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TEXAS PROPERTY CODE 1984



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Texas Property Code

WITH TABLES
AND INDEX

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

WEST PUBLISHING CO.
ST. PAUL, MINNESOTA

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V.T.C.A. Property Code, 1983 Pamphlet

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PREFACE

This Pamphlet contains the text of the Property Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Property Code constitutes a unit of the Texas Legislative Council's statutory revision program. The Code was originally enacted by Acts 1983, 68th Leg., ch. 576.

Disposition and Derivation Tables are included preceding the Code, thus providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of Code sections.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

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
1977	65	1st C.S.	July 21, 1977	*
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.

DISPOSITION TABLE

Showing where provisions of former Civil Statutes are covered in the Property Code or the Natural Resources Code.

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
166a -----	5.005	1301a, § 16 -----	81.201
1288 -----	5.021	§ 18 -----	81.208
1289 -----	13.001	§ 19 -----	81.205
1290 -----	5.003	§ 20 -----	81.206
1291 -----	5.001	§ 21 -----	81.207
1291a -----	5.042	§ 23 -----	81.003
1291b -----	5.043	1301b, § 1 -----	5.061
1292 -----	5.022		5.062
1293 -----	5.022	§ 2 -----	5.063
1293a -----	5.026	1994, subd. 1 -----	142.002
1293b -----	5.006	subd. 2 -----	142.001
1293c -----	5.025	subd. 3 -----	142.003
1294 -----	12.001	subd. 4 -----	142.006
1295 -----	5.004	subd. 5 -----	142.004
1296 -----	5.041	subd. 6 -----	142.005
1297 -----	5.023	3264 -----	21.011 to
1298 -----	5.024		21.016
1301 -----	5.002	3265, subd. 1 -----	21.041
1301a, § 1 -----	81.001		21.042
§ 2 -----	81.002	subd. 2 -----	21.042
	81.103	subd. 3 -----	21.042
	81.203	subd. 4 -----	21.042
§ 3 -----	81.101	subd. 5 -----	21.048
§ 4 -----	81.104	subd. 6 -----	21.019
§ 5 -----	81.104		21.020
§ 6 -----	81.104	subd. 7 -----	21.043
	81.107	3266, subd. 2 -----	21.014
§ 7(A) -----	81.103	subd. 3 -----	21.047
§ 7(B) -----	81.102	subd. 4 -----	21.047
	81.104	subd. 5 -----	21.047
§ 7(C) -----	81.103		21.048
§ 8 -----	81.108	subd. 6 -----	21.018
§ 9 -----	81.105	subd. 7 -----	21.061
	81.106	subd. 8 -----	21.022
	81.109	3266a, § 1 -----	21.001
§ 10 -----	81.210	§ 2 -----	21.013
§ 11 -----	81.110		21.018
§ 12 -----	81.110	§ 3 -----	21.013
§ 13 -----	81.201		21.018
	81.202	§ 4 -----	21.002
§ 14 -----	81.209	§ 5(a) -----	21.013
§ 15 -----	81.204		21.018

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
3266a, § 5(b) -----	21.013	3272a, § 13 -----	72.705
	21.018	§ 14 -----	72.001
3266b, § 1 -----	21.046	§ 15 -----	72.601
§ 1A -----	21.046		to
§ 2 -----	21.046		72.604
3267 -----	21.047		72.703
3268 -----	21.021	3272b, § 1 -----	73.001
	21.044		to
	21.062		73.003
	21.063	§ 2 -----	73.003
3269 -----	21.003	§ 3 -----	73.101
	21.017		to
	21.064		73.104
3270 -----	21.045	§ 4 -----	73.201
3271 -----	21.065		to
3272, § 1 -----	71.001		73.203
	to	§ 5 -----	73.206
	71.005		73.207
	71.103		73.401
§ 2 -----	71.002	§ 6 -----	73.402
3272a, § 1 -----	72.001		73.301
	72.101		73.302
	72.102		73.402
	72.104	§ 7 -----	73.204
§ 2 -----	72.103		73.205
	to	§ 8 -----	73.501
	72.105		73.502
§ 3(a) -----	72.201	§ 9 -----	73.503
§ 3(b) -----	72.202	3273 -----	71.101
§ 3(c) -----	72.202		72.001
	72.302	3274 -----	71.102
§ 3(d) -----	72.203	3275 -----	71.102
§ 3(e) -----	72.204	3276 -----	71.104
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§ 3(g) -----	72.303	3278 -----	71.105
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§ 4(b) -----	72.302	3280 -----	71.108
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§ 4(d) -----	72.305		Nat.Res.C.
§ 5(a) -----	72.401		51.086
§ 5(b) -----	72.402		Nat.Res.C.
§ 5(c) -----	72.403		51.121
§ 6(a) -----	72.501	3282 -----	71.201
§ 6(b) -----	72.506	3283 -----	71.303
§ 7(a) -----	72.502	3284 -----	71.109
§ 7(b) -----	72.503	3285 -----	71.203
§ 7(c) -----	72.504	3286 -----	71.301
§ 8 -----	72.505	3287 -----	71.302
§ 9 -----	72.702	3288 -----	71.006
	72.704	3289 -----	71.304
§ 10 -----	72.001	3810 -----	51.002
§ 10a -----	72.001	3833 -----	41.001
§ 11 -----	72.306	3834 -----	41.002
§ 12 -----	72.701	3835 -----	41.002

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
3836(a)	42.001	5236d, § 5	54.044
	42.002	§ 6	54.044
(b)	42.004	§ 7	54.045
(c)	42.004	5236e, § 1	92.001
(d)	42.004		92.102
3838	43.001	§ 2(a)	92.103
3839	41.002	§ 2(b)	92.103
3840	42.001		92.106
3841	41.022	§ 3(a)	92.104
3842	41.022		92.109
3843	41.022	§ 3(b)	92.104
3845	41.023	§ 4	92.109
3846	41.023	§ 5	92.105
3847	41.024	§ 6(a)	92.107
3848	41.024	§ 6(b)	92.108
3849	41.021	§ 7	92.006
3850	41.025	§ 11	92.002
3851	41.025		92.101
	41.026	5236f, § 1	92.001
3852	41.026		92.060
3853	41.026	§ 2	92.052
3854	41.028	§ 3	92.052
3855	41.027		92.053
3856	41.029		92.056
3857	41.030	§ 4	92.054
3859	42.003	§ 5	92.056
3973	24.001	§ 6	92.056
	24.002	§ 7	92.057
	24.004	§ 8	92.058
3974	24.001	§ 9	92.059
3975	24.002	§ 10	92.005
	24.003	§ 11	92.004
3975a	24.005	§ 12	92.055
3975b	24.006	§ 13	92.006
3992	24.007	§ 14	92.061
3994	24.008	§ 16	92.007
5222	54.001		92.056
	to	§ 17	92.002
	54.003		92.051
5223	54.002	5236g	91.003
	54.004	5236h, § 1	92.001
5224	54.002		92.151
5225	54.005		to
5226	54.005		92.153
5227	54.006		92.159
5232	54.007	§ 2	92.153
5236	91.004	§ 3	92.153
5236a	91.001	§ 4	92.154
5236b	92.003	§ 5	92.155
5236c	91.002	§ 6(a)	92.156
5236d, § 1	54.041	§ 6(b)	92.153
§ 2	54.042	§ 7	92.158
§ 3	54.043	§ 8	92.157
§ 4	54.043	§ 9	92.004

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
5236h, § 10	92.005	5238b, § 5(a)	59.022
§ 11	92.006	§ 5(b)	59.041
§ 12	92.160	§ 6(a)	59.042
§ 13	92.007	§ 6(b)	59.045
5236i, § 1	92.001	§ 6(c)	59.045
	92.201	§ 6(d)	59.046
	92.207	§ 7	59.042
§ 2	92.201		59.043
§ 3	92.201	§ 8(a)	59.042
§ 4	92.202		59.044
§ 5	92.203	§ 8(b)	59.042
§ 6	92.204	§ 8(c)	59.044
§ 7	92.206	§ 8(d)	59.042
§ 8	92.205		59.044
§ 9	92.004	§ 9	59.008
§ 10	92.005	§ 10	59.006
§ 11	92.006	§ 11	59.009
§ 12	92.208	§ 12	59.004
§ 14	92.007	§ 13	59.007
5236j, § 1	92.001	§ 14	59.005
	92.251	5239	54.025
	92.254	5447	52.002
	to		52.003
	92.256	5448	52.004
	92.258	5449	52.001
	92.262		52.006
§ 2(a)	92.255	5449(a), § 1	52.021
§ 2(b)	92.254		52.022
	92.255	§ 2	52.024
	92.257	§ 3	52.023
§ 3	92.256	§ 4	52.025
§ 4	92.258	§ 5	52.025
§ 5	92.258	5450	52.005
§ 6	92.259	5451	52.007
§ 7	92.259	5452, § 1	53.001
§ 8	92.261		53.021
§ 9	92.260		to
§ 10	92.004		53.023
§ 11	92.005		53.051
§ 12	92.253	§ 2	53.001
§ 13	92.253		53.002
§ 14	92.006		53.021
§ 15	92.252		53.024
§ 16	92.007		53.025
5237	91.005	5452-1	53.026
5238	54.021	5453	53.052
	to		53.055
	54.024		to
5238b, § 1	59.002		53.058
§ 2	59.003		53.083
§ 3	59.001	5454	53.083
	59.043	5455	53.054
	59.046	5456	53.003
§ 4	59.021	5458	53.022

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
5459, § 1	53.123	5472e, § 2	161.031
§ 2	53.124		163.032
5460	53.059	§ 3	162.033
5463, § 1	53.081	§ 4	162.004
	53.082	§ 7	162.004
§ 2	53.084	5473	56.001
	53.153		to
5464	53.121		57.003
5466	53.151	5474	56.001
5467	53.053		56.002
5468	53.122	5475	56.004
5469	53.101		56.041
	to	5476	56.024
	53.105		56.041
5470	53.152	5476a	56.021
5471	53.155		56.022
5472	53.154	5476b	56.005
5472a	53.231	5476c	56.021
	to		56.023
	53.234		56.043
5472b	53.235	5476d	56.044
5472b-1, § 1	53.236		56.045
	to	5477	56.042
	53.238	5478	56.006
§ 2	53.237	5480	57.001
	53.239		to
	53.240		57.003
5472c, § 1	53.171	5481	57.004
	53.172		57.006
§ 2	53.173	5482	57.005
§ 3	53.174	5483	58.001
§ 4	53.171		to
	53.175		58.003
§ 4a	53.176		58.005
5472d, § 1	53.201	5484	60.001
	to		60.002
	53.203	5485	58.009
	53.205	5486	58.004
§ 2	53.202		to
	53.203		58.007
§ 3	53.203	5487	58.007
§ 4	53.206	5488	58.006
§ 5	53.207	5500, § 1	70.101
§ 6	53.208		70.103
	53.209	§ 2	70.102
§ 7	53.201		70.103
	53.204	§ 3	70.104
	53.210	5501	70.201
§ 8	53.211		70.202
5472e, § 1	162.001	5502	70.003
	to	5503(a)	70.001
	162.003	(b)	70.001
	163.031	(c)	70.008
		5504	70.005

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
5504a(a) -----	70.006	6626(b) -----	11.003
(b) -----	70.006	6626b -----	12.009
(c) -----	70.004	6627 -----	13.001
5505 -----	70.007	6628 -----	12.003
5506 -----	51.001	6629 -----	11.002
5506a, § 1 -----	55.001	6630 -----	11.001
	to	6631 -----	13.003
	55.004	6633 -----	11.004
§ 2 -----	55.003		12.016
§ 3 -----	55.003	6634 -----	12.003
	to	6635 -----	12.013
	55.005	6636 -----	12.014
	55.007	6637 -----	12.015
§ 4 -----	55.001		13.005
	55.005	6638 -----	12.005
§ 4a -----	55.008	6639 -----	12.005
§ 4b -----	55.006	6640 -----	12.007
§ 4c -----	55.003	6641 -----	12.007
5506b, § 1 -----	70.002	6642 -----	13.004
§ 2 -----	70.005	6643 -----	13.004
§ 3 -----	70.007	6643a -----	12.008
5923b, § 2 -----	141.014	6644 -----	12.010
5923-101, § 1 -----	141.002	6644a -----	12.011
§ 2(a) -----	141.003	6646 -----	13.002
	141.004	6652 -----	11.004
§ 2(b) to (e) -----	141.003	6655 -----	11.005
§ 3 -----	141.005	6656 -----	11.005
§ 4(a) -----	141.006	6657 -----	11.005
§ 4(b) to (j) -----	141.006	6658 -----	11.006
§ 4(c) -----	141.011	6661 -----	11.001
§ 5 -----	141.007	6662 -----	12.012
§ 6 -----	141.008	7364 -----	22.001
§ 7(a) -----	141.010	7375 -----	22.002
§ 7(b) -----	141.010	7389 -----	22.021
§ 7(c) -----	141.009	7391 -----	22.003
§ 7(d) -----	141.010	7392 -----	22.004
§ 7(e) -----	141.009	7393 -----	22.021
§ 7(f) -----	141.009	7394 -----	22.021
§ 8 -----	141.012	7395 -----	22.021
§ 9 -----	141.013	7396 -----	22.021
§ 10 -----	141.001	7397 -----	22.022
6082 -----	23.001	7398 -----	22.023
6083 -----	23.002	7399 -----	22.023
6098 -----	23.003	7401 -----	22.024
6099 -----	23.004	7401A, § 1 -----	22.041
6100 -----	23.004	§ 2 -----	22.041
6101 -----	23.001	§ 3 -----	22.041
6102 -----	23.002		to
6108 -----	23.005		22.043
6624 -----	12.006	§ 4 -----	22.044
6625 -----	12.003	§ 5 -----	22.045
6625a -----	12.004	7409 -----	25.001
6626(a) -----	12.001	7417 -----	25.002
	12.002	7418 -----	25.002

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
7425a -----	101.001	7425b-19 -----	114.084
7425a-2, § 1 -----	161.001		114.085
§ 2(A) -----	161.002		115.011
	161.021		115.015
	to	7425b-20 -----	114.026
	161.024	7425b-21 -----	114.083
	161.028		115.011
§ 2(B) -----	161.021		115.015
	161.022	7425b-22 -----	113.059
	161.024	7425b-23 -----	114.005
	to	7425b-24 -----	115.001
	161.028		115.002
7425a-3, § 1 -----	161.001		115.011
	161.051		115.012
§ 2 -----	161.002	7425b-25 -----	113.001
	161.052		113.002
	161.054		113.009
	to		to
	161.056		113.011
	161.058		113.013
§ 3(a) -----	161.002		to
	161.052		113.016
	to		113.018
	161.056		to
	161.058		113.020
§ 3(b) -----	161.057		113.022
§ 4 -----	161.051		to
7425b -----	101.002		113.024
7425b-1 -----	111.001		113.058(a)
7425b-2 -----	111.003		to (f)
7425b-3 -----	112.007		114.003
	112.031		114.004
7425b-4 -----	111.004	7425b-26 -----	113.101
	113.102	7425b-27 -----	113.102
7425b-5 -----	112.032	7425b-28 -----	113.103
7425b-6 -----	112.032	7425b-29 -----	113.104
7425b-7 -----	112.001	7425b-30 -----	113.105
	112.004	7425b-31 -----	113.106
7425b-8 -----	114.082	7425b-32 -----	113.106
7425b-9 -----	114.081	7425b-33 -----	113.107
7425b-10 -----	113.052	7425b-34 -----	113.109
7425b-11 -----	113.057	7425b-35 -----	113.110
7425b-12 -----	113.053	7425b-36 -----	113.111
7425b-13 -----	113.054	7425b-37 -----	113.083
7425b-14 -----	113.055	7425b-38 -----	113.081
7425b-15 -----	114.001	7425b-39 -----	112.053
7425b-16 -----	113.017		113.082
	114.001	7425b-40 -----	113.084
7425b-17 -----		7425b-41 -----	112.051
7425b-18 -----	113.085	7425b-42 -----	112.053
	114.006	7425b-45 -----	111.005
		7425b-46 -----	113.056

DISPOSITION TABLE

Civ.St. Article	Property Code Section	Civ.St. Article	Property Code Section
7425b-48, § 1	113.171	7425d, § 1	121.001
	113.172		121.002
§ 2	113.151	§ 2	121.003
7425c, § 1	181.001	§ 3	121.004
	181.002	§ 4	121.005
§ 2	181.051	7425d-1, § 1	121.051
§ 3	181.052	§ 2	121.052
§ 4	181.054		121.053
§ 5	181.055	§ 3	121.052
§ 6	181.056	§ 4	121.054
§ 7	181.057	§ 5	121.055
§ 8	181.053	§ 6	121.056
§ 10	181.058	§ 7	121.057
§ 11	181.003	§ 8	121.058
§ 13	181.004		

DERIVATION TABLE

Showing where provisions of the Property Code and certain provisions of the Natural Resources Code were formerly covered in the Civil Statutes.

