.

(b) Time for Presentation of Claims to Guardians. Claims may be presented to the guardian at any time when the estate is not closed and when suit on such claims has not been barred by the general statutes of limitation.

(c) Claims Barred by Limitation Not to Be Allowed or Approved. No claims against a decedent or ward, or against the estate of either, on which a suit is barred by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that limitation has run, the claim shall be disapproved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 1, eff. June 15, 1971.]

§ 299. Tolling of General Statutes of Limitation

The general statutes of limitation are tolled:

(a) By filing a claim which is legally allowed and approved; or

(b) By bringing a suit upon a rejected and disapproved claim within ninety days after such rejection or disapproval.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 300. Claims for Expenses of Funeral and Last Illness

Claims for funeral expenses and expenses of the last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, and, if they are not presented within such time, the exempted property set apart to the widow and children, and any allowances made to them under the provisions of this Code, shall no longer be liable for the payment of such claims or any part thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 301. Claims Must Be Authenticated

Except as hereinafter provided with respect to the payment of unauthenticated claims by guardians, no personal representative of a decedent's estate or of the estate of a ward shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 302. When Defects of Form Are Waived

Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written objection thereto has been made within thirty days after presentment of the claim, and filed with the county clerk.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 303. Evidence Concerning Lost or Destroyed Claims

If evidence of a claim is lost or destroyed, the claimant, or someone for him, may make affidavit to the fact of such loss or destruction, stating the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 304. Authentication of Claim by Others Than Individual Owners

The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of such corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 305. Guardian's Payment of Unauthenticated Claims

A guardian may pay an unauthenticated claim against the estate of his ward which he believes to be just, but he and the sureties on his bond shall be liable for the amount of any such payment in the event the court should find that such claim is not just.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 306. Method of Handling Secured Claims

(a) Specifications of Claim. When a secured claim against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

(b) Handling of Secured Claims Not Presented in Time. If a secured claim is not presented within the time provided by law, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

(c) Approved Claim as Preferred Lien Against Property. When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

(d) Payment of Maturities on Secured Claims. If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within twelve months from the date letters testamentary or of administration or guardianship are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on motion of the claimholder, the court shall require the sale of said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities, or, at the option of the claimholder, a motion may be made in a like manner to require the sale of said property free of such lien and to apply the proceeds to the payment of the whole debt.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 307. Claims Providing for Attorney's Fees

If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 308. Depositing Claims With Clerk

Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or his attorney, by letter mailed to his last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is filed, then it shall be presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or the presumption of rejection because not acted upon within said thirty day period.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 309. Memorandum of Allowance or Rejection of Claim

When a duly authenticated claim against an estate is presented to the representative, or filed with the clerk as heretofore provided, he shall, within thirty days after the claim is presented or filed, endorse thereon, or annex thereto, a memorandum signed by him, stating the time of presentation or filing of the claim, and that he allows or rejects it, or what portion thereof he allows or rejects.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 310. Failure to Endorse or Annex Memorandum

The failure of a representative of an estate to endorse on, or annex to, a claim presented to him, his allowance or rejection thereof within thirty days after the claim was presented, shall constitute a rejection of the claim. If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or he may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 311. When Claims Entered in Docket

(a) Claims Against Estates of Decedents. If a claim against the estate of a decedent has been presented within six months after the issuance of original testamentary letters or of administration, and all or part of such claim is allowed by the executor or administrator, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter the same in its proper place upon the claim docket. If such claim is not so presented within such time, the payment thereof, should it be approved in whole or in part, shall be postponed until all other claims which have been presented, allowed, and approved within the time prescribed have been first entirely paid.

(b) Claims Against Estates of Wards. After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter it on the claim docket.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 2, eff. June 15, 1971.]

§ 312. Contest of Claims, Action by Court, and Appeals

(a) Contest of Claims. Any person interested in an estate or ward may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) Court's Action Upon Claims. All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

(c) Hearing on Claims. Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and the personal representative under

oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, he shall disapprove it.

(d) Order of the Court. When the court has acted upon a claim, he shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

(e) Appeal. When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the courts of (civil) appeals, as from other judgments of the county court in probate matters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 14, eff. June 21, 1975.]

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending or in any other court of proper jurisdiction within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition, if of any court other than the court of original probate jurisdiction, and filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 5, eff. June 21, 1975.]

§ 314. Presentment of Claims a Prerequisite for Judgment

No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate or ward, and rejected by him or by the court, in whole or in part.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 315. Costs of Suit With Respect to Claims

All costs incurred in the probate court with respect to claims shall be taxed as follows:

(a) If allowed and approved, the estate shall pay the costs.

(b) If allowed, but disapproved, the claimant shall pay the costs.

(c) If rejected, but established by suit, the estate shall pay the costs.

(d) If rejected, but not established by suit, the claimant shall pay the costs.

(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, he shall pay all costs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 316. Claims Against Executors or Administrators

The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator is indebted to his testator or intestate, he shall account for the debt in the same manner as if it were cash in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall be required to account for it only from the date when it becomes due.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 317. Claims by Personal Representatives

(a) By Executors or Administrators. The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred.

(b) By Guardians. A claim which the guardian held against the ward or his estate at the time of his appointment, or which has since accrued, shall be verified by affidavit as required in other cases, and presented to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket, after which it shall take the same course as other claims.

(c) Action on Such Claims. When a claim by an executor, administrator, or guardian has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(d) Provisions Not Applicable to Certain Claims. The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to the claim of any heir, devisee, or legatee

who claims in such capacity, or to any claim that accrues against the estate after the granting of letters for which the representative of the estate has contracted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 318. Claims Not Allowed After Order for Partition and Distribution

No claim for money against his testator or intestate shall be allowed by an executor or administrator and no suit shall be instituted against him on any such claim, after an order for partition and distribution has been made; but, after such an order has been made, the owner of any claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees, or legatees of the estate, limited to the value of the property received by them in such partition and distribution.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 319. Claims Not to Be Paid Unless Approved

Except as provided for payment at his own risk by a guardian of an unauthenticated claim, no claim for money against the estate of a decedent or ward, or any part thereof, shall be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 320. Order of Payment of Claims

(a) Estates of Decedents. Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Two Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) Estates of Wards. The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable, in the following order:

(1) expenses for the care, maintenance and education of the ward or his dependents;

(2) funeral expenses and expenses of last sickness, if the guardianship is kept open after the death of the ward as provided by Section 404A of this Code, except that any claim against the estate of a ward that has been allowed and approved or established by suit prior to the death of the ward shall be paid prior to the funeral expenses and expenses of last sickness;

(3) expenses of administration; and

(4) other claims against the estate.

(c) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1876, ch. 758, § 1, eff. Aug. 27, 1979.]

§ 320A. Funeral Expenses

When executors, independent executors, and administrators pay claims for funeral expenses and for items incident thereto, such as tombstones, grave markers, crypts or burial plots, they shall charge the whole of such claims to the decedent's estate and shall charge no part thereof to the community share of a surviving spouse.

[Acts 1967, 60th Leg., p. 768, ch. 321, § 1, eff. May 27, 1967.]

§ 321. Deficiency of Assets

When there is a deficiency of assets to pay all claims of the same class, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No executor, administrator, or guardian shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 322. Classification of Claims Against Estates of Decedent

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. Claims for taxes, penalties, and interest due under Title 2, Tax Code; [1] Chapter 8, Title 132, Revised Civil Statutes of Texas, 1925, as amended; [2] Section 81.111, Natural Resources Code; the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes); or Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

Class 5. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 6. All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 3, eff. June 15, 1971; Acts 1979, 66th Leg., p. 869, ch. 394, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 242, ch. 102, § 8, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1785, ch. 389, §§ 38A, 39(*l*), eff. Jan. 1, 1982.]

[1] Tax Code, § 101.001 et seq.

[2] Civil Statutes, art. 8801 et seq.

Section 1 of Acts 1981, 67th Leg., ch. 389, enacted Title 2 of the Tax Code.

§ 323. Joint Obligation

When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, his estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 324. Representatives Not to Purchase Claims

It shall be unlawful, and cause for removal, for an executor, administrator, or guardian, whether acting under appointment by will or under orders of the court, to purchase for his own use or for any purposes whatsoever, any claim against the estate he represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the judge may, in his discretion, remove such representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 325. Proceeds of Sale of Mortgaged Property

Whenever a personal representative has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall pay such proceeds to the holder or holders of such mortgage or other liens; and, if he shall fail to do so, such holder or holders, upon proof thereof, may obtain an order from the court directing such payment to be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 326. Owner May Obtain Order for Payment

Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 327. Claims Presented Against Estate of Decedent After Six Months

Unsecured claims against the estate presented to an executor or administrator after the expiration of six months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what is sufficient to pay all debts of every kind against the estate that were presented within the six months and allowed and approved or established by judgment, or that shall be so established; and an order for the payment of any such claim may be obtained from the court, upon proof that the executor or administrator has such funds, in like manner as is provided in this Code for other creditors to obtain payment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2993, ch. 988, § 4, eff. June 15, 1971.]