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
5.001	1291	12.010	6644
5.002	1301	12.011	6644a
5.003	1290	12.012	6662
5.004	1295	12.013	6635
5.006	1293b	12.014	6636
5.021	1288	12.015	6637
5.022	1293	12.016	6633
5.023	1297	13.001	1289
5.024	1298		6627
5.025	1293c	13.002	6646
5.026	1293a	13.003	6631
5.041	1296	13.004	6642
5.042	1291a		6643
5.043	1291b	13.005	6637
5.061	1301b, § 1	21.001	3266a, § 1
5.062	1301b, § 1	21.002	3266a, § 4
5.063	1301b, § 2	21.003	3269
11.001	6630	21.011	3264
	6661	21.012	3264
11.002	6629	21.013	3264
11.003	6626(b)		3266a, §§ 2, 3,
11.004	6633		5
	6652	21.014	3264
11.005	6655		3266, subd. 2
	to	21.015	3264
	6657	21.016	3264
11.006	6658	21.017	3269
12.001	1294	21.018	3266, subd. 6
	6626(a)		3266a, §§ 2, 3,
12.002	6626(a)		5
12.003	6625	21.019	3265, subd. 6
	6628	21.020	3265, subd. 6
	6634	21.021	3268
12.004	6625a	21.022	3266, subd. 8
12.005	6638	21.041	3265, subd. 1
	6639	21.042	3265, subds. 1
12.006	6624		to 4
12.007	6640	21.043	3265, subd. 7
	6641	21.044	3268
12.008	6643a	21.045	3270
12.009	6626b		

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
21.046 -----	3266b, §§ 1, 1A, 2	41.022 -----	3841
21.047 -----	3266, subds. 3 to 5		to
	3267	41.023 -----	3843
21.048 -----	3265, subd. 5		3845
	3266, subd. 5	41.024 -----	3846
21.061 -----	3266, subd. 7		3847
21.062 -----	3268	41.024 -----	3848
21.063 -----	3271	41.025 -----	3850
22.001 -----	7364		3851
22.002 -----	7375	41.026 -----	3851
22.003 -----	7391		to
22.004 -----	7392		3853
22.021 -----	7389	41.027 -----	3855
	7393	41.028 -----	3854
	to	41.029 -----	3856
	7396	41.030 -----	3857
22.022 -----	7397	42.001 -----	3836
22.023 -----	7398		3840
	7399	42.002 -----	3836(a)
22.024 -----	7401	42.003 -----	3859
22.041 -----	7401A, §§ 1 to 3	42.004 -----	3836(b) to (d)
22.042 -----	7401A, § 3	43.001 -----	3838
22.043 -----	7401A, § 3	51.001 -----	5506
22.044 -----	7401A, § 4	51.002 -----	3810
22.045 -----	7401, § 5	52.001 -----	5449
23.001 -----	6082	52.002 -----	5447
	6101	52.003 -----	5447
23.002 -----	6083	52.004 -----	5448
	6102	52.005 -----	5450
23.003 -----	6098	52.006 -----	5449
23.004 -----	6099	52.007 -----	5451
	6100	52.021 -----	5449(a), § 1
23.005 -----	6108	52.022 -----	5449(a), § 1
24.001 -----	3973	52.023 -----	5449(a), § 3
	3974	52.024 -----	5449(a), § 2
24.002 -----	3973	52.025 -----	5449(a), §§ 4, 5
	3975	53.001 -----	5452, §§ 1, 2
24.003 -----	3975	53.002 -----	5452, § 2
24.004 -----	3973	53.003 -----	5456
24.005 -----	3975a	53.021 -----	5452, §§ 1, 2
24.006 -----	3975b	53.022 -----	5452, § 1
24.007 -----	3992		5458
24.008 -----	3994	53.023 -----	5452, § 1
25.001 -----	7409	53.024 -----	5452, § 2
25.002 -----	7417	53.025 -----	5452, § 2
	7418	53.026 -----	5452-1
41.001 -----	3833	53.051 -----	5452, § 1
41.002 -----	3834	53.052 -----	5453
	3835	53.053 -----	5467
	3839	53.054 -----	5455
41.021 -----	3849	53.055 -----	5453
		53.056 -----	5453
		53.057 -----	5453

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
53.058 -----	5453	54.005 -----	5225
53.059 -----	5460		5226
53.081 -----	5463, § 1	54.006 -----	5227
53.082 -----	5463, § 1	54.007 -----	5232
53.083 -----	5453	54.021 -----	5238
	5454	54.022 -----	5238
53.084 -----	5463, § 2	54.023 -----	5238
53.101 -----	5469	54.024 -----	5238
53.103 -----	5469	54.025 -----	5239
53.105 -----	5469	54.041 -----	5236d, § 1
53.121 -----	5464	54.042 -----	5236d, § 2
53.122 -----	5468	54.043 -----	5236d, §§ 3, 4
53.123 -----	5459, § 1	54.044 -----	5236d, §§ 5, 6
53.124 -----	5459, § 2	54.045 -----	5236d, § 7
53.151 -----	5466	55.001 -----	5506a, §§ 1, 4
53.152 -----	5470	55.002 -----	5506a, § 1
53.153 -----	5463, § 2	55.003 -----	5506a, §§ 1 to 3, 4c
53.154 -----	5472		
53.155 -----	5471	55.004 -----	5506a, §§ 1, 3
53.171 -----	5472c, §§ 1, 4	55.005 -----	5506a, §§ 3, 4
53.172 -----	5472c, § 1	55.006 -----	5506a, § 4b
53.173 -----	5472c, § 2	55.007 -----	5506a, § 3
53.174 -----	5472c, § 3	55.008 -----	5506a, § 4a
53.175 -----	5472c, § 4	56.001 -----	5473
53.176 -----	5472c, § 4a		5474
53.201 -----	5472d, §§ 1, 7	56.002 -----	5473
53.202 -----	5472d, §§ 1, 2		5474
53.203 -----	5472d, §§ 1 to 3	56.003 -----	5473
		56.004 -----	5475
53.204 -----	5472d, § 7	56.005 -----	5476b
53.205 -----	5472d, § 1	56.006 -----	5478
53.206 -----	5472d, § 4	56.021 -----	5476a
53.207 -----	5472d, § 5		5476c
53.208 -----	5472d, § 6	56.022 -----	5476a
53.209 -----	5472d, § 6	56.023 -----	5476c
53.210 -----	5472d, § 7	56.024 -----	5476
53.211 -----	5472d, § 8	56.041 -----	5475
53.231 -----	5472a		5476
53.232 -----	5472a	56.042 -----	5477
53.233 -----	5472a	56.043 -----	5476c
53.234 -----	5472a	56.044 -----	5476d
53.235 -----	5472b	56.045 -----	5476d
53.236 -----	5472b-1, § 1	57.001 -----	5480
53.237 -----	5472b-1, §§ 1, 2	57.002 -----	5480
		57.003 -----	5480
53.238 -----	5472b-1, § 1	57.004 -----	5481
53.239 -----	5472b-1, § 2	57.005 -----	5482
53.240 -----	5472b-1, § 2	57.006 -----	5481
54.001 -----	5222	58.001 -----	5483
54.002 -----	5222	58.002 -----	5483
	5223	58.003 -----	5483
54.003 -----	5222	58.004 -----	5486
54.004 -----	5223	58.005 -----	5483
			5486

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
58.006	5486	71.105	3278
	5488	71.106	3277
58.007	5486	71.107	3279
58.008	5487	71.108	3280
58.009	5485	71.109	3284
59.001	5238b, § 3	71.201	3282
59.002	5238b, § 1	71.202	3281
59.003	5238b, § 2	71.203	3285
59.004	5238b, § 12	71.301	3286
59.005	5238b, § 14	71.302	3287
59.006	5238b, § 10	71.303	3283
59.007	5238b, § 13	71.304	3289
59.008	5238b, § 9	72.001	3272a, §§ 1, 10, 10a, 14
59.009	5238b, § 11		3273
59.021	5238b, § 4	72.101	3272a, § 1
59.022	5238b, § 5(a)	72.102	3272a, § 1
59.041	5238b, § 5(b)	72.103	3272a, § 2
59.042	5238b, §§ 6(a), 7, 8(a), (b), (d)	72.104	3272a, §§ 1, 2
59.043	5238b, §§ 3, 7	72.105	3272a, § 2
59.044	5238b, § 8(a), (c), (d)	72.201	3272a, § 3(a)
59.045	5238b, § 6(b), (c)	72.202	3272a, § 3(b), (c)
59.046	5328b, §§ 3, 6(d)	72.203	3272a, § 3(d)
60.001	5484	72.204	3272a, § 3(e), (f)
60.002	5484	72.301	3272a, § 4(a)
70.001	5503(a), (b)	72.302	3272a, §§ 3(c), 4(b)
70.002	5506b, § 1	72.303	3272a, § 3(g)
70.003	5502	72.304	3272a, § 4(c)
70.004	5504a(c)	72.305	3272a, § 4(d)
70.005	5504	72.306	3272a, § 11
	5506b, § 2	72.401	3272a, § 5(a)
70.006	5504a(a), (b)	72.402	3272a, § 5(b)
70.007	5506b, § 3	72.403	3272a, § 5(c)
70.008	5503(c)	72.501	3272a, § 6(a)
70.101	5505, § 1	72.502	3272a, § 7(a)
70.102	5505, § 2	72.503	3272a, § 7(b)
70.103	5505, §§ 1, 2	72.504	3272a, § 7(c)
70.104	5500, § 3	72.505	3272a, § 8
70.201	5501	72.506	3272a, § 6(b)
70.202	5501	72.601	3272a, § 15
71.001	3272, § 1	72.602	3272a, § 15
71.002	3272, §§ 1, 2	72.603	3272a, § 15
71.003	3272, § 1	72.604	3272a, § 15
71.004	3272, § 1	72.701	3272a, § 12
71.005	3272, § 1	72.702	3272a, § 9
71.006	3288	72.703	3272a, § 15
71.101	3273	72.704	3272a, § 9
71.102	3274	72.705	3272a, § 13
	3275	73.001	3272a, § 1
71.103	3272, § 1	73.002	3272a, § 1
71.104	3276	73.003	3272a, § 2

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
73.101 -----	3272b, § 3	92.001 -----	5236e, § 1
73.102 -----	3272b, § 3		5236f, § 1
73.103 -----	3272b, § 3		5236h, § 1
73.104 -----	3272b, § 3		5236i, § 1
73.201 -----	3272b, § 4		5236j, § 1
73.202 -----	3272b, § 4	92.002 -----	5236e, § 11
73.203 -----	3272b, § 4		5236f, § 17
73.204 -----	3272b, § 7	92.003 -----	5236b
73.205 -----	3272b, § 7	92.004 -----	5236f, § 11
73.206 -----	3272b, § 5		5236h, § 9
73.207 -----	3272b, § 5		5236i, § 9
73.301 -----	3272b, § 6		5236j, § 10
73.302 -----	3272b, § 6	92.005 -----	5236f, § 10
73.401 -----	3272b, § 5		5236h, § 10
73.402 -----	3272b, §§ 5, 6		5236i, § 10
73.501 -----	3272b, § 8		5236j, § 11
73.502 -----	3272b, § 8	92.006 -----	5236e, § 7
73.503 -----	3272b, § 9		5236f, § 13
81.001 -----	1301a, § 1		5236h, § 11
81.002 -----	1301a, § 2		5236i, § 11
81.003 -----	1301a, § 23		5236j, § 14
81.101 -----	1301a, § 3	92.007 -----	5236f, § 16
81.102 -----	1301a, § 7b		5236h, § 13
81.103 -----	1301a, §§ 2, 7(A), (C)		5236i, § 14
81.104 -----	1301a, §§ 4 to 6, 7(B)		5236j, § 16
81.105 -----	1301a, § 9	92.051 -----	5236f, § 17
81.106 -----	1301a, § 9	92.052 -----	5236f, §§ 2, 3
81.107 -----	1301a, § 6	92.053 -----	5236f, § 3
81.108 -----	1301a, § 8	92.054 -----	5236f, § 4
81.109 -----	1301a, § 9	92.055 -----	5236f, § 12
81.110 -----	1301a, §§ 11, 12	92.056 -----	5236f, §§ 3, 5, 6, 16
81.201 -----	1301a, §§ 13, 16	92.057 -----	5236f, § 7
81.202 -----	1301a, § 13	92.058 -----	5236f, § 8
81.203 -----	1301a, § 2	92.059 -----	5236f, § 9
81.204 -----	1301a, § 15	92.060 -----	5236f, § 1
81.205 -----	1301a, § 19	92.061 -----	5236f, § 14
81.206 -----	1301a, § 20	92.101 -----	5236e, § 11
81.207 -----	1301a, § 21	92.102 -----	5236e, § 1
81.208 -----	1301a, § 18	92.103 -----	5236e, § 2(a), (b)
81.209 -----	1301a, § 14	92.104 -----	5236e, § 3(a), (b)
81.210 -----	1301a, § 10	92.105 -----	5236e, § 5
91.001 -----	5236a	92.106 -----	5236e, § 2(b)
91.002 -----	5236a	92.107 -----	5236e, § 6(a)
91.003 -----	5236g	92.108 -----	5236e, § 6(b)
91.004 -----	5236	92.109 -----	5236e, §§ 3(a), 4
91.005 -----	5237	92.151 -----	5236h, § 1
		92.152 -----	5236h, § 1
		92.153 -----	5236h, §§ 1 to 3, 6(b)
		92.154 -----	5236h, § 4

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
92.155	5236h, § 5	113.018	7425b-25
92.156	5236h, § 6a	113.019	7425b-25
92.157	5236h, § 8	113.020	7425b-25
92.158	5236h, § 7	113.022	7425b-25
92.159	5236h, § 1	113.023	7425b-25
92.160	5236h, § 12	113.024	7425b-25
92.201	5236i, §§ 1 to 3	113.052	7425b-10
92.202	5236i, § 4	113.053	7425b-12
92.203	5236i, § 5	113.054	7425b-13
92.204	5236i, § 6	113.055	7425b-14
92.205	5236i, § 8	113.056	7425b-46
92.206	5236i, § 7	113.058	7425b-25
92.207	5236i, § 1	113.059	7425b-22
92.208	5236i, § 12	113.081	7425b-38
92.251	5236j, § 1	113.082	7425b-38
92.252	5236j, § 15	113.083	7425b-37
92.253	5236j, §§ 12, 13	113.084	7425b-40
92.254	5236j, §§ 1, 2(b)	113.085	7425b-18
92.255	5236j, §§ 1, 2	113.101	7425b-26
92.256	5236j, §§ 1, 3	113.102	7425b-4 7425b-27
92.257	5236j, § 2(b)	113.103	7425b-28
92.258	5236j, §§ 1, 4, 5	113.104	7425b-29
92.259	5236j, §§ 6, 7	113.105	7425b-30
92.260	5236j, § 9	113.106	7425b-31 7425b-32
92.261	5236j, § 8	113.107	7425b-33
92.262	5236j, § 1	113.109	7425b-34
101.001	7425a	113.110	7425b-35
111.001	7425b-1	113.111	7425b-36
111.003	7425b-2	113.151	7425b-48, § 2
111.004	7425b-4	113.171	7425b-48, § 1
111.005	7425b-45	113.172	7425b-48, § 1(a)
112.001	7425b-7	114.001	7425b-15 7425b-16
112.004	7425b-7	114.003	7425b-25
112.007	7425b-3	114.004	7425b-25
112.031	7425b-3	114.005	7425b-23
112.032	7425b-5	114.006	7425b-18
112.033	7425b-6	114.062	7425b-20
112.051	7425b-41	114.063	7425b-25
112.053	7425b-42	114.081	7425b-9
113.001	7425b-25	114.082	7425b-8
113.002	7425b-25	114.083	7425b-21
113.009	7425b-25	114.084	7425b-19
113.010	7425b-25	114.085	7425b-25
113.011	7425b-25	115.001	7425b-24
113.013	7425b-25	115.002	7425b-24
113.014	7425b-25	115.011	7425b-19
113.015	7425b-25		7425b-21
113.016	7425b-15 7425b-25		7425b-24
113.017	7425b-16	115.012	7425b-24

DERIVATION TABLE

Property Code Section	Civ.St. Article	Property Code Section	Civ.St. Article
115.015 -----	7425b-19 7425b-21	161.023 -----	7425a-2, § 2(A)
121.001 -----	7425d, § 1	161.024 -----	7425a-2, § 2(A), (B)
121.002 -----	7425d, § 1	161.025 -----	7425a-2, § 2(B)
121.003 -----	7425d, § 2	161.026 -----	7425a-2, § 2(B)
121.004 -----	7425d, § 3	161.027 -----	7425a-2, § 2(B)
121.005 -----	7425d, § 4	161.028 -----	7425a-2, § 2(A), (B)
121.051 -----	7425d, § 1	161.051 -----	7425a-3, §§ 1, 4
121.052 -----	7425d-1, §§ 2, 3	161.052 -----	7425a-3, §§ 2, 3(a)
121.053 -----	7425d-1, § 2	161.053 -----	7425a-3, § 3(a)
121.054 -----	7425d-1, § 4	161.054 -----	7425a-3, §§ 2, 3(a)
121.055 -----	7425d-1, § 5	161.055 -----	7425a-3, §§ 2, 3(a)
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141.004 -----	5923-101, § 2(a)	162.004 -----	5472e, §§ 4, 7
141.005 -----	5923-101, § 3	162.031 -----	5472e, §§ 1, 2
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141.011 -----	5923-101, § 4(c)	181.004 -----	7425c, § 13
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Enactment

The Property Code was enacted by Acts 1983, 68th Leg., p. 3475, ch. 576, § 1, effective January 1, 1984. Sections 2 to 5 were amendatory provisions and § 6 was a repealer. Section 7 provided:

"Nonsubstantive Revision. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act."

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec.

1.001. Purpose of Code.

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§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general

and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1983, 68th Leg., p. 3478, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1983, 68th Leg., p. 3478, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 1.003. Internal References

In this code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

[Acts 1983, 68th Leg., p. 3479, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 2 to 4 reserved for expansion]

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CHAPTER 5. CONVEYANCES

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[Sections 5.007 to 5.020 reserved for expansion]

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- 5.041. Future Estates.
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[Sections 5.044 to 5.060 reserved for expansion]

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- 5.061. Avoidance of Forfeiture and Acceleration.
- 5.062. Notice.
- 5.063. Right to Cure Default.

SUBCHAPTER A. GENERAL PROVISIONS

§ 5.001. Fee Simple

(a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

[Acts 1983, 68th Leg., p. 3480, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.002. Failing as a Conveyance

An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

[Acts 1983, 68th Leg., p. 3480, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.003. Partial Conveyance

(a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

[Acts 1983, 68th Leg., p. 3480, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.004. Conveyance by Authorized Officer

(a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

[Acts 1983, 68th Leg., p. 3480, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.005. Aliens

An alien has the same real and personal property rights as a United States citizen.

[Acts 1983, 68th Leg., p. 3481, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.006. Attorney's Fees in Breach of Restrictive Covenant Action

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the expertise, reputation, and ability of the attorney; and
- (4) any other factor.

[Acts 1983, 68th Leg., p. 3481, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 5.007 to 5.020 reserved for expansion]

SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

§ 5.021. Instrument of Conveyance

A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

[Acts 1983, 68th Leg., p. 3481, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.022. Form

(a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

"The State of Texas,

"County of _____,

"Know all men by these presents, That I, _____, of the _____,

(give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or

county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _____ day of _____, A.D. 19____.

"Signed and delivered in the presence of _____,"

(b) A covenant of warranty is not required in a conveyance.

(c) The parties to a conveyance may insert any clause or use any form not in contravention of law.

[Acts 1983, 68th Leg., p. 3481, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.023. Implied Covenants

(a) Unless the conveyance expressly provides otherwise, the use of "grant" or "convey" in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

- (1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and
- (2) that at the time of the execution of the conveyance the estate is free from encumbrances.

(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance.

[Acts 1983, 68th Leg., p. 3482, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.024. Encumbrances

"Encumbrance" includes a tax, an assessment, and a lien on real property.

[Acts 1983, 68th Leg., p. 3482, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.025. Wood Shingle Roof

To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

[Acts 1983, 68th Leg., p. 3482, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.026. Discriminatory Provisions

(a) If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void.

(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section.

[Acts 1983, 68th Leg., p. 3483, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 5.027 to 5.040 reserved for expansion]

SUBCHAPTER C. FUTURE ESTATES

§ 5.041. Future Estates

A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.

[Acts 1983, 68th Leg., p. 3483, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.042. Abolition of Common-Law Rules

(a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, and the doctrine of worthier title do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

[Acts 1983, 68th Leg., p. 3483, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.043. Reformation of Interests Violating Rule Against Perpetuities

(a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to

effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

[Acts 1983, 68th Leg., p. 3484, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 5.044 to 5.060 reserved for expansion]

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

§ 5.061. Avoidance of Forfeiture and Acceleration

A seller may enforce a forfeiture of interest and the acceleration of the indebtedness of a purchaser in default under an executory contract for conveyance of real property used or to be used as the purchaser's residence only after notifying the purchaser of the seller's intent to enforce the forfeiture and acceleration and the expiration of the following periods:

- (1) if the purchaser has paid less than 10 percent of the purchase price, 15 days after the date notice is given;
- (2) if the purchaser has paid 10 percent or more but less than 20 percent of the purchase price, 30 days after the date notice is given; and
- (3) if the purchaser has paid 20 percent or more of the purchase price, 60 days after the date notice is given.

[Acts 1983, 68th Leg., p. 3484, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.062. Notice

(a) Notice under Section 5.061 of this code must be in writing. If the notice is mailed, it must be by registered or certified mail. The notice must be conspicuous and printed in 10-point boldfaced type or uppercase typewritten letters, and must include the statement:

NOTICE

YOU ARE LATE IN MAKING YOUR PAYMENT UNDER THE CONTRACT TO BUY YOUR HOME. UNLESS YOU MAKE THE PAYMENT BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR HOME AND TO KEEP ALL PAYMENTS YOU HAVE MADE TO DATE.

(b) Notice by mail is given when it is mailed to the purchaser's residence or place of business. Notice by other writing is given when it is delivered to the purchaser at the purchaser's residence or place of business.

[Acts 1983, 68th Leg., p. 3485, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 5.063. Right to Cure Default

Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property used or to be used as the purchaser's residence may, at any time before expiration of the applicable period provided by Section 5.061 of this code, avoid forfeiture of interest and acceleration of indebtedness by complying with the terms of the contract up to the date of compliance.

[Acts 1983, 68th Leg., p. 3485, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 6 to 10 reserved for expansion]

TITLE 3. PUBLIC RECORDS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS

Sec.

- 11.001. Place of Recording.
- 11.002. English Language.
- 11.003. Grantee's Address.
- 11.004. Duty of Recorder.
- 11.005. Judgment Proving an Instrument or Correcting a Certificate.
- 11.006. Instrument Affecting Title to Land in Archer County.

§ 11.001. Place of Recording

(a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located. However, if such an instrument grants a security interest by a utility as defined in Section 35.01, Business & Commerce Code, as amended, the instrument must be recorded as required by Section 35.02 of that code.

(b) If an instrument has been recorded in a proper county, the subsequent creation of a new county containing property conveyed or encumbered by the instrument does not affect the recording's validity or effect as notice. The county court of the new county shall at its own expense:

(1) obtain a certified transcript of the record of all instruments conveying or encumbering property in the new county;

(2) deposit the transcript for public inspection in the recorder's office of the new county; and

(3) make an index of the transcript.

[Acts 1983, 68th Leg., p. 3486, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 11.002. English Language

An instrument relating to real or personal property may not be recorded unless it is in English. An authenticated instrument not in English that was executed before August 22, 1897, however, may be recorded and operate as constructive notice from the date of filing if:

(1) a correct English translation is recorded with the original instrument; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

[Acts 1983, 68th Leg., p. 3486, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 11.003. Grantee's Address

(a) An instrument executed after December 31, 1981, conveying an interest in real property may not be recorded unless:

(1) a mailing address of each grantee appears in the instrument or in a separate writing signed by the grantor or grantee and attached to the instrument; or

(2) a penalty filing fee equal to the greater of \$25 or twice the statutory recording fee for the instrument is paid.

(b) The validity of a conveyance as between the parties is not affected by a failure to include an address of each grantee in the instrument or an attached writing.

(c) Payment of a filing fee and acceptance of the instrument by the county clerk for recording creates a conclusive presumption that the requirements of this section have been met.

[Acts 1983, 68th Leg., p. 3487, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 11.004. Duty of Recorder

(a) A county clerk shall:

(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved or acknowledged according to law;

(2) give a receipt, as required by law, for an instrument delivered for recording;

(3) record instruments relating to the same property in the order the instruments are filed; and

(4) provide and keep in the clerk's office the indexes required by law.

(b) A county clerk who violates a provision of this section and the sureties on the clerk's bond are liable for damages and, on motion in district court and after three days' notice to the clerk, for a civil penalty of not more than \$500, half of which is payable to the county and half to the person who files the motion.

[Acts 1983, 68th Leg., p. 3487, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 11.005. Judgment Proving an Instrument or Correcting a Certificate

(a) A person interested under an instrument that may be proved for record may bring an action in district court for a judgment proving the instrument.

(b) a person interested under a defectively certified instrument for which acknowledgement or proof of execution has been properly made may bring an action in district court for a judgment correcting the certificate.

(c) If a certified copy of a judgment in a suit under this section that shows proof of an instrument is attached to the instrument, the instrument may be recorded with the same effect as if it were acknowledged.

[Acts 1983, 68th Leg., p. 3488, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 11.006. Instrument Affecting Title to Land in Archer County

An instrument that in any manner affects title to land in Archer County, Texas, but was recorded in Jack County on or after August 10, 1866, but no later than August 10, 1870, and was made under the hand and seal of the county clerk of Shackelford County, is admissible in evidence in any suit in which secondary evidence is admissible.

[Acts 1983, 68th Leg., p. 3488, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 12. RECORDING OF INSTRUMENTS

Sec.

- 12.001. Instruments Concerning Property.
- 12.002. Subdivision Plat.
- 12.003. Instrument in General Land Office or Archives.
- 12.004. Foreign Deed.
- 12.005. Partition.
- 12.006. Grant from Government.
- 12.007. Lis Pendens.
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- 12.009. Mortgage or Deed of Trust Master Form.
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- 12.011. Certificate of Redemption.
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Sec.

- 12.014. Transfer of Judgment or Cause of Action.
- 12.015. Judgment in Justice Court.
- 12.016. Power of Attorney.

§ 12.001. Instruments Concerning Property

(a) An instrument concerning real or personal property may be recorded if it has been acknowledged or proved according to law.

(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged by the grantor in the presence of two or more credible subscribing witnesses or acknowledged before and certified by an officer authorized to take acknowledgements.

(c) This section does not require the acknowledgement or prohibit the recording of a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

[Acts 1983, 68th Leg., p. 3489, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.002. Subdivision Plat

(a) A map or plat of a subdivision or resubdivision of real property may not be recorded unless it is authorized by the appropriate county or city.

(b) If the real property is located five miles or more outside the corporate limits of a city or town, the commissioners court of the county in which the land is located must authorize the map or plat by order duly entered in the minutes of the court.

(c) If the real property is located in or within five miles of the corporate limits of a city or town, the governing body or planning commission of the municipality must authorize the map or plat as provided by Chapter 231, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 974a, Vernon's Texas Civil Statutes).

(d) This section does not apply to a partition by a court.

[Acts 1983, 68th Leg., p. 3489, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.003. Instrument in General Land Office or Archives

(a) If written evidence of title to land has been filed according to law in the General Land Office or is in the public archives, a copy of the written evidence may be recorded if:

- (1) the original was properly executed under the law in effect at the time of execution; and
- (2) the copy is certified by the officer having custody of the original and attested with the seal of the General Land Office.

(b) A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the

same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

- (1) the older title had been recorded with the county clerk of the county in which the land is located; or
- (2) the person who had the location or survey made had actual notice of the older title.

[Acts 1983, 68th Leg., p. 3490, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.004. Foreign Deed

If written evidence of title to land has been filed outside the county in which the land is located or outside the state, a copy of the written evidence may be recorded in the county in which the land is located if:

- (1) the original was properly executed and recorded under the law governing the recording; and
- (2) the copy is certified by the officer having legal custody of the original.

[Acts 1983, 68th Leg., p. 3490, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.005. Partition

(a) A court order partitioning or allowing recovery of title to land must be recorded with the county clerk of the county in which the land is located in order to be admitted as evidence to support a right claimed under the order.

(b) A record of an order is sufficient under this section if it consists of a brief statement by the clerk of the court that made the order, signed and sealed by the clerk, that includes:

- (1) the identity of the case in which the partition or judgment was made;
- (2) the date of the case;
- (3) the names of the parties to the case;
- (4) a description of the land involved that is located in the county of the recording; and
- (5) the name of the party to whom the land is decreed.

[Acts 1983, 68th Leg., p. 3490, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.006. Grant From Government

A grant from this state or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgement or proof.

[Acts 1983, 68th Leg., p. 3491, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.007. Lis Pendens

(a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

(b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:

- (1) the style and number, if any, of the proceeding;
- (2) the court in which the proceeding is pending;
- (3) the names of the parties;
- (4) the kind of proceeding; and
- (5) a description of the property affected.

(c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.

[Acts 1983, 68th Leg., p. 3491, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.008. Cancellation of Lis Pendens

(a) On the motion of a party or other person interested in the result of or in property affected by a proceeding in which a lis pendens has been recorded and after notice to each affected party, the court hearing the action may cancel the lis pendens at any time during the proceeding, whether in term time or vacation, if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.

(b) If the cancellation of a lis pendens is conditioned on the payment of money, the court may order the cancellation when the party seeking the cancellation pays into the court an amount equal to the total of:

- (1) the judgment sought;
- (2) the interest the court considers likely to accrue during the proceeding; and
- (3) costs.

(c) If the cancellation of a lis pendens is conditioned on the giving of an undertaking, the court may order the cancellation when the party seeking the cancellation gives a guarantee of payment of a judgment, plus interest and costs, in favor of the party who recorded the lis pendens. The guarantee must equal twice the amount of the judgment sought and have two sufficient sureties approved by the court. Not less than two days before the day the guarantee is submitted to the court for approval, the party seeking the cancellation shall serve the

attorney for the party who recorded the lis pendens a copy of the guarantee and notice of its submission to the court.

[Acts 1983, 68th Leg., p. 3491, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.009. Mortgage or Deed of Trust Master Form

(a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."