§ 328. Liability for Nonpayment of Claims

(a) Procedure to Force Payment. If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there

are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or

(b) Penalty Against Representative. Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on his bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 329. Borrowing Money

(a) Circumstances Under Which Money May Be Borrowed. Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

(1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent or ward or his estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or

(2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or

(3) For payment of claims allowed and approved, or established by suit, against the estate; or

(4) To renew and extend a valid, existing lien; or

(5) In the case of guardians of estates, if the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs, or if the revenue therefrom could be increased by making such improvements or repairs thereon, to make such improvements or repairs or

(6) In the case of guardians of estates, the probate court in its discretion may authorize the borrowing of money where it is in the best interest of and for the protection of the estate of the ward.

(b) Procedure for Borrowing Money. When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien upon property of the estate as security, a sworn application for such authority shall be filed with the court, stating fully and in detail the circumstances which the representative of the estate believes make necessary the granting of such authority. Thereupon, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring such persons, if they choose so to do, to appear and show cause, if any, why such application should not be granted.

(c) Order Authorizing Such Borrowing, or Extension of Lien. The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however: (1) that as to the estate of a decedent, the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an extension of such lien for not more than one additional year without further citation or notice; and (2) that as to the estate of a ward, the term of the loan or renewal shall be for such length of time as the court shall determine to be for the best interest of such estate. If a new lien is created upon property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and its creditors, as for the sale of real property belonging to the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, § 3, eff. May 25, 1973.]

§ 330. Notices to Veterans Administration by Guardians

Whenever an annual or other account, or an application for the expenditure of funds or for the investment of funds is filed by any guardian whose ward is a beneficiary of the Veterans Administration, or when a claim against the estate of such a ward shall be filed, the court shall thereupon fix a date for the hearing of such account, application, petition, or claim, as the case may be, not less than twenty days from the date of the filing thereof. The clerk of the court in which such account, application, petition, or claim shall be filed shall give notice thereof not less than fifteen days prior to the date fixed for such hearing to the Veterans Administration in whose territory the court is located by mailing a certified copy of such account, application, petition, or claim to said office of the Veterans Administration; provided that said Administration may through its attorney waive the service of such notice and also the

time within which a hearing may be had in such cases. Such account, application, petition, or claim shall be filed in duplicate, and the clerk of the court shall be entitled to a fee of Twenty-five Cents, taxable against the estate, for certifying to the copy thereof, which he shall forthwith mail to said Administration as provided herein. If not filed in duplicate, the clerk shall be entitled to a further fee of Fifteen Cents per one hundred words for making a copy thereof. Such additional costs of copying shall be taxed and collected from the guardian individually, and shall not be chargeable to the ward's estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 5. SALES

§ 331. Court Must Order Sales

Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 332. Sales Authorized by Will

Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 333. Certain Personal Property to Be Sold

The representative of an estate, after approval of inventory and appraisement, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept. Bonds, securities, or other personal property deemed by the court not to be so liable, property exempt from forced sale, specific legacies, and personal property necessary to carry on a farm, ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 334. Sales of Other Personal Property

Upon application by the personal representative of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by the preceding Section, including growing or harvested crops or livestock, but not including exempt property or specific legacies, if the court finds that so to do would be in the best interest of the estate in order to pay expenses of administration, funeral expenses, expenses of last illness, allowances, or claims against the estate, from the proceeds of the sale of such property. In so far as possible, applications and orders for the sale of personal property shall conform to the requirements hereinafter set forth for applications and orders for the sale of real estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 335. Special Provisions Pertaining to Livestock

When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed three per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 336. Sales of Personal Property at Public Auction

All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of

posting for original proceedings in probate, unless the court shall otherwise direct.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 337. Sales of Personal Property on Credit

No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of such property can be made to him, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 338. Sale of Mortgaged Property

Any creditor holding a claim secured by a valid mortgage or other lien, which has been allowed and approved or established by suit, may obtain from the court in which the estate is pending an order that said property, or so much thereof as necessary to satisfy his claim, shall be sold, by filing his written application therefor. Upon the filing of such application, the clerk shall issue citation requiring the representative of the estate to appear and show cause why such application should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 339. Sales of Personal Property to Be Reported; Decree Vests Title

All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate or ward in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 339A. Sale of Property of a Minor by a Parent Without Guardianship

(a) A natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell real or personal property of a minor in an estate without being appointed guardian, when the value of the minor's interest in the property does not exceed $10,000. A sale of property pursuant to an order of the court under this section is not subject to disaffirmance by the minor.

(b) The parent shall make application under oath to the court for the sale of the property. Venue for the application shall be the same as in applications for the appointment for guardians of a minor. The application shall contain the following information:

(1) a legal description of real property and a description identifying personal property;

(2) the name of the minor or minors and his interest in the property;

(3) the name of the purchaser;

(4) that the sale of the minor's interest is for cash; and

(5) that all funds received by the parent shall be used for the use and benefit of the minor.

(c) The court, on receipt of the application, shall set the application for hearing at a date not less than five days from date of the filing of the application and, if it deems necessary, may cause citation to be issued.

(d) At the time of the hearing of the application, the court shall order the sale of the property, if it is satisfied from the evidence that the sale is in the best interest of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

(e) When the order of sale has been entered by the court, the purchaser of the property shall pay the proceeds of the sale belonging to the minor or minors into the registry of the court.

(f) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Acts 1979, 66th Leg., p. 1754, ch. 713, § 26, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 749, ch. 180, § 1, eff. Sept. 1, 1983.]

§ 340. Selection of Real Property to Be Sold for Payment of Debts

Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 341. Application for Sale of Real Estate

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents,

and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

(b) to (g) Repealed by Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 2030, ch. 695, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 408, ch. 182, § 4, eff. May 25, 1973; Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.]

§ 342. Contents of Application for Sale of Real Estate

An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established, the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 343. Setting of Hearing on Application

Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate in writing a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 28, eff. Aug. 27, 1979.]

§ 344. Citation and Return on Application

Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land or interest or part thereof sought to be sold, requiring them to appear at the time set by the court as shown in the citation and show cause why the sale should not be made, if they so elect. Service of such citation shall be by posting.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 345. Opposition to Application

When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 346. Order of Sale

If satisfied upon hearing that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and

(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and

(c) The necessity or advisability of the sale and its purpose; and

(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and

(e) That the sale shall be made and the report returned in accordance with law; and

(f) The terms of the sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 347. Procedure When Representative Neglects to Apply for Sale

When the representative of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 348. Permissible Terms of Sale of Real Estate

(a) For Cash or Credit. The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

(b) Reconveyance Upon Redemption. When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 56th Leg., p. 636, ch. 290, § 1, eff. May 30, 1959.]

§ 349. Public Sales of Real Estate

(a) Notice of Sale. Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

(b) Method of Sale. All public sales of real estate shall be made at public auction to the highest bidder.

(c) Time and Place of Sale. All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by the court, he may order such sale to be made in the county in which the land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending.

(d) Continuance of Sales. If sales are not completed on the day advertised, they may be continued from day to day by making public announcement verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) Failure of Bidder to Comply. When any person shall bid off property of an estate offered

for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten per cent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 350. Private Sales of Real Estate

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no further advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Acts 1979, 66th Leg., p. 1755, ch. 713, § 29, eff. Aug. 27, 1979.]

§ 351. Sales of Easements and Right of Ways

It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property of estates of decedents or wards at private sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 352. Representative Not to Purchase Property of the Estate

The personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting. If any such purchase is made, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 353. Reports of Sale

All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

(a) The date of the order of sale.

(b) The property sold, describing it.

(c) The time and place of sale.

(d) The name of the purchaser.

(e) The amount for which each parcel of property or interest therein was sold.

(f) The terms of the sale, and whether made at public auction or privately.

(g) Whether the purchaser is ready to comply with the order of sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 354. Bond on Sale of Real Estate

If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. Otherwise, before any sale of real estate is confirmed, the court shall determine whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the

representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975.]

§ 356. Deed Conveys Title to Real Estate

When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 357. Delivery of Deed, Vendor's and Deed of Trust Lien

After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 358. Penalty for Neglect

Should the representative of an estate neglect to comply with the preceding Section, or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall, after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 6. HIRING AND RENTING

§ 359. Hiring or Renting Without Order of Court

The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the best interest of the estate, for a period not to exceed one year.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 360. Liability of Personal Representative

If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 361. Order to Hire or Rent

Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 362. Procedure in Case of Neglect to Rent Property

Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 363. When Property is Hired or Rented on Credit

When property is hired or rented on credit, possession thereof shall not be delivered until the hirer

or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 364. Property Hired or Rented to Be Returned in Good Condition

All property hired or rented, with or without an order of court, shall be returned to the possession of the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 365. Report of Hiring or Renting

(a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

(1) The property involved and its appraised value.

(2) The date of hiring or renting, and whether at public auction or privately.

(3) The name of the person or persons hiring or renting such property.

(4) The amount of such hiring or rental.