(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:

(1) that the master form is recorded in the county in which the instrument is offered for record;

(2) the numbers of the book or volume and first page of the records in which the master form is recorded; and

(3) a definite identification of each provision being incorporated.

(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

(e) The provisions of the Uniform Commercial Code¹ prevail over this section.

[Acts 1983, 68th Leg., p. 3492, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Business and Commerce Code, § 1.101 et seq.

§ 12.010. Federal Lien

(a) A notice, abstract, or statement of a lien or claim in favor of the United States or a release or discharge of the lien or claim may be recorded if the instrument has been prepared according to the laws of the United States.

(b) The county clerk shall number an instrument filed under this section in the order it is filed, record it in the Federal Lien Record, and index it alphabetically in the Index to Federal Liens under the name

of each person named in or affected by the instrument.

(c) Failure of a county clerk to properly record or index an instrument relating to a lien or claim of the United States or nonpayment of a filing fee does not affect the validity of the lien, claim, release, or discharge.

[Acts 1983, 68th Leg., p. 3493, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.011. Certificate of Redemption

An instrument issued by the United States that redeems or evidences redemption of real property from a judicial sale or from a nonjudicial sale under foreclosure of a lien, mortgage, or deed of trust may be recorded in records of conveyances in each county in which the property is located if the instrument has been issued according to the laws of the United States.

[Acts 1983, 68th Leg., p. 3493, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.012. Attachment

(a) If an officer files a writ of attachment on real property with a county clerk, the clerk shall record the name of each plaintiff and defendant in attachment, the amount of the debt, and the officer's return in full.

(b) A county clerk who receives a certified copy of an order quashing or vacating a writ of attachment shall record the order and the name of each plaintiff and defendant.

[Acts 1983, 68th Leg., p. 3494, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.013. Judgment

A judgment or an abstract of a judgment of a court in this state may be recorded if the judgment is attested under the signature and seal of the clerk of the court that rendered the judgment.

[Acts 1983, 68th Leg., p. 3494, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.014. Transfer of Judgment or Cause of Action

(a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged in the form and manner required by law for acknowledgement of deeds.

(c) If a transfer of a judgment is filed, the clerk shall note the transfer on the margin of the minute book at the place where the judgment is recorded.

If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action.

[Acts 1983, 68th Leg., p. 3494, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.015. Judgment in Justice Court

(a) On the application of a party interested in land that has been sold under an execution issued by a justice court, the justice of the peace having custody of the execution and the judgment under which it was issued shall make a certified transcript of the judgment, the execution, and the levy and return of the executing officer.

(b) A certified transcript under this section may be recorded in the same manner as a deed.

[Acts 1983, 68th Leg., p. 3495, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 12.016. Power of Attorney

A power of attorney may be recorded.

[Acts 1983, 68th Leg., p. 3495, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 13. EFFECTS OF RECORDING

Sec.

- 13.001. Validity of Unrecorded Instrument.
- 13.002. Effect of Recorded Instrument.
- 13.003. Instruments Previously Recorded in Other Counties.
- 13.004. Effect of Recording Lis Pendens.
- 13.005. Effect of Recording Judgment of Justice Court.

§ 13.001. Validity of Unrecorded Instrument

(a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged or proved and filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

[Acts 1983, 68th Leg., p. 3495, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 13.002. Effect of Recorded Instrument

An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument.

[Acts 1983, 68th Leg., p. 3495, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 13.003. Instruments Previously Recorded in Other Counties

The original or a certified copy of a conveyance, covenant, agreement, deed of trust, or mortgage, relating to land, that has been recorded in a county of this state other than the county where the land to which the instrument relates is located, is valid as to a creditor or a subsequent purchaser who has paid a valuable consideration and who does not have notice of the instrument only after it is recorded in the county in which the land is located. Recording a previously recorded instrument in the proper county does not validate an invalid instrument.

[Acts 1983, 68th Leg., p. 3496, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 13.004. Effect of Recording Lis Pendens

(a) A recorded lis pendens is notice to the world of its contents. The notice is effective from the time it is filed for record, regardless of whether service has been made on the parties to the proceeding.

(b) A transfer or encumbrance of real property involved in a proceeding by a party to the proceeding to a third party who has paid a valuable consideration and who does not have actual or constructive notice of the proceeding is effective, even though the judgment is against the party transferring or encumbering the property, unless a notice of the pendency of the proceeding has been recorded under that party's name in each county in which the property is located.

[Acts 1983, 68th Leg., p. 3496, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 13.005. Effect of Recording Judgment of Justice Court

A certified transcript of a justice court judgment recorded under Section 12.015 of this code has the same effect as a recorded deed. A court shall admit as evidence the transcript or a copy of the transcript, if the copy is certified with the signature and seal of the clerk of the county in which the transcript is recorded, in the same manner and with the same effect as the original judgment and execution.

[Acts 1983, 68th Leg., p. 3496, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 14 to 20 reserved for expansion]

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 21. EMINENT DOMAIN

SUBCHAPTER A. JURISDICTION

Sec.

- 21.001. Concurrent Jurisdiction.
- 21.002. Transfer of Cases.
- 21.003. District Court Authority.

[Sections 21.004 to 21.010 reserved for expansion]

SUBCHAPTER B. PROCEDURE

- 21.011. Standard Procedure.
- 21.012. Condemnation Petition.
- 21.013. Venue.
- 21.014. Special Commissioners.
- 21.015. Hearing.
- 21.016. Notice.
- 21.017. Alternative Pleadings.
- 21.018. Appeal from Commissioners' Findings.
- 21.019. Dismissal of Condemnation Proceedings.
- 21.020. Reinstatement of Condemnation Proceedings.
- 21.021. Possession Pending Litigation.
- 21.022. Authority of Courts.

[Sections 21.023 to 21.040 reserved for expansion]

SUBCHAPTER C. DAMAGES AND COSTS

- 21.041. Evidence.
- 21.042. Assessment of Damages.
- 21.043. Displacement From Dwelling or Place of Business.
- 21.044. Damages From Temporary Possession
- 21.045. Title Acquired.
- 21.046. Relocation Assistance Program.
- 21.047. Assessment of Costs.
- 21.048. Statement of Damages and Costs.

[Sections 21.049 to 21.060 reserved for expansion]

SUBCHAPTER D. JUDGMENT

- 21.061. Judgment on Commissioners' Findings.
- 21.062. Writ of Possession.
- 21.063. Appeal.
- 21.064. Injunctive Relief.
- 21.065. Vested Interest.

SUBCHAPTER A. JURISDICTION

§ 21.001. Concurrent Jurisdiction

District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases.

[Acts 1983, 68th Leg., p. 3498, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.002. Transfer of Cases

If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court.

[Acts 1983, 68th Leg., p. 3498, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.003. District Court Authority

A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:

(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

(2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority.

[Acts 1983, 68th Leg., p. 3498, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 21.004 to 21.010 reserved for expansion]

SUBCHAPTER B. PROCEDURE

§ 21.011. Standard Procedure

Exercise of the eminent domain authority in all cases is governed by Sections 21.012 through 21.016 of this code.

[Acts 1983, 68th Leg., p. 3498, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.012. Condemnation Petition

(a) If the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemning entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

- (1) describe the property to be condemned;
- (2) state the purpose for which the entity intends to use the property;
- (3) state the name of the owner of the property if the owner is known; and
- (4) state that the entity and the property owner are unable to agree on the damages.

[Acts 1983, 68th Leg., p. 3498, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.013. Venue

(a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a

county in which there is one county court at law with jurisdiction must file the petition with the judge of that court or, if there is more than one county court at law with jurisdiction, with the county clerk.

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law with jurisdiction must file the condemnation petition with the district judge or, if there is more than one district court in the county, with the district clerk.

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

[Acts 1983, 68th Leg., p. 3499, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.014. Special Commissioners

(a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested freeholders who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners, shall give preference to persons agreed on by the parties. If a person fails to serve as a commissioner, the judge may appoint a replacement.

(b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

(c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.

[Acts 1983, 68th Leg., p. 3499, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.015. Hearing

(a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time and at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

(b) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

[Acts 1983, 68th Leg., p. 3500, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.016. Notice

(a) Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

(b) Notice of the hearing must be served on a party not later than the 11th day before the day set for the hearing. A person competent to testify may serve the notice.

(c) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.

(d) Notice may be served:

(1) by delivering a copy of the notice to the party or to the party's agent or attorney;

(2) if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

(3) if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law.

[Acts 1983, 68th Leg., p. 3500, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.017. Alternative Pleadings

(a) This state, a political subdivision of this state, a person, an association of persons, or a corporation that is a party to a suit covered by Section 21.003 of this code by petition, cross-bill, or plea of intervention may assert a claim to the property or, alternatively, seek to condemn the property.

(b) A plea under this section is not an admission of an adverse party's title to the property in controversy.

[Acts 1983, 68th Leg., p. 3501, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.018. Appeal From Commissioners' Findings

(a) A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

(b) If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

[Acts 1983, 68th Leg., p. 3501 ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.019. Dismissal of Condemnation Proceedings

(a) A party that files a condemnation petition may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner.

(b) A court that hears a motion to dismiss a condemnation proceeding shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

[Acts 1983, 68th Leg., p. 3501, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.020. Reinstatement of Condemnation Proceedings

If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding.

[Acts 1983, 68th Leg., p. 3502, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.021. Possession Pending Litigation

(a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

(1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional

costs that may be awarded to the property owner by the trial court or on appeal.

(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (1) and (2) of Subsection (a).

(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor.

[Acts 1983, 68th Leg., p. 3502, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.022. Authority of Courts

Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law.

[Acts 1983, 68th Leg., p. 3503, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 21.023 to 21.040 reserved for expansion]

SUBCHAPTER C. DAMAGES AND COSTS

§ 21.041. Evidence

As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

- (1) the value of the property being condemned;
- (2) the injury to the property owner;
- (3) the benefit to the property owner's remaining property; and
- (4) the use of the property for the purpose of the condemnation.

[Acts 1983, 68th Leg., p. 3504, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.042. Assessment of Damages

(a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

(b) If an entire tract or parcel of real property is condemned, the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing.

(c) If a portion of a tract or parcel of real property is condemned, the special commissioners shall determine the damage to the property owner after

estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, but they may not consider an injury or benefit that the property owner experiences in common with the general community.

[Acts 1983, 68th Leg., p. 3504, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.043. Displacement From Dwelling or Place of Business

(a) A property owner who is permanently physically displaced from the property owner's dwelling or place of business and who is not entitled to reimbursement for moving expenses under another law may recover, in addition to the property owner's other damages, the reasonable expenses of moving the property owner's personal property from the dwelling or place of business.

(b) A recovery under this section may not exceed the market value of the property being moved. The maximum distance of movement to be considered is 50 miles.

[Acts 1983, 68th Leg., p. 3504, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.044. Damages From Temporary Possession

(a) If a court finally determines that a condemnor who has taken possession of property pending litigation did not have the right to condemn the property, the court may award to the property owner the damages that resulted from the temporary possession.

(b) The court may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the condemnor.

[Acts 1983, 68th Leg., p. 3505, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.045. Title Acquired

Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. An interest acquired by a condemnor is not lost by the forfeiture or expiration of the condemnor's charter and is

subject to an extension of the charter or the grant of a new charter without a new condemnation.

[Acts 1983, 68th Leg., p. 3505, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.046. Relocation Assistance Program

(a) A department, agency, instrumentality, or political subdivision of this state may provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization if the service is compatible with the Federal Uniform Relocation Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

(b) This state or a political subdivision of this state may, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

(c) A department, agency, instrumentality, or political subdivision of this state that indicates a program under Subsection (b) shall adopt rules relating to the administration of the program.

(d) Neither this state nor a political subdivision of this state may authorize expenditures under Subsection (b) that exceed payments authorized under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(e) If a person moves or discontinues the person's business, moves personal property, or moves from the person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the person is considered to be displaced because of the acquisition of real property.

[Acts 1983, 68th Leg., p. 3505, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.047. Assessment of Costs

(a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay

the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs.

(c) A court that has jurisdiction of an eminent domain proceeding may tax \$10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding.

[Acts 1983, 68th Leg., p. 3506, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.048. Statement of Damages and Costs

After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

(1) make a written statement of their decision stating the damages, date it, sign it, and promptly file it and all other papers connected with the proceeding with the court; and

(2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court.

[Acts 1983, 68th Leg., p. 3507, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4766, ch. 838, § 1

Section 1 of Acts 1983, 68th Leg., p. 4766, ch. 838, eff. Sept. 1, 1983, purported to amend subd. 5 of Civil Statutes, art. 3265 [now, this section], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subd. 5 reads:

"When the commissioners have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due the owner, if any be found to be due, and shall date and sign such decision and file it together with all other papers connected with the proceeding with the judge of the court hearing the proceeding on the day the decision is made or on the next working day thereafter. The judge shall inform the clerk of the court as to the decision on the day the decision is filed or on the next working day thereafter. The clerk shall, on the day the decision is filed or on the next working day thereafter, send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 21.049 to 21.060 reserved for expansion]

SUBCHAPTER D. JUDGMENT

§ 21.061. Judgment on Commissioners' Findings

If no party in a condemnation proceeding files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners' findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment.

[Acts 1983, 68th Leg., p. 3507, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.062. Writ of Possession

If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner.

[Acts 1983, 68th Leg., p. 3507, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.063. Appeal

(a) The appeal of a judgment in a condemnation proceeding is as in other civil cases.

(b) A court hearing an appeal from the decision of a trial court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal.

[Acts 1983, 68th Leg., p. 3507, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.064. Injunctive Relief

(a) A court hearing a suit covered by Section 21.003 of this code may grant injunctive relief under the rules of equity.

(b) Instead of granting an injunction under this section, a court may require a condemnor to provide security adequate to compensate the property owner for damages that might result from the condemnation.

[Acts 1983, 68th Leg., p. 3508, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 21.065. Vested Interest

A judgment of a court under this chapter vests a right granted to a condemnor.

[Acts 1983, 68th Leg., p. 3508, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 22. TRESPASS TO TRY TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 22.001. Trespass to Try Title.
 22.002. Title Sufficient to Maintain Action.
 22.003. Final Judgment Conclusive.
 22.004. Effect of Former Law.

[Sections 22.005 to 22.020 reserved for expansion]

SUBCHAPTER B. JUDGMENT AND DAMAGES

- 22.021. Claim for Improvements.
 22.022. Writ of Possession.
 22.023. Failure to Pay.
 22.024. Payments Into Court.

[Sections 22.025 to 22.040 reserved for expansion]

SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

- 22.041. Plea for Removal of Improvements.
 22.042. Referee.
 22.043. Retained Jurisdiction.
 22.044. Condition for Removal.
 22.045. Cumulative Remedies.

SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Trespass to Try Title

(a) A trespass to try title action is the method of determining title to lands, tenements, or other real property.

(b) The action of ejectment is not available in this state.

[Acts 1983, 68th Leg., p. 3509, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.002. Title Sufficient to Maintain Action

A headright certificate, land scrip, bounty warrant, or other evidence of legal right to located and surveyed land is sufficient title to maintain a trespass to try title action.

[Acts 1983, 68th Leg., p. 3509, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.003. Final Judgment Conclusive

A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through that party by a title that arises after the action is initiated.

[Acts 1983, 68th Leg., p. 3509, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.004. Effect of Former Law

This chapter does not affect rights that existed before the introduction of the common law in this state. Those rights are defined by the principles of the law in effect at the time the rights accrued.

[Acts 1983, 68th Leg., p. 3509, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 22.005 to 22.020 reserved for expansion]

SUBCHAPTER B. JUDGMENT AND DAMAGES

§ 22.021. Claim for Improvements

(a) A defendant in a trespass to try title action who is not the rightful owner of the property, but who has possessed the property in good faith and made permanent and valuable improvements to it, is either:

(1) entitled to recover the amount by which the estimated value of the defendant's improvements exceeds the estimated value of the defendant's use and occupation of and waste or other injury to the property; or

(2) liable for the amount by which the value of the use and occupation of and waste and other injury to the property exceeds the value of the improvements and for costs.