(5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 366. Action of Court on Report

At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not be bound and the court may order another offering of the property for hire or rent, in the same manner and subject to the same rules heretofore provided. If the report has been approved and it later appears that, by reason of any fault of the representative of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the representative of the estate and his sureties to appear and show cause why the reasonable value of hire or rent of such property shall not be adjudged against him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 7. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND OTHER MATTERS RELATING TO MINERAL PROPERTIES

§ 367. Mineral Leases After Public Notice

(a) Certain Words and Terms Defined. As used throughout in this Part of this Chapter, the words "land" or "interest in land" include minerals or any interest in any of such minerals in place. The word "property" includes land, minerals in place, whether solid, liquid or gaseous, as well as an interest of any kind in such property, including royalty, owned by the estate. "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(b) Mineral Leases, With or Without Pooling or Unitization. Personal representatives of the estates of decedents, minors, and incompetents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

(c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters. All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with the following rules:

1. Contents of Application. The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or

unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

2. Order Designating Time and Place for Hearing Application.

(a) Duties of Clerk and Judge. When an application to lease, as above prescribed, is filed, the county clerk shall immediately call the filing of such application to the attention of the court, and the judge shall promptly make and enter a brief order designating the time and place for the hearing of such application.

(b) Continuance of Hearing. If the hearing is not had at the time originally designated by the court or by timely order or orders of continuance duly entered, then, in such event, the hearing shall be automatically continued, without further notice, to the same hour or time the following day (except Sundays and holidays on which the county courthouse is officially closed to business) and from day to day until the application is finally acted upon and disposed of by order of the court. No notice of such automatic continuance shall be required.

3. Notice of Application to Lease, Service of Notice, and Proof of Service.

(a) Notice and Its Contents. The personal representative, and not the county clerk, shall give notice in writing of the time designated by the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

(b) Service of Notice. The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

4. Preceding Requirements Mandatory. In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

5. Hearing on Application to Lease and Order Thereon. At the time and place designated for the hearing, or at any time to which it shall have been continued as hereinabove provided, the judge shall hear such application, requiring proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice; and, if he is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, then an order shall be entered so finding, and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) affecting and covering the property, or portions thereof, described in the application. Said order authorizing leasing shall also set out the following mandatory contents:

(a) The name of the lessee.

(b) The actual cash consideration, if any, to be paid by the lessee.

(c) Finding that the personal representative is exempted by law from giving bond, if that be a fact and if not a fact, then a finding as to whether or not the representative's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid, if any. If the court finds the general bond insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency.

(d) A complete exhibit copy, either written or printed, of each lease thus authorized to be made, shall either be set out in the order or attached thereto and incorporated by reference in said order and made a part thereof. It shall show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized; provided, that if no date of the lease appears in such exhibit copy, or in the court's order, then the date of the court's order shall be considered for all purposes as the date of the authorized lease, and if the name and address of the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be

inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed. If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, unless the personal representative is not required to give a general bond, no such lease, for which a cash consideration is required, though ordered, executed, and delivered, shall be valid unless the order authorizing same actually makes findings with respect to the general bond, and, in case such bond has been found insufficient, then unless and until the bond has been increased, or an additional bond given, as required by the court's order, with the sureties required by law, has been approved by the judge and filed with the clerk of the court in which the proceedings are pending. In the event two or more leases on different lands are authorized by the same order, the general bond shall be increased, or additional bonds given, to cover all. It shall not be necessary for the judge to make any order confirming such leases.

7. Term of Lease Binding. Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided the authorized primary term shall not exceed five (5) years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells, with no cessation of operations of more than sixty (60) consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

7(a). Validation of Certain Provisions of Leases Heretofore Executed by Personal Representatives. As to any valid mineral lease heretofore executed and delivered in compliance with the provisions of the Texas Probate Code and which lease is still in force, any provisions of any such lease continuing such lease in force after its five (5) year primary term by a shut-in gas well are hereby validated; provided, however, that this provision shall not be applicable to any such provision of any such lease which is involved in any lawsuit pending in this state on the effective date of this Act wherein the validity of such provision is an issue.

8. Amendment of Leases. Any oil, gas, and mineral lease heretofore or hereafter executed by a personal representative pursuant to the Texas Probate Code may be amended by an instrument which provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part thereof shall continue such lease in force after its five (5) year primary term. Such instrument shall be executed by the personal representative, with the approval of the court, and on such terms and conditions as may be prescribed therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 441, ch. 215, § 1, eff. May 25, 1961; Acts 1961, 57th Leg., p. 441, ch. 215, §§ 2, 3, eff. May 25, 1961.]

§ 368. Mineral Leases at Private Sale

(a) Authorization Allowed. Notwithstanding the preceding mandatory requirements for setting a time and place for hearing of an application to lease and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale (without public notice or advertising) if, in the opinion of the court, sufficient facts are set out in the application required above to show that it would be more advantageous to the estate that a lease be made privately and without compliance with said mandatory requirements mentioned above. Leases so authorized may include pooling provisions or unitization clauses as in other cases.

(b) Action of the Court When Public Advertising Not Required. At any time after the expiration of five (5) days and prior to the expiration of ten (10) days from the date of filing and without an order setting time and place of hearing, the court shall hear the application to lease at private sale and shall inquire into the manner in which the proposed lease has been or will be made, and shall hear evidence for or against the same; and, if satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms, and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of such lease without the necessity of advertising, notice, or citation, said order complying in all other respects with the requirements essential to the validity of mineral leases as hereinabove set out, as if advertising or notice were required. No order confirming a lease or leases made at private sale need be issued, but no such lease shall be valid until the increased or additional bond required by

the court, if any, has been approved by the court and filed with the clerk of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(b).]

§ 369. Pooling or Unitization of Royalty or Minerals

(a) Authorization for Pooling or Unitization. When an existing lease or leases on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among other things, provide:

(1) That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

(2) That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area, if the presence of such shut-in gas well is a ground for continuation of the lease by the terms of said lease.

(3) That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(4) That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

(5) That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

(6) That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Procedure for Authorizing Pooling or Unitization. Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

(1) Contents of Application. The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the minutes. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

(2) Notice Not Necessary. No notice of the filing of such application by advertising, citation, or otherwise, is required.

(3) Hearing of Application. A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(4) Action of Court and Contents of Order. If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsec-

tion (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 441, ch. 215, § 4, eff. May 25, 1961.]

§ 370. Special Ancillary Instruments Which May Be Executed Without Court Order

As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate prior to the effective date of this Code, or pursuant to its provisions, or by a former owner of land, minerals, or royalty affected thereby, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(c).]

§ 371. Procedure When Representative of Estate Neglects to Apply for Authority

When the personal representative of an estate shall neglect to apply for authority to subject property of the estate to a lease for mineral development, pooling or unitization, or to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate may, upon written application filed with the county clerk, cause such representative to be cited to show cause why it is not for the best interest of the estate for such a lease to be made, or such an agreement entered into. The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 372. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes

All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents, minors, persons of unsound mind, or habitual drunkards, and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest therein, with like properties of others, including agreements contemplated or authorized to be made under the terms of Section 3, Article 6008–b, Vernon's Texas Revised Civil Statutes of 1925, as amended, having been authorized by the court having venue, and executed and delivered by the executors, administrators, guardians, or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 8. PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS

§ 373. Application for Partition and Distribution of Estates of Decedents

(a) Who May Apply. At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) Contents of Application. The application shall state:

(1) The name of the person whose estate is sought to be partitioned and distributed; and

(2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the application; and

(3) The reasons why partition and distribution should be had.

(c) Partial Distribution. At any time after the original grant of letters testamentary or of administration, and the filing and approval of the inventory, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request a distribution of any portion of the estate. All interested parties shall be personally cited, as in other distributions, including known creditors. The court may upon proper citation and hearing distribute any portion of the estate it deems advisable. In the event a distribution is to be made to one or more heirs or devisees, and not to all the heirs or devisees, the court shall require a refunding bond in an amount to be determined by the court to be filed with the court and, upon its approval, the court shall order the distribution of that portion of the estate, unless such requirement is waived in writing and the waiver is filed with the court by all interested parties. This section shall apply to corpus as well as income, notwithstanding any other provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, § 2, eff. May 25, 1973.]

§ 374. Citation of Interested Persons

Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall be personally served upon each person residing in the state entitled to a share of the estate whose address is known; and, if there be any such persons whose identities or addresses are not known, or who are not residents of this state, or are residents of but absent from this state, such citation shall be served by publication.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 375. Citation of Executor or Administrator

When application for partition and distribution is made by any person other than the executor or administrator, such representative shall also be cited to appear and answer the application and to file in court a verified exhibit and account of the condition of the estate, as in the case of final settlements.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 376. Guardians Ad Litem to Be Appointed in Certain Cases

Where there are minors, or persons of unsound mind, having no guardian in this state, who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the court shall appoint a guardian ad litem to represent such minors, or persons of unsound minds and the court shall appoint an attorney to represent non-residents and unknown parties having an interest in the estate, if there be any. If a guardian ad litem or attorney so appointed shall neglect to attend to the duties of such appointment, the court shall appoint others in their places; and such guardian ad litem and attorney shall be allowed by the court a reasonable compensation for their services, to be paid out of the estate of the person they represent, and if such an allowance is not paid, an execution may issue therefor in the name of the person entitled thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 377. Facts to Be Ascertained Upon Hearing

At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 378. Decree of the Court

If the court is of the opinion that the estate should be partitioned and distributed, it shall enter a decree which shall state:

(a) The name and address, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the names of their guardians, or the guardians ad litem, and the name of the attorney appointed to represent those who are unknown or who are not residents of the state.