(b) In estimating values of improvements or of use and occupation:

(1) improvements are valued at the time of trial, but only to the extent that the improvements increased the value of the property; and

(2) use and occupation is valued for the time before the date the action was filed that the defendant was in possession of the property, but excluding the value resulting from the improvements made by the defendant or those under whom the defendant claims.

(c) The defendant who makes a claim for improvements must plead:

(1) that the defendant and those under whom the defendant claims have had good faith adverse possession of the property in controversy for at least one year before the date the action began;

(2) that they or the defendant made permanent and valuable improvements to the property while in possession;

(3) the grounds for the claim;

(4) the identity of the improvements; and

(5) the value of each improvement.

(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements.

[Acts 1983, 68th Leg., p. 3509, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.022. Writ of Possession

If in a trespass to try title action the plaintiff obtains a judgment for the contested property, but the defendant obtains a judgment for the value of the defendant's improvements in excess of the defendant's liability for use, occupation, and damages, the court may not issue a writ of possession until

the first anniversary of the judgment unless the plaintiff pays to the clerk of the court for the benefit of the defendant the amount of the judgment in favor of the defendant plus interest.

[Acts 1983, 68th Leg., p. 3510, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.023. Failure to Pay

(a) If after a trespass to try title action a plaintiff does not pay a judgment awarded to a defendant, plus accrued interest, before the first anniversary of the judgment and if the defendant, before the sixth month after the first anniversary of the judgment, pays the value of the property, less the value of the defendant's improvements, to the clerk of the court for the benefit of the plaintiff, the plaintiff may not obtain a writ of possession or maintain any proceeding against the defendant or the defendant's heirs or assigns for the property awarded to the plaintiff in the trespass to try title action.

(b) If an eligible defendant does not exercise the option under this section, a plaintiff may apply for a writ of possession as in other cases.

[Acts 1983, 68th Leg., p. 3511, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.024. Payments Into Court

If a party in a trespass to try title action makes a payment to the clerk of a court under this subchapter, the clerk shall enter a dated memorandum of the payment on the page of the record on which the judgment was entered. The clerk shall pay the money on demand to the person entitled to the payment, who shall indicate receipt of the payment by dating and signing the record on the same page on which the judgment was entered.

[Acts 1983, 68th Leg., p. 3511, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 22.025 to 22.040 reserved for expansion]

SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

§ 22.041. Plea for Removal of Improvements

(a) A defendant in a trespass to try title action who is not the rightful owner of the property in controversy may remove improvements made to the property if:

(1) the defendant, and those under whom the defendant claims, possessed the property, and made permanent and valuable improvements to it, without intent to defraud; and

(2) the improvements can be removed without substantial and permanent damage to the property.

(b) The pleadings of a defendant who seeks to remove improvements must contain:

(1) a statement that the defendant, and those under whom the defendant claims, adversely possessed the property, and made permanent and valuable improvements to it, without intent to defraud;

(2) a statement identifying the improvements; and

(3) an offer to provide a surety bond in an amount and conditioned as required by this section.

(c) Before removing the improvements, the defendant must post a surety bond in an amount determined by the court, conditioned on the removal of the improvements in a manner that substantially restores the property to the condition it was in before the improvements were made.

[Acts 1983, 68th Leg., p. 3511, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.042. Referee

A court that authorizes a defendant in a trespass to try title action to remove improvements shall appoint a referee to supervise the removal. The court may require the referee to make reports to the court concerning the removal.

[Acts 1983, 68th Leg., p. 3512, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.043. Retained Jurisdiction

A court that authorizes a defendant in a trespass to try title action to remove improvements retains jurisdiction of the action until the court makes a final disposition of the case and a final determination of the rights, duties, and liabilities of the parties and sureties.

[Acts 1983, 68th Leg., p. 3512, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.044. Condition for Removal

Before a court in a trespass to try title action authorizes a defendant to remove improvements, the court may require the defendant to satisfy a money judgment in favor of the plaintiff that arises out of a claim of the plaintiff in the action.

[Acts 1983, 68th Leg., p. 3512, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 22.045. Cumulative Remedies

The remedy of removing improvements may be pleaded as an alternative to all other remedies at law or in equity.

[Acts 1983, 68th Leg., p. 3513, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 23. PARTITION

- Sec.
- 23.001. Partition.
- 23.002. Venue and Jurisdiction.

Sec.

- 23.003. Effect on Future Interests.
 23.004. Effect of Partition.
 23.005. Fees.

§ 23.001. Partition

A joint owner or claimant of real property or an interest in real property or a joint owner of personal property may compel a partition of the interest or the property among the joint owners or claimants under this chapter and the Texas Rules of Civil Procedure.

[Acts 1983, 68th Leg., p. 3513, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 23.002. Venue and Jurisdiction

(a) A joint owner or a claimant of real property or an interest in real property may bring an action to partition the property or interest in a district court of a county in which any part of the property is located.

(b) A joint owner of personal property must bring an action to partition the property in a court that has jurisdiction over the value of the property.

[Acts 1983, 68th Leg., p. 3513, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 23.003. Effect on Future Interests

A partition of real property involving an owner of a life estate or an estate for years and other owners of equal or greater estate does not prejudice the rights of an owner of a reversion or remainder interest.

[Acts 1983, 68th Leg., p. 3513, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 23.004. Effect of Partition

(a) A person allotted a share of or an interest in real property in a partition action holds the property or interest in severalty under the conditions and covenants that applied to the property prior to the partition.

(b) A court decree confirming a report of commissioners in partition of real property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by a warranty deed from the other parties in the action.

(c) Except as provided by this chapter, a partition of real property does not affect a right in the property.

[Acts 1983, 68th Leg., p. 3513, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 23.005. Fees

A court that hears an action to partition real property shall pay each commissioner in partition and the surveyor, if any, \$3 a day for making and returning the partition. The court shall tax and

collect this fee in the same manner as the other costs in the action.

[Acts 1983, 68th Leg., p. 3514, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 24. FORCIBLE ENTRY AND DETAINER**Sec.**

- 24.001. Forcible Entry and Detainer.
 24.002. Forcible Detainer.
 24.003. Substitution of Parties.
 24.004. Jurisdiction.
 24.005. Notice to Vacate for Nonpayment of Rent.
 24.006. Attorney's Fees and Costs of Suit.
 24.007. Appeal.
 24.008. Effect on Other Actions.

§ 24.001. Forcible Entry and Detainer

(a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force.

(b) For the purposes of this chapter, a forcible entry is:

- (1) an entry without the consent of the person in actual possession of the property; or
- (2) as to a landlord, an entry onto property in the possession of the landlord's tenant at will or by sufferance, whether with or without the tenant's consent.

[Acts 1983, 68th Leg., p. 3514, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.002. Forcible Detainer

(a) A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

- (1) is a tenant or a subtenant wilfully and without force holding over after the expiration of the lease under which the person claimed;
- (2) is a tenant at will or by sufferance;
- (3) is a tenant of a person who acquired possession by forcible entry;
- (4) has made a forcible entry on the possession of a person who acquired possession by forcible entry; or
- (5) has made a forcible entry on the possession of a tenant whose term has expired.

(b) The demand for possession must be made in writing by a person entitled to possession of the property.

[Acts 1983, 68th Leg., p. 3514, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.003. Substitution of Parties

If a tenancy for a term expires while the tenant's action for forcible entry is pending, the landlord may prosecute the action in the tenant's name for the landlord's benefit and at the landlord's expense.

It is immaterial whether the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

[Acts 1983, 68th Leg., p. 3515, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.004. Jurisdiction

A justice court in the precinct in which the real property is located has jurisdiction in forcible entry and detainer and forcible detainer actions.

[Acts 1983, 68th Leg., p. 3515, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.005. Notice to Vacate for Nonpayment of Rent

(a) If a tenancy is longer than for week to week, a landlord must give a tenant who defaults in the payment of rent at least three days' written notice to vacate the leased premises before the landlord files an action for forcible entry and detainer or forcible detainer, unless a landlord and a tenant contract otherwise in a written or an oral lease.

(b) The notice shall be given in person or by mail at the leased premises. The notice period is calculated from the day on which the notice is delivered.

[Acts 1983, 68th Leg., p. 3515, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.006. Attorney's Fees and Costs of Suit

(a) To be eligible to recover attorney's fees and costs of suit in a forcible entry and detainer or a forcible detainer action, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must be sent by registered or certified mail at least 10 days before the date the action is filed.

(b) The demand must state that if the tenant does not vacate the premises within 10 days and the landlord files an action, the court may enter a judgment against the tenant for the costs of suit and reasonable attorney's fees.

(c) A prevailing landlord may recover:

(1) reasonable attorney's fees, if the tenant does not vacate the premises before the court renders judgment; or

(2) reasonable attorney's fees plus the costs of the suit if the tenant vacates the premises after the suit is filed but before judgment is rendered.

[Acts 1983, 68th Leg., p. 3516, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.007. Appeal

A final judgment of a county court in a forcible entry and detainer or a forcible detainer action may

not be appealed unless the judgment awards damages greater than \$100.

[Acts 1983, 68th Leg., p. 3516, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 24.008. Effect on Other Actions

A forcible entry and detainer or a forcible detainer action does not bar an action for trespass, damages, waste, rent, or mesne profits.

[Acts 1983, 68th Leg., p. 3516, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 25. TRIAL OF RIGHT OF PROPERTY

Sec.

25.001. Jurisdiction.

25.002. Damages

§ 25.001. Jurisdiction

A trial of the right of property is an action that applies only to personal property. A trial of the right of property must be tried in a court with jurisdiction of the amount in controversy.

[Acts 1983, 68th Leg., p. 3516, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 25.002. Damages

If a claimant in a trial of the right of property does not establish a right to the property, the court shall adjudge damages against the obligors in the claimant's bond equal to 10 percent of the lesser of:

(1) the property's value; or

(2) the amount claimed under the writ levied against the property.

[Acts 1983, 68th Leg., p. 3517, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 26 to 40 reserved for expansion]

TITLE 5. LIENS AND EXEMPT PROPERTY

SUBTITLE A. EXEMPT PROPERTY

CHAPTER 41. HOMESTEAD

SUBCHAPTER A. NATURE OF EXEMPTION

Sec.

41.001. Homestead.

41.002. Homestead and Sepulcher Exemption.

[Sections 41.003 to 41.020 reserved for expansion]

SUBCHAPTER B. DESIGNATION AND EXCESS

41.021. Effect of Homestead Designation.

41.022. Voluntary Designation of Rural Homestead.

41.023. Notice to Designate.

41.024. Designation by Homestead Claimant After Notice.

41.025. Designation by Commissioners.

41.026. Form and Effect of Designation by Commissioners.

Sec.

- 41.027. Fees and Expenses.
 41.028. Sheriff's Return.
 41.029. Sale of Excess.
 41.030. Change of Designation.

SUBCHAPTER A. NATURE OF EXEMPTION

§ 41.001. Homestead

(a) To be a homestead property must be used by a homestead claimant as a home or as a place to exercise the calling or business to provide for a family or a single adult who is not a member of a family. The homestead consists of:

(1) one or more parcels of real property, including improvements, that is not in a city, town, or village and that totals not more than 200 acres for a family or not more than 100 acres for a single adult who is not a member of a family; or

(2) one or more lots in a city, town, or village, having a total value of \$10,000, not including improvements, at the time the property is designated as a homestead.

(b) Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

[Acts 1983, 68th Leg., p. 3517, ch. 576, § 1, eff. Jan. 1, 1984.]

**Amendment by Acts 1983, 68th Leg., p. 5309,
 ch. 976, §§ 1, 2**

Sections 1 and 2 of Acts 1983, 68th Leg., p. 5309, ch. 976, effective upon adoption of Acts 1983, 68th Leg., p. 6724, H.J.R. No. 105, which took place at an election held November 8, 1983, purported to amend Civil Statutes, art. 3333 [now, this section], by amending subd. (a) thereof and adding subd. (c) thereto without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended and added, subs. (a) and (c) read:

"(a) It is used for the purposes of a home, or as a place to exercise the calling or business to provide for a family or a single, adult person, not a constituent of a family, the homestead of a family or a single, adult person, not a constituent of a family, shall consist of:

"(1) for a family, not more than two hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

"(2) for a single, adult person, not a constituent of a family, not more than one hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

"(3) for a family or a single, adult person, not a constituent of a family, a lot or lots amounting to not more than one acre of land, together with any improvements thereon, if in a city, town, or village."

"(c) The exemptions provided to homesteads under this article apply to all homesteads in this state regardless of the dates they were created."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 41.002. Homestead and Sepulcher Exemption

(a) A homestead and one or more lots held for use as a sepulcher of a family or a single adult who is not a member of a family are except from attachment, execution, and forced sale for the payment of debts, except for encumbrances properly fixed on the property.

(b) The proceeds of a voluntary sale of a homestead are not subject to garnishment or forced sale before six months after the date of the sale.

(c) The homestead exemption provided in this section does not apply if the debt is for:

(1) all or part of the purchase money of the homestead;

(2) taxes on the homestead; or

(3) work and material used in constructing improvements on the homestead, if the work and material have been contracted for in writing and, in the case of a family homestead, if both spouses have given consent in the manner required by law for the conveyance of the homestead.

[Acts 1983, 68th Leg., p. 3518, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 41.003 to 41.020 reserved for expansion]

SUBCHAPTER B. DESIGNATION
AND EXCESS

§ 41.021. Effect of Homestead Designation

(a) A designation of homestead by a defendant relinquishes the defendant's homestead right in real property owned by the defendant that is not included in the designation and is binding on the defendant and persons in privity with the defendant.

(b) A court shall admit an original or a certified copy of the designation as evidence of its factual statements.

[Acts 1983, 68th Leg., p. 3518, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.022. Voluntary Designation of Rural Homestead

(a) If a family homestead that is not in a town or city is part of one or more tracts containing a total of more than 200 acres, the head of the family may

voluntarily designate not more than 200 acres of the property as the homestead.

(b) To designate property as a homestead, a person must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

- (1) a description sufficient to identify the property designated;
- (2) a statement by the person who executed the instrument that the property is designated as the homestead of the person's family;
- (3) the name of the original grantee of the property; and
- (4) the number of acres designated, and if there is more than one survey, the number of acres in each.

[Acts 1983, 68th Leg., p. 3519, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.023. Notice to Designate

(a) If an execution is issued against an owner of a homestead that is eligible for voluntary designation but that has not been designated, the officer holding the execution may, and shall at the request of the plaintiff in execution or the plaintiff's agent or attorney, notify the defendant that if the defendant fails to designate a homestead before the 11th day after the date the notice is delivered, the officer will have the designation made as provided by law.

(b) The notice must be written or printed and signed by the officer. The officer shall serve the notice by reading it to the defendant or by leaving a copy at the defendant's residence with a person who is 14 years of age or older. On the notice the officer shall indicate how the notice was delivered and endorse the officer's return. The officer shall return the notice to the court that issued the execution, and the proper officer of that court shall file it. The filed notice is prima facie evidence of its factual statements.

[Acts 1983, 68th Leg., p. 3519, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.024. Designation by Homestead Claimant After Notice

Before the 11th day after the date a notice to designate is delivered, a defendant in execution may designate the homestead and deliver the designation to the officer who served the notice. The officer shall file the designation with the county clerk of the county in which a part of the homestead is located. The clerk shall promptly record the designation in the county deed records.

[Acts 1983, 68th Leg., p. 3520, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.025. Designation by Commissioners

If a defendant in execution does not designate a homestead before the 11th day after the date legal notice to designate was given, the officer holding the execution shall verbally or in writing promptly summon as commissioners three disinterested landowners of the county. The commissioners shall promptly designate the defendant's homestead. If they consider it necessary, the commissioners may hire a surveyor to assist them.