(b) The proportional part of the estate to which each is entitled.

(c) A full description of all the estate to be distributed.

(d) That the executor or administrator retain in his hands for the payment of all debts, taxes, and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 379. Partition When Estate Consists of Money or Debts Only

If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and shall order the payment and delivery thereof by the executor or administrator.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 380. Partition and Distribution When Property is Capable of Division

(a) Appointment of Commissioners. If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

(b) Writ of Partition and Service Thereof. When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

(c) Partition by Commissioners. The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

(d) Report of Commissioners. The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

(e) Action of the Court. Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

(f) Delivery of Property. When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

(g) Fees of Commissioners. Commissioners thus appointed who actually serve in partitioning and distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 381. Partition and Distribution When Property of an Estate Is Incapable of Division

(a) Finding by the Court. When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

(b) Order of Sale. When the court has found that the whole or any portion of the estate is not

capable of fair and equal division, it shall order a sale of all property which it has found not to be capable of such division. Such sale shall be made by the executor or administrator in the same manner as when sales of real estate are made for the purpose of satisfying debts of the estate, and the proceeds of such sale, when collected, shall be distributed by the court among those entitled thereto.

(c) Purchase by Distributee. At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as exceeds the amount of his share of such property.

(d) Applicability of Provisions Relating to Sales of Real Estate. The provisions of this Code relative to reports of sales of real estate, the giving of an increased general or additional bond upon sales of real estate, and to the vesting of title to the property sold by decree or by deed, shall also apply to sales made under this Section.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 382. Property Located in Another County

(a) Court May Order Sale. When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) Court May Appoint Additional Commissioners. If the court is not satisfied that such property cannot be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 383. To Whom Property of a Minor Shall Be Delivered

If any distributee be a minor, his share of the estate shall be delivered to his guardian. If he has no guardian and is a resident of this state, the executor or administrator shall retain his share until a guardian is appointed or the disability of minority is terminated. If a distributee is a minor and resides out of this state, and has a foreign guardian, the executor or administrator in this state shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he receives such estate, shall have made a bond still in force as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein the administration is pending in this state a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form and in force and effect under the laws of said state; and, if the court shall be satisfied that said guardian has been legally appointed and has otherwise complied with the requirements herein, the court shall order all instruments submitted to it pursuant to the provisions of this Section to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 384. Damages for Neglect to Deliver Property

If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month or fraction thereof that the share is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 385. Partition of Community Property

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

(b) Bond and Action of the Court. The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to

the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

(c) Lien Upon Property Delivered. Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such bond, and shall have judgment thereon for one-half of such debt as he shall establish, and for the other one-half he shall be entitled to be paid by the executor or administrator of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 386. Partition of Property Jointly Owned

Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the court from which letters testamentary or of administration have been granted thereon to have a partition thereof, whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the provisions of this Code in relation to the partition and distribution of estates shall govern partition hereunder, so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 387. Expense of Partition

Expense of partition of the estate of a decedent shall be paid by the distributees pro rata. The portion of the estate allotted each distributee shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 9. PARTITION OF WARD'S ESTATE IN REALTY

§ 388. Partition of Ward's Interest in Realty

(a) Agreement upon Partition. If the estate of a ward owns an interest in real estate in common with other part owner or owners, and if, in the opinion of the guardian, it is to the best interest of such ward's estate that said real estate be partitioned, the guardian may agree upon a partition with the other part owner or owners, subject to the approval of the court in which the guardianship proceedings are pending.

(b) Application for Approval of Agreement. When a guardian has reached an agreement with the other part owner or owners as to how said real estate is to be partitioned, he shall file with the court an application to have such agreement approved. The application shall describe the land to be divided and shall state why it is to the best interest of the ward's estate that said real estate be partitioned, and shall show that the proposed partition agreement is fair and just to the ward's estate.

(c) Hearing on Application. When such application is filed, the county clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, provided such application shall remain on file at least ten days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application.

(d) Approval of Agreed Partition. If the judge is satisfied that the proposed partition is for the best interest of the ward's estate, the court shall enter an order approving partition and directing the guardian to execute the necessary agreement, or agreements, for the purpose of carrying such order and partition into effect.

(e) Ratification of Partition Agreements. Whenever a guardian has heretofore executed agreements, or hereafter shall execute agreements, as to the partition of any lands in which the ward has an interest, without having first secured the approval of the court as provided herein, such guardian may file with the court in which the guardianship proceedings are pending, an application for the approval and ratification of said partition agreements. The application shall refer to said agreements in such manner that the court or judge can fully understand the nature of the partition and the lands divided. It shall also state that, in the opinion of the guardian, said agreement or agreements are fair and just to the ward's estate and are for the best interest of such estate. When such application is filed a hearing shall be had thereon as provided by Subsection (c) hereof, and, if the court is of the opinion that such partition is fairly made and that the same is for the best interest of the ward's estate, an order shall be entered ratifying and approving such partition agreement or agreements, and when so ratified and approved, such partition shall be effective and binding as if originally executed after an order of the court.

(f) Judicial Proceeding to Secure Partition. If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with others, part owner or owners, should be partitioned, he may bring suit in the court in which such guardianship proceedings are pending

against the other part owner for the partition of such real estate; and the court after hearing such suit may, if it is satisfied that such necessity exists, enter an order partitioning such real estate to the owner thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 1128, ch. 427, § 1, eff. June 19, 1975.]

PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

§ 389. Investments

If, at any time, the guardian of the estate shall have on hand money belonging to the ward beyond that which may be necessary for the education and maintenance of such ward or wards, he shall invest such money as follows:

(a) In bonds or other obligations of the United States; or

(b) In tax-supported bonds of the State of Texas; or

(c) In tax-supported bonds of any county, district, political subdivision, or incorporated city or town in the State of Texas; provided, that the bonds of counties, districts, subdivisions, cities, and towns may be purchased only subject to the following restrictions: the net funded debt of said issuing unit shall not exceed ten per cent of the assessed value of taxable property therein, "net funded debt" meaning the total funded debt less sinking funds on hand; and further, in the case of cities or towns, less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenues of which are not pledged to support other obligations; provided, however, that these restrictions shall not apply to bonds issued for road purposes in this state under authority of Section 52 of Article III of the Constitution of Texas, which bonds are supported by a tax unlimited as to rate or amount; or

(d) In shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or

(e) In the shares or share accounts of any federal savings and loan association domiciled in this state, where the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or

(f) In collateral bonds of companies incorporated under the laws of the State of Texas, having a paid-in capital of One Million Dollars or more, when such bonds are a direct obligation of the company issuing them, and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee.

(g) In interest-bearing time deposits which may be withdrawn on or before one year after demand in any bank doing business in Texas where the payment of such time deposits is insured by the Federal Deposit Insurance Corporation.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 42, ch. 28, § 1, eff. March 25, 1961.]

§ 389A. Other Investments

(a) Application to Invest or Sell. When a guardian of an estate shall deem it to be in the best interest of its ward to invest in or sell any property or security in which a trustee is authorized to invest by either Section 113.056 or Subchapter F, Chapter 113, of the Texas Trust Code (Subtitle B, Title 9, Property Code),[1] and such investment or sale is not expressly permitted by other Sections of this Code, the guardian may file a written application in the court where the guardianship is pending, asking for an order authorizing it to make such desired investment or sale and stating the reason why the guardian is of the opinion that such investment or sale would be beneficial to the ward. No citation or notice is necessary unless ordered by the court.

(b) Action of the Court. Upon the hearing of the application if the court is satisfied that such investment or sale will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment or sale to be made, and shall contain such other directions as the court finds advisable.

(c) Applicability. The procedure specified in this Section need not be followed in making investments or sales specifically authorized by other statutes and is inapplicable when a different procedure is prescribed for an investment or sale by a guardian.

[Acts 1969, 61st Leg., p. 2052, ch. 707, § 1, eff. June 12, 1969. Amended by Acts 1973, 63rd Leg., p. 422, ch. 187, § 1, eff. May 25, 1973; Acts 1977, 65th Leg., p. 1137, ch. 428, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 3393, ch. 567, art. 2, § 8, eff. Jan. 1, 1984.]

[1] Property Code, § 113.171 et seq.

§ 390. Investment in Life Insurance or Annuities

(a) Life Insurance Company Defined. By the term "life insurance company" as used herein, is meant any stock or mutual legal reserve life insurance company that maintains the full legal reserves required under the laws of this state, and that is licensed by the State Board of Insurance to transact the business of life insurance in this state.