[Acts 1983, 68th Leg., p. 3520, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.026. Form and Effect of Designation by Commissioners

(a) A designation of a homestead by commissioners must be written, signed, and sworn to by a majority of the commissioners, after which it may be recorded. The designation must:

- (1) include each element required of a designation by the defendant; and
- (2) state that the officer holding the execution summoned the commissioners to make the designation and that to the best of their judgment the designation is fair.

(b) The commissioners shall return the designation to the officer, who shall file it for record with the county clerk. A designation made under this section or a certified copy of the designation has the same effect as a designation made by a defendant.

[Acts 1983, 68th Leg., p. 3520, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.027. Fees and Expenses

For each day of service a commissioner is entitled to a fee of \$2, and a surveyor is entitled to a fee of \$5, including pay for chain carriers. The court shall tax these fees, the clerk's and officer's fees, and expenses against the defendant as part of the costs of execution and shall collect them as it collects other costs.

[Acts 1983, 68th Leg., p. 3521, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.028. Sheriff's Return

(a) If an officer holding an execution notifies the defendant in execution to designate a rural homestead, the officer shall make a return on the execution showing:

- (1) that notice to designate was given to the defendant, referring to the notice and return;
- (2) either that the defendant made a designation and stating the date it was delivered or that the defendant failed or refused to designate;
- (3) if appropriate, that the commissioners were appointed according to law, stating the date of the appointments; and

(4) that the officer filed the designation of the defendant or the commissioners with the county clerk, stating the date of the filing.

(b) The officer shall return the notice to designate with the execution.

(c) A return under this section is prima facie evidence of its factual statement.

[Acts 1983, 68th Leg., p. 3521, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.029. Sale of Excess

An officer holding an execution against a defendant whose homestead has been designated under this subchapter may sell the defendant's real property not included in the homestead according to the law governing execution sales.

[Acts 1983, 68th Leg., p. 3521, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 41.030. Change of Designation

A defendant may change the boundaries of a homestead designated under this subchapter by executing and recording an instrument in the manner required for a voluntary designation. A change under this section does not impair rights acquired by a party before the change.

[Acts 1983, 68th Leg., p. 3522, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 42. PERSONAL PROPERTY

Sec.

42.001. Personal Property Exemption.

42.002. Personal Property Eligible for Exemption.

42.003. Designation of Exempt Property.

42.004. Transfer of Nonexempt Property.

§ 42.001. Personal Property Exemption

(a) Eligible personal property that is owned by a family and that has an aggregate fair market value of not more than \$30,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

(b) Eligible personal property that is owned by a single adult who is not a member of a family and that has an aggregate fair market value of not more than \$15,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

(c) The exemption provided in this section does not apply to a debt that is secured by a lien on the property or that is due for rents or advances from a landlord to the landlord's tenant.

[Acts 1983, 68th Leg., p. 3522, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 42.002. Personal Property Eligible for Exemption

The following personal property is eligible for the exemption:

(1) home furnishings, including family heirlooms;

(2) provisions for consumption;

(3) if reasonably necessary for the family or single adult:

(A) farming or ranching implements;

(B) tools, equipment, books, and apparatus, including a boat, used in a trade or profession;

(C) clothing;

(D) two firearms; and

(E) athletic and sporting equipment;

(4) if not held or used for production of income, passenger cars and light trucks as defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or, whether or not held for the production of income, two of the following categories of means of travel:

(A) two animals from the following kinds with a saddle and bridle for each:

(i) horses;

(ii) colts;

(iii) mules; and

(iv) donkeys;

(B) a bicycle or motorcycle;

(C) a wagon, cart, or dray, with reasonably necessary harness;

(D) an automobile;

(E) a truck cab;

(F) a truck trailer;

(G) a camper truck;

(H) a truck; and

(I) a pickup truck;

(5) the following animals and forage on hand reasonably necessary for their consumption:

(A) 5 cows and their calves;

(B) 1 breeding age bull;

(C) 20 each of hogs, sheep, and goats;

(D) 50 chickens; and

(E) 30 each of turkeys, ducks, geese, and guineas;

(6) household pets;

(7) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member of the insured person's family or a dependent of the single person claiming the exemption is a beneficiary of the policy; and

(8) current wages for personal services.

[Acts 1983, 68th Leg., p. 3522, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 42.003. Designation of Exempt Property

(a) If a family or a single adult who is not a member of a family owns more of a kind of personal property than is eligible for exemption, the head of the family or the single adult may designate the portion of that kind of property to be levied on.

(b) If a defendant in execution can be found in the county, the officer holding the execution shall ask the head of the family or the single adult to designate the personal property to be levied on. If the defendant cannot be found in the county or if the proper person fails to make a designation within a reasonable time after the officer's request, the officer may make the designation.

[Acts 1983, 68th Leg., p. 3524, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 42.004. Transfer of Nonexempt Property

(a) If a person uses property not exempt under this chapter to acquire eligible personal property or an interest in eligible personal property or to make improvements or pay indebtedness on eligible personal property, with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than four years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

[Acts 1983, 68th Leg., p. 3524, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 43. EXEMPT PUBLIC PROPERTY

Sec.

43.001. Exempt Public Library.

§ 43.001. Exempt Public Library

A public library is exempt from attachment, execution, and forced sale.

[Acts 1983, 68th Leg., p. 3525, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 44 to 50 reserved for expansion]

SUBTITLE B. LIENS

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

Sec.

51.001. Effect on Other Liens.

51.002. Sale of Real Property Under Contract Lien.

§ 51.001. Effect on Other Liens

Except as provided by Chapter 59, this subtitle does not affect:

- (1) the right to create a lien by special contract or agreement; or
- (2) a lien that is not treated in this subtitle, including a lien arising under common law, in equity, or under another statute of this state.

[Acts 1983, 68th Leg., p. 3525, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 51.002. Sale of Real Property Under Contract Lien

(a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. The sale must take place in the county in which the land is located, or if the property is located in more than one county, the sale may be made in any county in which the property is located.

(b) Notice of the sale must be given at least 21 days before the date of the sale:

- (1) by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold; and
- (2) by the holder of the debt to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of the holder of the debt, is obligated to pay the debt.

(c) Service of a notice by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address as shown by the records of the holder of the debt. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

[Acts 1983, 68th Leg., p. 3525, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 5056, ch. 915, § 1

Section 1 of Acts 1983, 68th Leg., p. 5056, ch. 915, eff. Jan. 1, 1984, purported to amend Civil Statutes, art. 3810 [now, this section], without reference to the repeal of said article by Acts 1983, 68th

Leg., p. 3729, ch. 576, § 6. As so amended, art. 3310 reads:

"(a) All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notice as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notices shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice of the sale at the courthouse door, and by filing a copy of the notice in the office of the county clerk of the county in which the sale is to be made at least 21 days preceding the date of the sale. If the real estate is in more than one county, a notice shall be posted at the courthouse door and filed with the county clerk of each county in which the real estate is situated.

"(b) In addition to the notices given under Subsection (a) of this article, the holder of the debt to which the power is related shall at least 21 days preceding the date of sale serve written notice of the proposed sale by certified mail on each debtor obligated to pay such debt according to the records of such holder. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of the holder of the debt, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Such sale shall be made at public vendue between the hours of 10:00 a.m. and 4:00 p.m. of the first Tuesday in any month.

"(c) Each county clerk shall keep all notices filed under Subsection (a) of this article in a convenient file that is available to the public for examination during normal business hours. The clerk may dispose of the notices after the date of sale specified in the notice has passed. The clerk shall receive a fee of \$2 for each notice filed."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2), provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

CHAPTER 52. JUDGMENT LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

52.001. Establishment of Lien.

Sec.

52.002. Issuance of Abstract.
52.003. Contents of Abstract.
52.004. Recording and Indexing of Abstract.
52.005. Satisfaction of Judgment.
52.006. Duration of Lien.
52.007. Federal Court Judgment.

[Sections 52.008 to 52.020 reserved for expansion]

SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST BANKRUPTS

52.021. Discharge and Cancellation.
52.022. Application for Court Order.
52.023. Notice of Application.
52.024. Court Order.
52.025. Effect on Lien of Discharge of Debt in Bankruptcy.

SUBCHAPTER A. GENERAL PROVISIONS

§ 52.001. Establishment of Lien

A first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, constitutes a lien on the real property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

[Acts 1983, 68th Leg., p. 3526, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.002. Issuance of Abstract

(a) On application of a person in whose favor a judgment is rendered or on application of that person's agent, attorney, or assignee, the justice of the peace who rendered the judgment or the clerk of the court that rendered the judgment shall prepare and deliver to the applicant an abstract of the judgment.

(b) The justice or clerk shall certify the abstract.

(c) The applicant for the abstract must pay the fee allowed by law.

[Acts 1983, 68th Leg., p. 3527, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.003. Contents of Abstract

An abstract of a judgment must show:

- (1) the names of the plaintiff and defendant;
- (2) the birthdate and driver's license number of the defendant, if available to the clerk or justice;
- (3) the number of the suit in which the judgment was rendered;
- (4) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
- (5) the date on which the judgment was rendered;
- (6) the amount for which the judgment was rendered and the balance due; and

(7) the rate of interest specified in the judgment.

[Acts 1983, 68th Leg., p. 3527, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.004. Recording and Indexing of Abstract

(a) The county clerk shall immediately record in the county judgment records each properly authenticated abstract of judgment that is presented for recording. The clerk shall note in the records the date and hour an abstract of judgment is received.

(b) At the same time an abstract is recorded, the county clerk shall enter the abstract on the alphabetical index to the judgment records, showing:

- (1) the name of each plaintiff in the judgment;
- (2) the name of each defendant in the judgment; and

(3) the number of the page in the records in which the abstract is recorded.

(c) The clerk shall leave a space at the foot of each recorded abstract for the entry of credits on or satisfaction of the judgment and shall make those entries when credits are properly shown.

[Acts 1983, 68th Leg., p. 3527, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.005. Satisfaction of Judgment

Satisfaction of a judgment in whole or in part may be shown by:

(1) return on an execution issued on the judgment, or a copy of the return, certified by the officer making the return and showing:

- (A) the names of the parties to the judgment;
- (B) the number and style of the suit;
- (C) the court in which the judgment was rendered;
- (D) the date and amount of the judgment; and

(E) the dates of issuance and return of the execution; or

(2) a receipt, acknowledgement, or release that is signed by the party entitled to receive payment of the judgment or by that person's agent or attorney of record and that is acknowledged or proven for record in the manner required for deeds.

[Acts 1983, 68th Leg., p. 3528, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.006. Duration of Lien

A judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

[Acts 1983, 68th Leg., p. 3528, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.007. Federal Court Judgment

An abstract of a judgment rendered in this state by a federal court may be recorded and indexed under this chapter on the certificate of the clerk of the court.

[Acts 1983, 68th Leg., p. 3528, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 52.008 to 52.020 reserved for expansion]

SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST BANKRUPTS

§ 52.021. Discharge and Cancellation

(a) In accordance with this chapter, a judgment and judgment lien may be discharged and canceled if the person against whom the judgment was rendered is discharged from his debts under federal bankruptcy law.

(b) This chapter applies to judgments against persons whose debts are discharged in bankruptcy regardless of the fact that the discharge in bankruptcy occurred before this law took effect.

[Acts 1983, 68th Leg., p. 3529, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.022. Application for Court Order

(a) The person who has been discharged from his debts, that person's receiver or trustee, or any other interested person may apply, on proof of the discharge, to the court in which the judgment was rendered for an order discharging and canceling the judgment and judgment lien.

(b) A person may not apply for the order before a year has elapsed since the bankruptcy discharge.

[Acts 1983, 68th Leg., p. 3529, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.023. Notice of Application

(a) Notice of the application for the order and copies of the papers on which application is made must be served on the judgment creditor or his attorney of record in the action in which the judgment was rendered.

(b) If the residence or place of business of the judgment creditor or his attorney is known, notice must be served in the manner prescribed for service of notice in an action.

(c) As an alternative to service under Subsection (b), the court may order that notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks if the applicant proves by affidavit that:

- (1) the address of neither the judgment creditor nor his attorney is known and the address of neither can be ascertained by due diligence; or

(2) the judgment creditor is not a resident of this state and his attorney is dead, removed from the state, or unknown.

[Acts 1983, 68th Leg., p. 3529, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.024. Court Order

(a) The court shall conduct a hearing on the application and shall enter an order of discharge and cancellation of the judgment and any abstracts of the judgment if the debtor or bankrupt has been discharged in bankruptcy from the payment of the obligation or debt represented by the judgment.

(b) In each county in which the court's order is recorded in the judgment lien records, the order constitutes a release, discharge, and cancellation of the judgment and of any unsatisfied judgment lien represented by an abstract that is of record in the county on the date of the order or is recorded in the county on or after the date of the order.

[Acts 1983, 68th Leg., p. 3530, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 52.025. Effect on Lien of Discharge of Debt in Bankruptcy

(a) A judgment lien is not affected by the order of discharge and cancellation and may be enforced, if the lien is against real property owned by the bankrupt or debtor before the debtor was adjudged bankrupt or a petition for debtor relief was filed under federal bankruptcy law, and:

(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

(2) the property is nonexempt and is abandoned during the course of the proceeding.

(b) Except as provided by Subsection (a), the judgment is of no force or validity and may not be a lien on real property acquired by the bankrupt or debtor after the discharge in bankruptcy.

[Acts 1983, 68th Leg., p. 3530, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 53.001. Definitions.
- 53.002. More Than One Original Contractor.
- 53.003. Notices.

[Sections 53.004 to 53.020 reserved for expansion]

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

- 53.021. Persons Entitled to Lien.
- 53.022. Property to Which Lien Extends.
- 53.023. Payment Secured by Lien.
- 53.024. Limitation on Subcontractor's Lien.
- 53.025. Limitation on Ordinary Retainage Lien.

Sec.

- 53.026. Sham Contract; Penalty for Certain False Statements.

[Sections 53.027 to 53.050 reserved for expansion]

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

- 53.051. Necessary Procedures.
- 53.052. Filing of Affidavit.
- 53.053. Accrual of Indebtedness.
- 53.054. Contents of Affidavit.
- 53.055. Notice of Filed Affidavit.
- 53.056. Derivative Claimant: Notice to Owner or Original Contractor.
- 53.057. Derivative Claimant: Notice for Contractual Retainage Claim.
- 53.058. Derivative Claimant: Notice for Specially Fabricated Items.
- 53.059. Homestead.

[Sections 53.060 to 53.080 reserved for expansion]

SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

- 53.081. Authority to Withhold Funds for Benefit of Claimants.
- 53.082. Time for Which Funds are Withheld.
- 53.083. Payment to Claimant on Demand.
- 53.084. Owner's Liability.

[Sections 53.085 to 53.100 reserved for expansion]

SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS

- 53.101. Required Retainage.
- 53.102. Payment Secured by Retainage.
- 53.103. Lien on Retained Funds.
- 53.104. Preferences.
- 53.105. Owner's Liability for Failure to Retain

[Sections 53.106 to 53.120 reserved for expansion]

SUBCHAPTER F. PRIORITIES AND PREFERENCES

- 53.121. Preference Over Other Creditors.
- 53.122. Equality of Mechanic's Liens.
- 53.123. Priority of Mechanic's Lien Over Other Liens.
- 53.124. Inception of Mechanic's Lien.

[Sections 53.125 to 53.150 reserved for expansion]

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

- 53.151. Relinquishment Following Contract Compliance; Garnishment of Money Due Original Contractor.
- 53.152. Recording of Lien Release.
- 53.153. Defense of Actions.
- 53.154. Foreclosure.
- 53.155. Transfer of Property Sold.

[Sections 53.156 to 53.170 reserved for expansion]

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

- 53.171. Bond.
- 53.172. Bond Requirements.
- 53.173. Notice of Bond.
- 53.174. Recording of Bond and Notice.
- 53.175. Action on Bond.
- 53.176. Attorney's Fees.

[Sections 53.177 to 53.200 reserved for expansion]

SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

- 53.201. Bond.
- 53.202. Bond Requirements.

Sec.

- 53.203. Recording of Bond and Contract.
- 53.204. Reliance on Record.
- 53.205. Enforceable Claims.
- 53.206. Perfection of Claim.
- 53.207. Owner's Notice of Claim to Surety.
- 53.208. Action on Bond.
- 53.209. Attorney's Fees.
- 53.210. Claims in Excess of Bond Amount.
- 53.211. Attempted Compliance.

[Sections 53.212 to 53.230 reserved for expansion]

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

- 53.231. Lien.
- 53.232. To Whom Notice Given; Manner.
- 53.233. Contents of Notice.
- 53.234. Time for Notice.
- 53.235. Official to Retain Funds.
- 53.236. Bond For Release of Lien.
- 53.237. Bond Requirements.
- 53.238. Notice of Bond.
- 53.239. Action on Bond.
- 53.240. Attorney's Fees.

SUBCHAPTER A. GENERAL PROVISIONS

§ 53.001. Definitions

In this chapter:

(1) "Contract price" means the cost to the owner for any part of construction or repair performed under an original contract.

(2) "Improvement" includes:

(A) abutting sidewalks and streets and utilities in or on those sidewalks and streets;

(B) clearing, grubbing, draining, or fencing of land;

(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and

(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees.

(3) "Labor" means labor used in the direct prosecution of the work.

(4) "Material" means all or part of:

(A) the material, machinery, fixtures, or tools incorporated into the work, consumed in the direct prosecution of the work, or ordered and delivered for incorporation or consumption;

(B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct prosecution of the work at the site of the construction or repair; or

(C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct prosecution of the work.

(5) "Mechanic's lien" means the lien provided by this chapter.

(6) "Original contract" means an agreement to which an owner is party either directly or by implication of law.

(7) "Original contractor" means a person contracting with an owner either directly or through the owner's agent.

(8) "Retainage" means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered. The term does not include retainage under Subchapter E.¹

(9) "Specially fabricated material" means material fabricated for use as a component of the construction or repair so as to be reasonably unsuitable for use elsewhere.

(10) "Subcontractor" means a person who has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor to perform all or part of the work required by an original contract.

(11) "Work" means any part of construction or repair performed under an original contract.

[Acts 1983, 68th Leg., p. 3533, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.101 et seq.

§ 53.002. More Than One Original Contractor

On any work there may be more than one original contractor for purposes of this chapter.

[Acts 1983, 68th Leg., p. 3535, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.003. Notices

(a) This section applies to notices required by Subchapters B through G.¹

(b) Any notice or other written communication may be delivered in person to the party entitled to the notice or to that party's agent, regardless of the manner prescribed by law.

(c) If notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(d) If a written notice is received by the person entitled to receive it, the method by which the notice was delivered is immaterial.

[Acts 1983, 68th Leg., p. 3535, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Sections 53.021 et seq. to 53.151 et seq.

[Sections 53.004 to 53.020 reserved for expansion]

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

§ 53.021. Persons Entitled to Lien

(a) A person, including a lumber dealer, artisan, laborer, mechanic, or subcontractor, has a lien if:

(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of:

(A) a house, building, or improvement;

(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or

(C) a railroad; and

(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

(b) A person who specially fabricates material has a lien even if the material is not delivered.

[Acts 1983, 68th Leg., p. 3535, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.022. Property to Which Lien Extends

(a) The lien extends to the house, building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed.

(b) The lien does not extend to abutting sidewalks, streets, and utilities that are public property.

(c) A lien against land in a city, town, or village extends to each lot on which the house, building, or improvement is situated or on which the labor was performed.

(d) A lien against land not in a city, town, or village extends to not more than 50 acres on which the house, building, or improvement is situated or on which the labor was performed.

[Acts 1983, 68th Leg., p. 3536, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.023. Payment Secured by Lien

The lien secures payment for:

(1) the labor done or material furnished for the construction or repair; or

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value.

[Acts 1983, 68th Leg., p. 3536, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.024. Limitation on Subcontractor's Lien

The amount of a lien claimed by a subcontractor may not exceed:

(1) an amount equal to the proportion of the total subcontract price that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred, and proportionate profit margin bears to the total subcontract price; minus

(2) the sum of previous payments received by the claimant on the subcontract.

[Acts 1983, 68th Leg., p. 3536, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.025. Limitation on Ordinary Retainage Lien

A lien for retainage is valid only for the amount specified to be retained in the contract between the claimant and the original contractor or between claimant and a subcontractor.

[Acts 1983, 68th Leg., p. 3537, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.026. Sham Contract; Penalty for Certain False Statements

(a) A person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with a corporation or individual, as applicable, is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

(1) the owner contracted with the corporation for the construction or repair of a house, building, or improvements and the owner can effectively control the corporation through ownership of voting stock, interlocking directorships, or otherwise; or

(2) the owner contracted with the corporation or individual for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that the individual or corporation was to perform the contract.

(b) A person commits an offense if, for the purpose of procuring money or any other thing of value in connection with the construction or repair:

(1) the person knowingly and with intent to defraud makes or causes to be made a false written statement to the effect that a bill, charge, account, or claim for labor performed or for material or specially fabricated material furnished for the construction or repair of a house, building, or improvement has been paid or satisfied in full or in part; and

(2) the person is:

(A) the owner of the real property or the owner's agent;

(B) an agent, director, officer, or employee of a corporation, firm, or association that is owner of the real property;

(C) an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner of the real property and that the owner of the real property can effectively control through the ownership of voting stock, interlocking directorship, or otherwise; or

(D) in direct contractual relationship with the owner of the real property or is an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner, and the contract was entered into without good faith or without intent that the contract was to be performed by the person or corporation.

(c) An offense under Subsection (b) is a misdemeanor punishable by:

(1) a fine of not less than \$100 nor more than \$5,000;

(2) confinement in county jail for not more than one year; or

(3) both the fine and the confinement.

(d) In this section, "owner" does not include a person who has or claims a security interest only.

[Acts 1983, 68th Leg., p. 3537, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.027 to 53.050 reserved for expansion]

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

§ 53.051. Necessary Procedures

To perfect the lien, a person must comply with this subchapter.

[Acts 1983, 68th Leg., p. 3538, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.052. Filing of Affidavit

(a) The person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends.

(b) An original contractor must file the affidavit not later than the 120th day after the day on which the indebtedness accrues.

(c) A lumber dealer, artisan, laborer, mechanic, subcontractor, or other person who is not an original contractor must file the affidavit not later than the 90th day after the day on which the indebtedness accrues.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure

of the county clerk to property record or index a filed affidavit does not invalidate the lien.

[Acts 1983, 68th Leg., p. 3538, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.053. Accrual of Indebtedness

(a) For purposes of Section 53.052, indebtedness accrues on a contract under which labor was performed, materials furnished, or specially fabricated material is to be furnished in accordance with this section.

(b) Indebtedness to an original contractor accrues:

(1) immediately on any material breach or termination of the original contract by the owner; or

(2) on the 10th day of the month following the month in which the original contract has been completed, finally settled, or abandoned.

(c) Indebtedness to an artisan, laborer, or mechanic who has labored at an hourly, daily, or weekly rate of pay for an original contractor or a subcontractor accrues at the end of the calendar week during which the labor was performed.

(d) Indebtedness to a subcontractor, or to any person not covered by Subsection (b), (c), or (e), who has furnished labor or material to an original contractor or to another subcontractor accrues on the 10th day of the month following the last month in which the labor was performed or the material furnished.

(e) Indebtedness for specially fabricated material accrues:

(1) on the 10th day of the month following the last month in which materials were delivered;

(2) on the 10th day of the month following the last month in which delivery of the last of the material would normally have been required at the job site; or

(3) immediately on any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

(f) A claim for retainage accrues on the 10th day of the month following the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, or abandoned.

[Acts 1983, 68th Leg., p. 3539, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.054. Contents of Affidavit

(a) The affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

(1) a sworn statement of the claim, including the amount;

(2) the name of the owner or reputed owner, if known;

(3) a general statement of the kind of work done and materials furnished by the claimant;

(4) the name of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

(5) the name of the original contractor; and

(6) a description, legally sufficient for identification, of the property sought to be charged with the lien.

(b) The claimant may attach to the affidavit a copy of any applicable written agreement or contract.

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any abbreviations or symbols customary in the trade. [Acts 1983, 68th Leg., p. 3540, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.055. Notice of Filed Affidavit

A person who files an affidavit must send two copies of the affidavit by registered or certified mail to the owner at the owner's last known business or residence address.

[Acts 1983, 68th Leg., p. 3540, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.056. Derivative Claimant: Notice to Owner or Original Contractor

(a) A claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid.

(b) If the lien claim arises from a debt incurred by a subcontractor, the claimant must give to the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 36th day following the 10th day of the month following each month in which all or part of the claimant's labor was performed or material delivered. The claimant must give the same notice to the owner not later than the 90th day after the 10th day of the month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.

(c) If the lien claim arises from a debt incurred by the original contractor, the claimant must give notice to the owner in accordance with Subsection (b) but is not required to give notice to the original contractor.

(d) To authorize the owner to withhold funds under Subchapter D,¹ the notice to the owner must state that if the bill remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

- (1) the owner withholds payments from the contractor for payment of the bill; or
- (2) the bill is otherwise paid or settled.

(e) The notice must be sent by registered or certified mail and must be addressed to the owner or original contractor, as applicable, at his last known business or residence address.

(f) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section.

[Acts 1983, 68th Leg., p. 3540, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.081 et seq.

§ 53.057. Derivative Claimant: Notice for Contractual Retainage Claim

(a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 if the claimant is to labor, furnish labor or materials, or specially fabricate materials under an agreement with an original contractor or a subcontractor providing for retainage.

(b) The claimant must give the owner notice of the retainage agreement not later than the 36th day after the 10th day of the month following the month in which the agreement is made. If the agreement is with a subcontractor, the claimant must also give notice within that time to the original contractor.

(c) The notice must contain:

- (1) the sum to be retained;
- (2) the due date or dates, if known; and
- (3) a general indication of the nature of the agreement.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or original contractor, as applicable.

(e) A claimant who gives notice under this section and Section 53.055 is not required to give any other notice as to the retainage.

[Acts 1983, 68th Leg., p. 3541, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.058. Derivative Claimant: Notice for Specially Fabricated Items

(a) A claimant who specially fabricates material must give notice under this section for the lien to be valid.

(b) The claimant must give the owner notice not later than the 36th day after the 10th day of the month following the month in which the claimant receives and accepts the order for the material. If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

(c) The notice must contain:

- (1) a statement that the order has been received and accepted; and
- (2) the price of the order.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or original contractor, as applicable.

(e) In addition to notice under this section, the claimant must give notice under Section 53.056 if delivery has been made or if the normal delivery time for the job has passed.

(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.056.

(g) If a retainage agreement consists in whole or part of an obligation to furnish specially fabricated materials and the claimant has given notice under Section 53.057, the claimant is not required to give notice under this section.

[Acts 1983, 68th Leg., p. 3542, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.059. Homestead

(a) To fix the lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.

(b) The contract must be entered before the material is furnished or the labor is performed.

(c) If the owner is married, the contract must be signed by both spouses.

(d) The contract must be filed with the county clerk of the county in which the homestead is located, who shall record it in records kept for that purpose.

(e) If the contract is made and recorded by an original contractor, the contract inures to the benefit of all persons who labor or furnish material for the original contractor.

[Acts 1983, 68th Leg., p. 3543, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.060 to 53.080 reserved for expansion]

SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

§ 53.081. Authority to Withhold Funds for Benefit of Claimants

(a) If an owner receives notice under Section 53.056, 53.057, or 53.058, the owner may withhold from payments to the original contractor an amount necessary to pay the claim for which he receives notice.

(b) If notice is sent under Section 53.056, the owner may withhold the funds immediately on receipt of the notice.

(c) If notice is sent under Section 53.057, the owner may withhold funds immediately on receipt

of a copy of the claimant's affidavit prepared in accordance with Sections 53.052 through 53.055.

(d) If notice is sent under Section 53.058, the owner may withhold funds immediately on receipt of the notices sent under Subsection (e) of that section.

[Acts 1983, 68th Leg., p. 3543, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.082. Time for Which Funds are Withheld

Unless payment is made under Section 53.083 or the claim is otherwise settled or determined, the owner shall retain the funds withheld until:

- (1) the time for securing the mechanic's lien has passed; or
- (2) if a lien affidavit has been filed, until the lien claim has been satisfied or released.

[Acts 1983, 68th Leg., p. 3544, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.083. Payment to Claimant on Demand

(a) The claimant may make written demand for payment of the claim to an owner authorized to withhold funds under this subchapter. The demand must give notice to the owner that all or part of the claim has accrued under Section 53.053 or is past due according to the agreement between the parties.

(b) The claimant must send a copy of the demand to the original contractor. The original contractor may give the owner written notice that the contractor intends to dispute the claim. The original contractor must give the notice not later than the 30th day after the day he receives the copy of the demand. If the original contractor does not give the owner timely notice, he is considered to have assented to the demand and the owner shall pay the claim.

(c) The claimant's demand may accompany the original notice of nonpayment or of a past-due claim and may be stamped or written in legible form on the face of the notice.

(d) Unless the lien has been secured, the demand may not be made after expiration of the time within which the claimant may secure the lien for the claim.

[Acts 1983, 68th Leg., p. 3544, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4574, ch. 763, § 1

Section 1 of Acts 1983, 68th Leg., p. 4574, ch. 763, eff. Aug. 29, 1983, purported to amend Civil Statutes, art. 5453 [now, §§ 53.052, 53.055 to 53.058, and this section], by adding subds. 4 and 5 thereto without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so added, subds. 4 and 5 read:

"4. If the lien provided for in this Article is not paid within 180 days from its being fixed and secured in the manner provided for in this Article, the claimant or owner of such lien shall be entitled to recover all reasonable costs of collection including attorney's fees.

"5. If the claim for such lien shall not be valid or enforceable, due to failure to fix and secure said lien in a manner provided for in this Article, or for any other reason, then the owner, original contractor, subcontractor or any surety under any bond shall be entitled to recover from the claimant all reasonable costs of defending against such lien claim, including attorney's fees."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 53.084. Owner's Liability

(a) Except for the amount required to be retained under Subchapter E,¹ the owner is not liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this subchapter.

(b) If the owner has received the notices required by subchapter C,² if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which he is liable under Subchapter E.

[Acts 1983, 68th Leg., p. 3545, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.101 et seq.

² Section 53.051 et seq.

[Sections 53.085 to 53.100 reserved for expansion]

SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS

§ 53.101. Required Retainage

(a) During the progress of work for which a mechanic's lien may be claimed and for 30 days after the work is completed, the owner shall retain:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

(b) In this section, "owner" includes the owner's agent, trustee, or receiver.

[Acts 1983, 68th Leg., p. 3545, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.102. Payment Secured by Retainage

The retained funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work.

[Acts 1983, 68th Leg., p. 3545, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.103. Lien on Retained Funds

A claimant has a lien on the retained funds if the claimant:

(1) sends the notices required by this chapter in the time and manner required; and

(2) files an affidavit claiming a lien not later than the 30th day after the work is completed.

[Acts 1983, 68th Leg., p. 3545, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.104. Preferences

(a) Artisans and mechanics are entitled to a preference to the retained funds and shall share proportionately to the extent of their claims.

(b) After payment of artisans and mechanics, other participating claimants share proportionately in the balance of the retained funds.

[Acts 1983, 68th Leg., p. 3546, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.105. Owner's Liability for Failure to Retain

(a) If the owner fails or refuses to comply with this subchapter, the claimants complying with this subchapter have a lien, at least to the extent of the amount that should have been retained, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

(b) The claimants share the lien proportionately in accordance with the preference provided by Section 53.104.

[Acts 1983, 68th Leg., p. 3546, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.106 to 53.120 reserved for expansion]

SUBCHAPTER F. PRIORITIES AND PREFERENCES

§ 53.121. Preference Over Other Creditors

All subcontractors, laborers, and materialmen who have a mechanic's lien have preference over other creditors of the original contractor.