(b) New Insurance and Annuities. The guardian of the estate may invest in policies of life, term, or endowment insurance, or in annuity contracts, or both, issued by a life insurance company as herein defined, or administered by the Veterans Adminis-

tration, subject, however, to the following conditions and limitations:

(1) The guardian shall first apply to the court for an order authorizing the guardian to make such investment. The application shall include a report showing in detail the financial condition of the estate at the time such application is made; the name and address of the life insurance company from which the policy or annuity contract is to be purchased and that such company is then licensed by the State Board of Insurance to transact such business in this state, or that the policy or contract is administered by the Veterans Administration; a statement of the face amount and plan of the policy of insurance sought to be purchased and of the amount, frequency and duration of the annuity payments to be provided by the annuity contract sought to be purchased; a statement of the amount, frequency and duration of the premiums required by the policy or annuity contract; and a statement of the cash value of the policy or annuity contract at its anniversary nearest the twenty-first birthday of the ward, assuming that all premiums to such anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(2) The policy or policies of insurance shall be on the life of the ward, his father, mother, spouse, child, brother, sister, grandfather, grandmother, or a person in whose life the ward may have an insurable interest.

(3) The ward, his or her estate, father, mother, spouse, child, brother, sister, grandfather or grandmother, and none other, shall be the beneficiary or beneficiaries of any such policy of insurance and of the death benefit of any such annuity contract, and the ward, and none other, shall be the annuitant in any such annuity contract.

(4) The control of any such policy or annuity contracts, and of the incidents of ownership therein, shall be vested in the guardian during the life and disability of the ward.

(5) The policy or annuity contract shall not be amended or changed during the life and disability of the ward except upon application to and order of the court.

(c) Old or Existing Insurance or Annuities. If a policy of life, term or endowment insurance or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing such policy or contract of annuity is a life insurance company as herein defined, or the policy or contract is administered by the Veterans Administration, it shall be lawful to continue such policy or contract in full force and effect. All future premiums may be paid out of surplus funds of said ward. Provided, however, that the guardian shall apply to the court for an order to continue said policy or contract, or both, according to their existing terms or to modify the same to fit any new developments affecting the welfare of the ward, and provided further, that before any such application is granted the guardian shall file a report in said court showing in detail the financial condition of the estate of the ward at the time the application is filed.

(d) Order on Application. The court, if satisfied by the application and the evidence adduced at the hearing that it is to the interest of the ward to grant such application, shall enter its order granting same.

(e) Exclusive Property of Ward on Termination of Guardianship. Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions hereof shall become the exclusive property of said ward or wards when disability has been terminated.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 642, ch. 296, § 1, eff. Aug. 11, 1959; Acts 1965, 59th Leg., p. 527, ch. 271, § 1, eff. May 28, 1965.]

§ 391. Loans and Security Therefor

If, at any time, the guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he may lend the same for the highest rate of interest that can be obtained therefor. The guardian shall take the note of the borrower for money lent, secured by mortgage with power of sale on unencumbered real estate situated in this state, worth at least twice the amount of such note; or by collateral notes secured by vendor's lien notes, as collateral; or he may purchase vendor's lien notes, provided that at least one-half has been paid in cash or its equivalent on the land for which said notes were given.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 392. Guardian's Liability for Loans

The guardian shall not be personally responsible for money lent under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence with respect to such loan or the collection of the same, in which case, he and the sureties upon his bond shall be liable for whatever loss his ward sustains by reason of such fraud or negligence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 393. Guardian's Investments in Real Estate

(a) Application to Invest in Real Estate. When the guardian thinks it best for his ward who has a

surplus of money on hand to invest in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such desired investment, and stating the reasons why the guardian is of the opinion that such investment would be for the benefit of the ward.

(b) Action of the Court. When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as necessary to obtain all the facts concerning the investment; but he shall not render an opinion or make any order on the application until after the expiration of ten days from date of filing. Upon the hearing of such application, if the court is satisfied that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court thinks advisable.

(c) Approval of Contract for Purchase of Real Estate. When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and, if satisfied that such investment will benefit the estate of the ward, and that the title of such real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until said contract has been approved by the court by an order to that effect.

(d) Title to Real Estate. When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed, and accounted for by the guardian as other real estate of the ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 394. Securing Opinion of Attorney With Respect to Loans and Investments

When the guardian lends or invests the money of his ward, he shall not pay over or transfer any money in consummation of such loan or investment until he shall have submitted all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to such loan or investment to a reputable attorney for examination, and shall have received a written opinion from such attorney to the effect that all papers pertaining to such loan or investment are regular, and that the title to such bonds, notes, or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested (unless one per cent of such amount is less than Twenty-five Dollars, in which event the fee shall be Twenty-five Dollars), which shall be paid by the guardian out of the funds of the ward. On loans, the attorney's fee shall be paid by the borrower. Provided, however, that in connection with any loan on real estate the guardian may, in his discretion, obtain a mortgagee's title insurance policy in lieu of an abstract and attorney's opinion.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 395. Report of Investment and Loans

The guardian shall report to the court in writing, verified by his affidavit, the investment or lending of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof, unless the investment or loan was made pursuant to order of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 396. Liability of Guardian for Failure to Lend or Invest Funds

If the guardian neglects to invest or lend surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal, and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or lend the same, which amounts may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 397. Requiring Guardian to Invest or Lend Surplus Funds

When there is any surplus money of the estate in the hands of the guardian, the court, on its own motion or upon written complaint filed by any person, may cause such guardian to be cited to appear and show cause why such surplus money should not be invested or lent at interest. Upon the hearing of such complaint, the court shall enter such order as the law and the facts require.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 398. Contributions

(a) Application. The guardian may at any time file his sworn application in writing with the county clerk, requesting the court in which the guardianship is pending to enter an order authorizing the guardian to contribute from the income of the ward's estate a specific amount of money, stated in said application, to one or more designated corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to some one or more designated nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare.

(b) Setting Hearing on Application. When such an application is filed, the county clerk shall

immediately call the same to the attention of the judge of the court, and the judge shall, by written order filed with said clerk, designate a day to hear such application; provided that such application shall remain on file at least ten days before such hearing is held. The judge may postpone or continue such hearing from time to time until he is satisfied concerning such application.

(c) Action of the Court. Upon the conclusion of such hearing, if the court is satisfied and finds from the evidence that the amount of the proposed contribution stated in the application will probably not exceed twenty per cent of the net income of the ward's estate for the current calendar year, and that the net income of the ward's estate for such year exceeds, or probably will exceed, Twenty-five Thousand Dollars, and that the full amount of such contribution, if made, will probably be deductible from the ward's gross income, in determining the net income of the ward under the applicable income tax laws, rules, and regulations of the United States of America, and that the condition of the ward's estate is such as to justify a contribution in said amount, and that the proposed contribution is reasonable in amount and is for a worthy cause, the court in its discretion may enter an order authorizing the guardian to make such contribution from income of the ward's estate to the particular donee designated in said application and order. When such order has been entered and filed with the county clerk, the guardian shall be entitled to make such contribution, but he shall not be entitled to any commission or compensation by reason thereof or in connection therewith.

(d) Consent of Certain Wards to Contributions. If at the time of the hearing, the ward be fourteen years or more of age and be of sound mind and not an habitual drunkard, no order authorizing such a contribution shall be entered unless there shall have been first filed with the county clerk in said proceedings, the ward's sworn written request that the guardian's said application be granted, and that such particular contribution in the designated amount be authorized by the court, and unless such request be affirmed by personal appearance of the ward before the judge of said court at said hearing.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 10A. STOCKS, BONDS AND OTHER PERSONAL PROPERTY

Part 10A, consisting of section 398A, was added by Acts 1969, 61st Leg., p. 2106, ch. 719, § 1.

§ 398A. Holding of Stocks, Bonds and Other Personal Property by Personal Representatives in Name of Nominee

Unless otherwise provided by will, a personal representative may cause stocks, bonds, and other personal property of an estate to be registered and held in the name of a nominee without mention of the fiduciary relationship in any instrument or record constituting or evidencing title thereto. The personal representative is liable for the acts of the nominee with respect to any property so registered. The records of the personal representative shall at all times show the ownership of the property. Any property so registered shall be in the possession and control of the personal representative at all times and be kept separate from his individual property.

[Acts 1969, 61st Leg., p. 2106, ch. 719, § 1, eff. Sept. 1, 1969.]

PART 11. ANNUAL ACCOUNTS AND OTHER EXHIBITS

§ 399. Annual Accounts Required

(a) Estates of Decedents and Wards Being Administered Under Order of Court. The personal representative of the estate of a decedent or ward being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate or ward, as the case may be.

(2) Any changes in the property of the estate or ward which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data neces-

sary to identify the same fully, and how and where held for safekeeping.

(b) Annual Reports Continue Until Estate Closed. Each personal representative of the estate of a decedent or ward shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money, securities, and other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference thereto.

(c) Guardians of the Person. The guardian of the person, when there is a separate guardian of the estate, shall at the expiration of twelve (12) months from the date of his qualification and receipt of letters, and annually thereafter, return to the court his sworn account showing each item of receipts and disbursements for the support and maintenance of the ward, his education when necessary, and support and maintenance of the ward's dependents, when authorized by order of court. All who are guardians of the person shall include in their reports facts concerning each ward's physical welfare, his well-being, and his progress in education, if the latter be pertinent. Unless the judge is satisfied that the facts stated are true, he shall issue such orders as are necessary for the best interest of the ward.

(d) Supporting Vouchers, etc., Attached to Accounts. Annexed to all annual accounts of representatives of estates and wards, and, so far as applicable, accounts of guardians of the persons of wards and guardians of those wards entitled to receive governmental funds, required by this Section, shall be:

(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.

(2) An official letter from the bank or other depository in which the money on hand of the estate or ward is deposited, showing the amounts in general or special deposits.

(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a depository subject to orders of the court, the proof to be by one of the following means:

a. By an official letter from the bank or other depository wherein said securities or other assets are held for safekeeping; provided, that if such depository is the representative, the official letter shall be signed by a representative of such depository other than the one verifying the account; or

b. By a certificate of an authorized representative of the corporation which is surety on the representative's bonds; or

c. By a certificate of the clerk or a deputy clerk of a court of record in this State; or

d. By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such certificate or affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

(e) Verification of Account. The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates.

(f) Annual Accounts May be Waived, When. In cases in which the income of a ward's estate from real property becomes negligible, and the estate owns no personal property, the estate may be closed, as hereinafter provided. If the estate owns personal property which produces negligible or fixed income, the court shall have the power to waive the filing of annual accounts, and the court may permit the guardian to receive all income and apply it to the support, maintenance, and education of the ward, and account to the court for income and corpus of the estate when the same must be closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(a).]

§ 400. Penalty for Failure to File Annual Account

Should any personal representative of an estate, or guardian of the person of a ward, fail to return any annual account required by preceding sections of this Code, any person interested in said estate or ward may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars ($500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(b).]

§ 401. Action upon Annual Accounts

These rules shall govern the handling of annual accounts:

(a) They shall be filed with the county clerk, and the filing thereof shall be noted forthwith upon the judge's docket.

(b) Before being considered by the judge, the account shall remain on file ten (10) days.

(c) At any time after the expiration of ten (10) days after the filing of an annual account, the judge shall consider same, and may continue the hearing thereon until fully advised as to all items of said account.

(d) No accounting shall be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of court has been proved as required by law.

(e) If the account be found incorrect, it shall be corrected. When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:

(1) Order for Payment of Claims in Full. If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

(2) Order for Pro Rata Payment of Claims. If it shall appear from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal representative has any funds on hand, the court shall order such funds to be applied to the payment of all claims having a preference in the order of their priority if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established by final judgment, taking into consideration also the claims that were presented within twelve (12) months after the granting of administration, and those which are in suit or on which suit may yet be instituted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(c).]

§ 402. Additional Exhibits of Estates of Decedents

At any time after the expiration of fifteen months from the original grant of letters to an executor or administrator, any interested person may, by a complaint in writing filed in the court in which the estate is pending, cause the representative to be cited to appear and make an exhibit in writing under oath, setting forth fully, in connection with previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said representative has any funds of the estate in his hands subject to distribution among the creditors of the estate, the court shall order the same to be paid out to them according to the provisions of this Code; or any representative may voluntarily present such exhibit to the court; and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 403. Penalty for Failure to File Exhibits or Reports

Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

§ 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) Estates of Decedents. When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) Persons and Estates of Wards.

1. Of a Minor. When the minor dies, or becomes an adult by becoming eighteen years of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. Of Incompetents. When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. Of a Person Entitled to Funds From Any Governmental Source. When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. Exhaustion of Estate. When the estate of a ward becomes exhausted.

5. When Income Negligible. When the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975.]

§ 404A. Payment of Funeral Expenses and Other Debts

Notwithstanding the provisions of the preceding Section, before the guardianship of the persons and the estates of wards shall be closed upon the death of any ward, the guardian subject to the approval of the Court may make all funeral arrangements, pay for such funeral expenses out of the estate of the deceased ward and pay all other debts out of such estate. If a personal representative of the estate of a deceased ward is appointed, the Court shall on the written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 406 of this Code.

[Acts 1963, 58th Leg., p. 1009, ch. 416, § 1. Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 2, eff. Aug. 27, 1979.]

§ 404B. Payment by Guardian of Taxes or Expenses

Notwithstanding any other provision of this Code, a Probate Court in which proceedings to declare heirship are maintained, under the provisions of Subsection (c), Section 48 of this Code, may order the payment by the guardian of inheritance or estate taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying inheritance or estate taxes, or expenses of administering the estate, or for the purpose of distributing the estate among the heirs.

[Acts 1977, 65th Leg., p. 1522, ch. 616, § 3, eff. Aug. 29, 1977.]

§ 405. Account for Final Settlement of Estates of Decedents and Persons and Estates of Wards

When administration of the estate of a decedent, or guardianship of person or estate, or of the person and estate of a ward, is to be settled and closed, the personal representative of such estate or of such ward shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration or guardianship, as the case may be, concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate or of the ward, as the case may be, including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

(a) As to Estates of Decedents.

1. The property belonging to the estate which has come into the hands of the executor or administrator.

2. The disposition that has been made of such property.

3. The debts that have been paid.

4. The debts and expenses, if any, still owing by the estate.

5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.

7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

(b) As to Estates of Wards.

1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.

2. The disposition made of such property, rents, revenues, and profits.

3. The expenses and debts, if any, against the estate remaining unpaid.

4. The property of the estate remaining in the hands of such guardian, if any.

5. Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime

If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates or the date of the ward's death and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward, his guardian, or the personal representative of the ward's estate, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 3, eff. Aug. 27, 1979.]

§ 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. The notice must include a copy of the account for final settlement.

2. If a ward be a living resident of this state who is 14 years of age or older, and his or her residence be known, the ward shall be cited by personal service, unless the ward, in person or by attorney, by writing filed with the clerk, waives the issuance and personal service of citation.

3. If one who has been a ward be deceased, the ward's executor or administrator, if one has been appointed, shall be personally served, but no service is required if the executor or administrator is the same person as the guardian.

4. If a ward's residence is unknown, or if the ward is a non-resident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the ward's estate shall be by publication, unless the court by written order directs citation by posting.

5. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a proceeding concerning a decedent's estate or a guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 641, ch. 294, § 1, eff. May 30, 1959; Acts 1979, 66th Leg., p. 1755, ch. 713, § 30, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4558, ch. 756, § 1, eff. Sept. 1, 1983.]

§ 408. Action of the Court

(a) Action Upon Account. Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that it be delivered, in case of a ward, to such ward, or in the case of a deceased ward to the personal representative of the deceased ward's estate if one be appointed, or to any other person legally entitled thereto; in case of a decedent, that a partition and distribution be made among the persons entitled to receive such estate.

(c) Discharge of Representative When No Property Remains. If, upon such settlement, there be none of the estate remaining in the hands of the representative, he shall be discharged from his trust and the estate ordered closed.

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully

administered the same in accordance with this Code and the orders of the court, and his final account has been approved, and he has delivered all of said estate remaining in his hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from his trust, and declaring the estate closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1877, ch. 758, § 4, eff. Aug. 27, 1979.]

§ 409. Money Becoming Due Pending Final Discharge

Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value falling due to the estate or ward while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 410. Inheritance Taxes Must Be Paid

No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid. If no inheritance tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, and filed with the final papers closing the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 411. Appointment of Attorney to Represent Ward

When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 412. Offsets, Credits, and Bad Debts

In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 413. Accounting for Labor or Services of a Ward

The guardian of a ward shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by the ward, but the guardian shall be entitled to reasonable credits for the board, clothing, and maintenance of his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 414. Procedure if Representative Fails to Deliver Estate

If any personal representative of an estate or ward, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, appraising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER IX. SPECIFIC PROVISIONS RELATING TO PERSONS OF UNSOUND MIND AND HABITUAL DRUNKARDS

Sec.

§ 415. Information That Person of Unsound Mind or Habitual Drunkard Is Without Guardian

Any county officer, or other person, who shall discover any resident in the county who is of un-

sound mind or an habitual drunkard, and who is without a guardian, shall file information thereof with the county judge. Such information shall state that, to the best of the knowledge and belief of the affiant, such person is of unsound mind, or is an habitual drunkard, and is without a guardian; and, if the name of such person is unknown, such person shall be described. The information shall be subscribed and sworn to by the informant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 416. Issuance of Warrant Upon Information

Upon information that any person residing in the county is of unsound mind, or is an habitual drunkard, and is without a guardian, the judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall issue a warrant to the sheriff or constable commanding that such persons be brought before him at a time and place named in such warrant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 417. Hearing Upon Information

When the person charged is brought before the judge, the judge shall appoint a qualified person to act as guardian ad litem for the accused at such hearing and shall cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind or is an habitual drunkard. The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial thereof shall be governed by the same rules that govern in ordinary suits in the county court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 418. Appointment of Guardian

If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the court shall after the issuance and posting of notice as in the case of the appointment of permanent guardians, enter judgment accordingly, and appoint a guardian of the person and estate, or of either, of such defendant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 419. New Trial

The court may, for good cause shown, at any time within ten days after the verdict has been returned and judgment has been rendered, set aside the same and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 420. Applicability of Other Provisions of This Code

Each provision of this Code relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of incompetents in so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 421. Support of Ward's Family

The court by which any incompetent is committed to guardianship may make orders for the support of his family and the education of his children, when necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 422. Confinement of Ward

If any person of unsound mind shall be so far disordered in his mind as to endanger his own person, or the person or property of others, the guardian or other person under whose care he is, and who is bound to provide for his support, shall confine him in a suitable place until such time, not exceeding thirty days, as the court shall make an order for the restraint, support, and safekeeping of such ward. If any such person of unsound mind shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate shall cause such person to be apprehended and may employ any person to confine him in a suitable place until the court shall make further order thereon.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 423. Liability for Maintenance

Where an incompetent has no estate of his own, he shall be maintained:

(a) By the husband or wife of such person, if able to do so; or, if not,

(b) By the father or mother of such person, if able to do so; or, if not,

(c) By the children and grandchildren of such person, respectively, if able to do so; or, if not,

(d) By the county in which said person has his residence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 424. Expenses of Confinement

The expenses attending the confinement of an incompetent shall be paid by the guardian out of the estate of the ward, if he has an estate; and, if he has none, such expenses shall be paid by the person bound to provide for and support such incompetent; and, if not so paid, the county shall pay the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 425. Recovery by County of Sums Paid by It

In all cases of appropriation out of the county treasury for the support and confinement of any incompetent, the amount thereof may be recovered by the county from the estate of such person, or from any person who by law is bound to provide for the support of such incompetent, if there be any person able to pay for the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 426. Restoration of Ward to Sound Mind or Sobriety

(a) Citation of Guardian. If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the court on a day and at a place named in such citation, and show cause why such ward should not be adjudged to be of sound mind, or no longer an habitual drunkard, and discharged from further guardianship.

(b) Trial. If the facts of such alleged restoration be doubtful, the court shall cause a qualified jury to be impaneled to try the issue as in the first instance, and if such jury finds that the ward has been restored to his right mind or to sober habits, he shall be adjudged a person of sound mind or no longer an habitual drunkard, and shall be discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order adjudging the person to be of sound mind or no longer an habitual drunkard and discharging the ward from guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER X. PAYMENT OF ESTATES INTO STATE TREASURY

Sec.

§ 427. When Estates to Be Paid into State Treasury

If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the State Treasurer; and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 428. Notice to State Treasurer and Evidence Thereof

Whenever an order shall be made by the court for an executor or administrator to pay any funds to the State Treasurer under the preceding provisions of this Code, the clerk of the court in which such order is made shall mail to the State Treasurer a certified copy of such order within thirty days after the same has been made. Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, addressed to the State Treasurer at Austin, Texas, and the date when it was mailed, and shall record such certificate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 429. Penalty for Neglect to Notify State Treasurer

Any clerk who shall neglect to transmit a certified copy of any such order within the time prescribed, and to take and record such certificate, as required in the preceding Section, shall be liable in a penalty of One Hundred Dollars, to be recovered in an action in the name of the state, after personal service of citation, on the information of any citizen, one-half of which penalty shall be paid to the informer and the other one-half to the state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 430. Receipt of State Treasurer

Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the State Treasurer a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 431. Penalty for Failure to Make Payments to State Treasurer

When an executor or administrator fails to pay to the State Treasurer any funds of an estate which he has been ordered by the court so to pay, within three months after such order has been made, such executor or administrator shall, after personal service of citation charging such failure and after proof thereof, be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month, or fraction thereof, that he fails to make such payment after three months from such order, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 432. State Treasurer May Enforce Payment and Collect Damages

The State Treasurer shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding Section of this Code, and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. The State Treasurer shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county or district attorney, as the case may be, shall represent the State Treasurer in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 433. Suit for the Recovery of Funds Paid to the State Treasurer

(a) Mode of Recovery. When funds of an estate have been paid to the State Treasurer, any heir, devisee, or legatee of the estate, or their assigns, or any of them, may recover the portion of such funds to which he, she, or they are entitled. The person claiming such funds shall institute suit therefor, by petition filed in the court in which the estate was administered, against the State Treasurer, setting forth the plaintiff's right to such funds, and the amount claimed by him.

(b) Citation. Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county or the district attorney of the district, to be served by personal service, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

(c) Procedure. The proceedings in such suit shall be governed by the rules for other civil suits; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the State Treasurer to pay the same.

(d) Costs. The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

REPEAL OF LAWS—EMERGENCY CLAUSE

Sec.
434. Repeal of Laws Supplanted by This Code.
435. Emergency Clause.

§ 434. Repeal of Laws Supplanted by This Code

The following statutes and laws of this State are supplanted by the provisions of this Code and are hereby repealed:

(a) Title 48 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; [1] Article 932 of the Revised Civil Statutes of Texas of 1925; [2] and Chapter 196, Acts of the 52nd Legislature (1951), page 322; [3] and

1 Civil Statutes, arts. 2570 to 2583.
2 Civil Statutes, art. 932.
3 Civil Statutes, art. 2583a.

(b) Title 129 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; [4] and

4 Civil Statutes, arts. 8281 to 8305.

(1) Sections 1 and 2 of Chapter 196, Acts of the 42nd Legislature (1931), page 329; [5] and

5 Civil Statutes, arts. 8291, 8292.

(2) Section 1 of Chapter 297, Acts of the 49th Legislature (1945), page 469; [6] and

6 Civil Statutes, art. 8281.

(3) Sections 1 and 2 of Chapter 170, Acts of the 50th Legislature (1947), page 275; [7] and

7 Civil Statutes, arts. 8283, 8284.

(4) Section 1 of Chapter 120, Acts of the 51st Legislature (1949), page 218; [8] and

8 Civil Statutes, art. 8293.

(c) Title 54 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; [9] and

9 Civil Statutes, arts. 3290 to 3703.

(1) Acts of the 39th Legislature (1925), Section 1 of Chapter 82, page 253; [10] and

10 Civil Statutes, art. 3678.

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 50, page 74; [11] Sections 1, 2 and 3 of Chapter 81, page 123; [12] Section 1 of Chapter 92, page 142; [13] Section 1 of Chapter 152, page 223; [14] and Section 1 of Chapter 244, page 362; [15] and

11 Civil Statutes, art. 3654.
12 Civil Statutes, arts. 3334, 3334a, 3336.
13 Civil Statutes, art. 3351.
14 Civil Statutes, art. 3386.
15 Civil Statutes, art. 3597a.

(3) Acts of the 41st Legislature (1929): Sections 1 and 2 of Chapter 29, page 63; [16] Section 1 of Chapter 63, page 130; [17] Section 2 of Chapter 100, page 235; [18] Section 1 of Chapter 132, page 288; [19] and Section 1 of Chapter 48, First Called Session, page 107; [20] and

16 Civil Statutes, arts. 3386, 3576.
17 Civil Statutes, art. 3393a.
18 Civil Statutes, art. 3334.
19 Civil Statutes, art. 3325.
20 Civil Statutes, art. 3310a.

(4) Acts of the 42nd Legislature (1931): Chapter 52, page 79; [21] Section 1 of Chapter 59, page 93; [22] Chapter 123, page 210; [23] Section 1 of Chapter 234, page 389; [24] Section 1 of Chapter 235, page 390; [25] Section 1 of Chapter 236, page 391; [26] and Section 1 of Chapter 35a, page 842; [27] and

21 Civil Statutes, art. 3515a.
22 Civil Statutes, art. 3293-A.
23 Civil Statutes, art. 3310a.
24 Civil Statutes, art. 3531.
25 Civil Statutes, art. 3690.
26 Civil Statutes, art. 3492.
27 Probably should read: "and Section 1 of Chapter 352, page 842". Civil Statutes, art. 3432a.

(5) Acts of the 43rd Legislature, Third Called Session (1934): Section 1 of Chapter 25, page 48; [28] and

28 Civil Statutes, art. 3369.

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 247, page 634; [29] Section 1 of Chapter 248, page 635; [30] Section 1 of Chapter 250, page 637; [31] Section 1 of Chapter 251, page 638; [32] Section 1 of Chapter 252, page 638; [33] Section 1 of Chapter 253, page 639; [34] Section 1 of Chapter 266, page 654; [35] Section 1 of Chapter 272, page 658; [36] Section 1 of Chapter 273, page 659; [37] Sections 1 and 2 of Chapter 277, page 662; [38] Section 1 of Chapter 278, page 664; [39] Section 1 of Chapter 280, page 665; [40] and Chapter 446, Second Called Session, page 1729; [41] and

29 Civil Statutes, art. 3311.
30 Civil Statutes, art. 3334.
31 Civil Statutes, art. 3576.
32 Civil Statutes, art. 3321.
33 Civil Statutes, art. 3420.
34 Civil Statutes, art. 3476.
35 Civil Statutes, art. 3396.
36 Civil Statutes, art. 3337.
37 Civil Statutes, art. 3336.
38 Civil Statutes, arts. 3430, 3576 note.
39 Civil Statutes, art. 3417.
40 Civil Statutes, art. 3317.
41 Civil Statutes, arts. 3456A to 3456I.

(7) Acts of the 45th Legislature (1937): Section 1 of Chapter 193, page 391; [42] and Section 1 of Chapter 250, page 499; [43] and

42 Civil Statutes, arts. 3410-a, 3410-b.
43 Civil Statutes, art. 3605.

(8) Acts of the 46th Legislature (1939): H.B.No. 656, page 318; [44] H.B.No.158, page 319; [45] H.B. No.31, page 320; [46] and S.B.No.141, page 321; [47] and

44 Civil Statutes, art. 3334b.
45 Civil Statutes, art. 3336.
46 Civil Statutes, art. 3370.
47 Civil Statutes, arts. 3393a, 3396.

(9) Acts of the 47th Legislature (1941): Section 1 of Chapter 382, page 633; [48] and Chapter 521, page 845; [49] and

48 Civil Statutes, art. 3432b.
49 Civil Statutes, arts. 3333a, 3333a note.

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 234, page 356; [50] and

50 Civil Statutes, art. 3554a.

(11) Acts of the 49th Legislature (1945): Section 1 of Chapter 214, page 296; [51] Section 1 of Chapter 296, page 468; [52] Section 2 of Chapter 297, page 469; [53] and Sections 1 and 2 of Chapter 316, page 525; [54] and

51 Civil Statutes, art. 3310b.
52 Civil Statutes, art. 3344.
53 Civil Statutes, art. 3348.
54 Civil Statutes, arts. 3386, 3576.

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 401, page 942; [55] and

55 Civil Statutes, art. 3683a.

(13) Acts of the 52nd Legislature (1951): Chapter 37, page 62; [56] and

56 Civil Statutes, art. 3582a.

(d) Title 69 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;[57] and

57 Civil Statutes, arts. 4102 to 4329.

(1) Acts of the 39th Legislature (1925): Section 1 of Chapter 156, page 367;[58] and Section 1 of Chapter 134, page 338;[59] and

58 Civil Statutes, art. 4225.
59 Civil Statutes, arts. 4195, 4196.

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 16, page 22;[60] Section 2 of Chapter 31, page 43;[61] Section 1 of Chapter 164, page 237;[62] and Sections 1, 2 and 3 of Chapter 179, page 257;[63] and

60 Civil Statutes, art. 4231.
61 Civil Statutes, art. 4195a.
62 Civil Statutes, art. 4192.
63 Civil Statutes, arts. 4102, 4111, 4123.

(3) Acts of the 41st Legislature (1929): Section 1 of Chapter 31, page 65;[64] Chapter 126, page 281;[65] Sections 1 and 2 of Chapter 127, page 282;[66] Sections 1 and 2 of Chapter 128, page 283;[67] Sections 1 and 2 of Chapter 129, page 284;[68] Sections 1 and 2 of Chapter 130, page 285;[69] Sections 1, 2, 3, 4, 5 and 6 of Chapter 131, page 286;[70] Section 1 of Chapter 133, page 289;[71] and Chapter 305, page 684;[72] and

64 Civil Statutes, art. 4111.
65 Civil Statutes, art. 4227a.
66 Civil Statutes, art. 4233.
67 Civil Statutes, art. 4143.
68 Civil Statutes, art. 4234.
69 Civil Statutes, art. 4148.
70 Civil Statutes, arts. 4282 to 4284.
71 Civil Statutes, art. 4142.
72 Civil Statutes, art. 4180.

(4) Acts of the 42nd Legislature (1931): Section 1 of Chapter 237, page 392;[73] and

73 Civil Statutes, art. 4200.

(5) Acts of the 43rd Legislature (1933): Chapter 47, page 93;[74] Chapter 239, page 838;[75] and Section 1 of Chapter 26, Third Called Session (1934), page 49;[76] and

74 Probably should read: "Chapter 47, page 96". Civil Statutes, art. 4295a.
75 Civil Statutes, art. 4223a.
76 Civil Statutes, art. 4195a.

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 13, page 5;[77] Section 1 of Chapter 79, page 196;[78] Section 1 of Chapter 84, page 206;[79] Section 1 of Chapter 254, page 640;[80] Section 1 of Chapter 279, page 664;[81] and

77 Probably should read: "Section 1 of Chapter 13, page 35". Civil Statutes, art. 4204.
78 Civil Statutes, art. 4216.
79 Civil Statutes, art. 4201.
80 Civil Statutes, art. 4115.
81 Civil Statutes, art. 4291.

(7) Acts of the 45th Legislature (1937): Chapter 289, page 579;[82] Chapter 336, page 673;[83] Sections 1 and 2 of Chapter 27, First Called Session, page 1803;[84] and Section 1 of Chapter 54, Second Called Session, page 1964;[85] and

82 Civil Statutes, art. 4112a.
83 Civil Statutes, art. 4180.
84 Civil Statutes, arts. 4285, 4286.
85 Civil Statutes, art. 4180.

(8) Acts of the 46th Legislature (1939): S.B.No. 189, page 340;[86] and

86 Civil Statutes, art. 4225.

(9) Acts of the 47th Legislature (1941): Section 3 of Chapter 303, page 480;[87] and Sections 1, 2, 3, 4, 5, 6 and 7 of Chapter 541, page 867;[88] and

87 Civil Statutes, art. 4203.
88 Civil Statutes, arts. 4113, 4114, 4116, 4117, 4121 to 4123, 4128, 4228, 4229, 4272, 4123a, 4123a-1.

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 56, page 65;[89] Chapter 281, page 414;[90] and Section 1 of Chapter 378, page 684;[91] and

89 Civil Statutes, art. 4180.
90 Civil Statutes, art. 4296.
91 Civil Statutes, arts. 4201, 4216.

(11) Acts of the 49th Legislature (1945): Sections 3, 4 and 5 of Chapter 316, page 525;[92] and

92 Civil Statutes, arts. 4141, 4201, 4216.

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 39, page 51;[93] and Section 1 of Chapter 256, page 453;[94] and

93 Civil Statutes, art. 4296.
94 Civil Statutes, art. 4141.

(13) Acts of the 51st Legislature (1949): Section 1 of Chapter 499, page 923;[95] Section 1 of Chapter 556, page 1093;[96] Chapter 456, page 842;[97] and Section 3 of Chapter 259, page 447;[98] and

95 Civil Statutes, art. 4123a-1.
96 Civil Statutes, art. 4168.
97 Probably should read "Chapter 458, page 842". Civil Statutes, art. 4192b.
98 Probably should read "Section 3 of Chapter 259, page 477". Civil Statutes, art. 6008b, § 3.

(14) Acts of the 52nd Legislature (1951): Section 1 of Chapter 34, page 56.[99]

99 Civil Statutes, art. 4192.

(15) Acts of the 53rd Legislature (1953): Section 1 of Chapter 70, page 104.[1]

[1] Civil Statutes, art. 4285.

§ 435. Emergency Clause

The need for revision of the probate statutes of this state creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

CHAPTER XI. NONTESTAMENTARY TRANSFERS

PART 1. MULTIPLE-PARTY ACCOUNTS

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PART 1. MULTIPLE-PARTY ACCOUNTS

§ 436. Definitions

In this part:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not there is a right of survivorship.

(5) "Multiple-party account" means a joint account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a certified copy of a death certificate or the judgment or order of a court in a proceeding where the death of a person is proved by circumstantial evidence to the satisfaction of the court as provided by Section 72 of this code.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution, but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 437. Ownership as Between Parties and Others

The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 895, ch. 319, § 2, eff. Sept. 1, 1981.]

§ 438. Ownership During Lifetime

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 439. Right of Survivorship

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. A survivorship agreement will not be inferred from the mere fact that the account is a joint account. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee. If two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial

ownership of the account other than to transfer the rights of the decedent as part of his estate.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 440. Effect of Written Notice to Financial Institution

The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. Notwithstanding any other provision of the law, this form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 441. Accounts and Transfers Nontestamentary

Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 442. Rights of Creditors

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, and expenses of administration.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 443. Protection of Financial Institutions

Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 444. Payment on Signature of One Party

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. A multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 445. Payment of Joint Account After Death or Disability

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 446. Payment of P.O.D. Account

A P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of

all other persons named on the account either as an original payee or as P.O.D. payee.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 447. Payment of Trust Account

A trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 448. Discharge from Claims

Payment made as provided by Section 444, 445, 446, or 447 of this code discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 449. Set-Off to Financial Institution

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

§ 450. Provisions for Payment or Transfer at Death

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance of real or personal property, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

[Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

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