[Acts 1983, 68th Leg., p. 3546, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.122. Equality of Mechanic's Liens

(a) Except as provided by Subchapter E,¹ perfected mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

(b) If the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

(c) This chapter does not affect the contract between the owner and the original contractor as to the amount, manner, or time of payment of the contract price.

[Acts 1983, 68th Leg., p. 3546, ch. 576, § 1, eff. Jan. 1, 1984.]

¹Section 53.101 et seq.

§ 53.123. Priority of Mechanic's Lien Over Other Liens

(a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.

(b) The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien.

[Acts 1983, 68th Leg., p. 3547, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.124. Inception of Mechanic's Lien

(a) For purposes of section 53.123, the time of inception of a mechanic's lien is the earlier of:

(1) commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used; or

(2) recording of a written agreement, or if the agreement is oral, an affidavit stating that the lien claimant has entered into an agreement with the owner or the owner's contractor or subcontractor, to construct all or part of any improvements or to perform labor, furnish material, or provide specially fabricated material in connection with the construction.

(b) The construction or materials under Subdivision (1) of Subsection (a) must be visible from inspection of the land on which the improvements are being made.

(c) The contract or affidavit under Subdivision (2) of Subsection (a) must be recorded in the mechanic's

lien records of the county in which the land is located.

(d) The affidavit under Subdivision (2) of Subsection (a) must contain:

- (1) a description of the land;
- (2) the name and address of the lien claimant;
- (3) the name and address of the person with whom the lien claimant has contracted for the improvements, labor, materials, or specially fabricated materials; and
- (4) a general description of the improvements for which the parties contracted.

[Acts 1983, 68th Leg., p. 3547, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.125 to 53.150 reserved for expansion]

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

§ 53.151. Relinquishment Following Contract Compliance; Garnishment of Money Due Original Contractor

(a) When the debt is paid under the contract for construction, the party for whose interest the contract was recorded shall enter a relinquishment showing full compliance with the contract to the extent of all money due the party from the original contractor on account of labor done or material furnished.

(b) A creditor may not garnish the money due the original contractor from the owner to the prejudice of the subcontractors, mechanics, laborers, or materialmen.

[Acts 1983, 68th Leg., p. 3548, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.152. Recording of Lien Release

The claimant of a recorded mechanic's lien shall record a relinquishment and satisfaction of the lien when the lien is paid or satisfied or when the claimant receives the proper lienable parts for which the owner is liable under this chapter.

[Acts 1983, 68th Leg., p. 3548, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.153. Defense of Actions

(a) If an affidavit claiming a mechanic's lien is filed by a person other than the original contractor, the original contractor shall defend at his own expense a suit brought on the claim.

(b) If the suit results in judgment on the lien against the owner or the owner's property, the owner is entitled to deduct the amount of the judgment and costs from any amount due the original contractor. If the owner has settled with the original contractor in full, the owner is entitled to recov-

er from the original contractor any amount paid for which the original contractor was originally liable.

[Acts 1983, 68th Leg., p. 3548, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.154. Foreclosure

A mechanic's lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

[Acts 1983, 68th Leg., p. 3549, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.155. Transfer of Property Sold

If the house, building, improvement, or any piece of railroad property is sold separately, the officer making the sale shall place the purchaser in possession. The purchaser is entitled to a reasonable time after the date of purchase within which to remove the purchased property.

[Acts 1983, 68th Leg., p. 3549, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.156 to 53.170 reserved for expansion]

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

§ 53.171. Bond

(a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, the owner or the contractor or subcontractor through whom the lien is claimed may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the property subject to the lien is located.

(c) An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond.

[Acts 1983, 68th Leg., p. 3549, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.172. Bond Requirements

The bond must:

- (1) describe the property on which the liens are claimed;
- (2) refer to each lien claimed in a manner sufficient to identify it;
- (3) be in an amount double the amount of the liens referred to;
- (4) be payable to the parties claiming the liens;
- (5) be executed by:
 - (A) the party filing the bond as principal;
 and

(B) a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount of the liens claimed, plus costs, if the claims are proved to be liens on the property.

[Acts 1983, 68th Leg., p. 3549, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.173. Notice of Bond

(a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery.

(d) The original notice shall be returned to the office of the county clerk, and the person making service of copies shall make an oath on the back of the copies showing on whom and on what date the copies were served.

[Acts 1983, 68th Leg., p. 3550, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.174. Recording of Bond and Notice

(a) The county clerk shall record the bond, notice, and return in the mechanic's lien records.

(b) In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

[Acts 1983, 68th Leg., p. 3550, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.175. Action on Bond

(a) A party making or holding a lien claim may sue on the bond after the 30th day following the date on which the notice is served, but may not sue on the bond later than one year after the date on which the notice is served.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any court of jurisdiction.

[Acts 1983, 68th Leg., p. 3550, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.176. Attorney's Fees

A lienholder who recovers in a suit on the lien or on the bond is entitled to also recover a reasonable attorney's fee.

[Acts 1983, 68th Leg., p. 3551, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.177 to 53.200 reserved for expansion]

SUBCHAPTER I. BOND TO PAY LIENS
OR CLAIMS

§ 53.201. Bond

(a) An original contractor who has a written contract with the owner may furnish a bond for the benefit of claimants.

(b) If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of obligations under Subchapter D or E.¹

[Acts 1983, 68th Leg., p. 3551, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.081 et seq. or 53.101 et seq.

§ 53.202. Bond Requirements

The bond must:

- (1) be in a penal sum at least equal to the total of the original contract amount;
- (2) be in favor of the owner;
- (3) have the written approval of the owner endorsed on it;
- (4) be executed by:
 - (A) the original contractor as principal; and
 - (B) a corporate surety authorized to do business in this state; and
- (5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price.

[Acts 1983, 68th Leg., p. 3551, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.203. Recording of Bond and Contract

(a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is to be performed. A copy of the contract may be substituted for the original.

(b) The plans, specifications, and general conditions of the contract are not required to be filed.

(c) The county clerk shall record the bond and place the contract on file in the clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose.

(d) On request and payment of a reasonable fee, the county clerk shall furnish a copy of the bond and contract to any person.

(e) In any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of

the contents, execution, delivery, and filing of the originals.

[Acts 1983, 68th Leg., p. 3551, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.204. Reliance on Record

A purchaser, lender, or other person acquiring an interest in the owner's property is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials as if he were the owner who approved, accepted, and endorsed the bond.

[Acts 1983, 68th Leg., p. 3552, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.205. Enforceable Claims

(a) The bond protects all persons with a claim that is:

- (1) perfected in the manner prescribed for fixing a lien under Subchapter C;¹ or
- (2) perfected in the manner prescribed by Section 53.206.

(b) A claim or the rights to a claim under the bond may be assigned.

[Acts 1983, 68th Leg., p. 3552, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.051 et seq.

§ 53.206. Perfection of Claim

(a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C¹ for fixing a lien, a person must:

- (1) give to the original contractor all applicable notices under that subchapter; and
- (2) give to the surety on the bond, instead of the owner, all notices under that subchapter required to be given to the owner.

(b) to perfect a claim under this section, a person is not required to:

- (1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;
- (2) give notice to the surety under Subsection (b) of Section 53.058; or
- (3) file claim with the county clerk or accompany any claim or notice with an affidavit.

(c) For the claim to be valid, a person must give notice in the time and manner required by this section, but the content of the notices need only provide fair notice of the amount and the nature of the claim asserted.

[Acts 1983, 68th Leg., p. 3552, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.051 et seq.

§ 53.207. Owner's Notice of Claim to Surety

(a) If the owner receives any of the notices or a lien is fixed under Subchapter C,¹ the owner shall mail to the surety on the bond a copy of all notices received.

(b) Failure of the owner to send copies of notices to the surety does not relieve the surety of any liability under the bond if the claimant has complied with the requirements of this subchapter, nor does that failure impose any liability on the owner.

[Acts 1983, 68th Leg., p. 3553, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 53.051 et seq.

§ 53.208. Action on Bond

(a) A claimant may sue the principal and surety on the bond either jointly or severally, if his claim remains unpaid for 60 days after the claimant perfects the claim.

(b) The claimant may sue for the amount of the claim and court costs.

(c) The suit must be brought in the county in which the bond was recorded.

(d) The claimant must sue on the bond within 14 months following perfection of his claim.

[Acts 1983, 68th Leg., p. 3553, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.209. Attorney's Fees

A claimant who recovers on the bond may also recover reasonable attorney's fees.

[Acts 1983, 68th Leg., p. 3553, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.210. Claims in Excess of Bond Amount

If valid claims against the bond exceed the penal sum of the bond, each claimant is entitled to a pro rata share of the penal sum.

[Acts 1983, 68th Leg., p. 3553, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.211. Attempted Compliance

A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

- (1) is furnished and filed in attempted compliance with this subchapter; or
- (2) evidences by its terms intent to comply with this subchapter.

[Acts 1983, 68th Leg., p. 3554, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 53.212 to 53.230 reserved for expansion]

**SUBCHAPTER J. LIEN ON MONEY DUE
PUBLIC WORKS CONTRACTOR**

§ 53.231. Lien

A person who furnishes material or labor to a contractor under a prime contract that does not exceed \$25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

[Acts 1983, 68th Leg., p. 3554, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.232. To Whom Notice Given; Manner.

The lien claimant must send written notice of his claim by registered or certified mail to:

- (1) the officials of the state, county, town, or municipality whose duty it is to pay the contractor; and
- (2) the contractor at the contractor's last known business or residence address.

[Acts 1983, 68th Leg., p. 3554, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.233. Contents of Notice

(a) Whether based on written or oral agreement, the notice must contain:

- (1) the amount claimed;
- (2) the name of the party to whom the materials were delivered or for whom the labor was performed;
- (3) the dates and place of delivery or performance;
- (4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due; and
- (5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed.

(b) The notice must be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

[Acts 1983, 68th Leg., p. 3554, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.234. Time for Notice

The lien claimant must give notice before any payment is made to the contractor and not later than the 30th day after the 10th of the month following the month in which the labor was performed or the material furnished.

[Acts 1983, 68th Leg., p. 3555, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.235. Official to Retain Funds

A public official who receives the notice may not pay all of the money, bonds, or warrants due the contractor, but shall retain enough to pay the claim for which notice is given.

[Acts 1983, 68th Leg., p. 3555, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.236. Bond for Release of Lien

(a) If a claim is filed attempting to fix a lien under this subchapter, the contractor against whom the claim is made may file a bond with the officials of the state, county, town, or municipality whose duty it is to pay the money, bonds, or warrants to the contractor.

(b) If the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee.

[Acts 1983, 68th Leg., p. 3555, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.237. Bond Requirements

The bond must be:

- (1) in an amount double the amount of the claims filed;
- (2) payable to the claimants;
- (3) executed by:
 - (A) the party filing the bond as principal; and
 - (B) a corporate surety authorized by the law of this state to execute the bond as surety; and
- (4) conditioned that:
 - (A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and
 - (B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond.

[Acts 1983, 68th Leg., p. 3555, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.238. Notice of Bond

The official with whom the bond is filed shall send an exact copy of the bond by registered mail or certified mail, return receipt requested, to all claimants.

[Acts 1983, 68th Leg., p. 3556, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.239. Action on Bond

(a) A claimant must sue on the bond within six months after the bond is filed.

(b) The bond is not exhausted by one action on it. Each obligee or his assignee may maintain a separate suit on the bond in any court of jurisdiction.

[Acts 1983, 68th Leg., p. 3556, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 53.240. Attorney's Fees

If in a suit on the bond a claimant establishes that he was entitled to a lien under this subchapter and recovers judgment for the full amount of his claim, the court shall fix a reasonable attorney's fee in favor of the claimant and tax that fee as part of the costs in the case.

[Acts 1983, 68th Leg., p. 3556, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 54. LANDLORD'S LIENS

SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

Sec.

- 54.001. Lien.
- 54.002. Property to Which Lien Attaches.
- 54.003. Exceptions.
- 54.004. Duration of Lien.
- 54.005. Removal of Property.
- 54.006. Distress Warrant.
- 54.007. Judgment on Replevin Bond.

[Sections 54.008 to 54.020 reserved for expansion]

SUBCHAPTER B. BUILDING LANDLORD'S LIEN

- 54.021. Lien.
- 54.022. Commercial Building.
- 54.023. Exemptions.
- 54.024. Duration of Lien.
- 54.025. Distress Warrant.

[Sections 54.026 to 54.040 reserved for expansion]

SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN

- 54.041. Lien.
- 54.042. Exemptions.
- 54.043. Enforceability of Contractual Provisions.
- 54.044. Seizure of Property.
- 54.045. Violation by Landlord.

SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

§ 54.001. Lien

A person who leases land or tenements at will or for a term of years has a preference lien for rent that becomes due and for the money and the value of property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop for marketing.

[Acts 1983, 68th Leg., p. 3557, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.002. Property to Which Lien Attaches

(a) Except as provided by Subsections (b) and (c), the lien attaches to:

(1) the property on the leased premises that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises; and

(2) the crop grown on the leased premises in the year that the rent accrues or the property is furnished.

(b) If the landlord provides everything except labor, the lien attaches only to the crop grown in the year that the property is furnished.

(c) The lien does not attach to the goods of a merchant, trader, or mechanic if the tenant sells and delivers the goods in good faith in the regular course of business.

(d) A law exempting property from forced sale does not apply to a lien under this subchapter on agricultural products, animals, or tools.

[Acts 1983, 68th Leg., p. 3557, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.003. Exceptions

The lien does not arise if:

(1) a tenant provides everything necessary to cultivate the leased premises and the landlord charges rent of more than one-third of the value of the grain and one-fourth of the value of the cotton grown on the premises; or

(2) a landlord provides everything except the labor and directly or indirectly charges rent of more than one-half of the value of the grain and cotton grown on the premises.

[Acts 1983, 68th Leg., p. 3558, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.004. Duration of Lien

The lien exists while the property to which it is attached remains on the leased premises and until one month after the day that the property is removed from the premises. If agricultural products to which the lien is attached are placed in a public or bonded warehouse regulated by state law before the 31st day after the day that they are removed from the leased premises, the lien exists while they remain in the warehouse.

[Acts 1983, 68th Leg., p. 3558, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.005. Removal of Property

(a) If an advance or rent is unpaid, a tenant may not without the landlord's consent remove or permit the removal of agricultural products or other property to which the lien is attached from the leased premises.

WTSC Property—3

(b) If agricultural products subject to the lien are removed with the landlord's consent from the leased premises for preparation for market, the lien continues to exist as if the products had not been removed.

[Acts 1983, 68th Leg., p. 3558, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.006. Distress Warrant

(a) The person to whom rent or an advance is payable under the lease may apply to an appropriate justice of the peace for a distress warrant if the tenant:

(1) owes any rent or an advance;

(2) is about to abandon the premises; or

(3) is about to remove the tenant's property from the premises.

(b) The application for a warrant must be filed with a justice of the peace:

(1) in the precinct in which the leasehold is located or in which the property subject to the landlord's lien is located; or

(2) who has jurisdiction of the cause of action.

[Acts 1983, 68th Leg., p. 3558, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.007. Judgment on Replevin Bond

If a final judgment is rendered against a defendant who has replevied property seized under a distress warrant, the sureties on the defendant's replevy bond are also liable under the judgment, according to the terms of the bond.

[Acts 1983, 68th Leg., p. 3559, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 54.008 to 54.020 reserved for expansion]

SUBCHAPTER B. BUILDING LANDLORD'S LIEN

§ 54.021. Lien

A person who leases a building has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

[Acts 1983, 68th Leg., p. 3559, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.022. Commercial Building

(a) The lien is unenforceable for rent on a commercial building that is more than six months past due unless the landlord files a lien statement with the county clerk of the county in which the building is located.

(b) The lien statement must be verified by the landlord or the landlord's agent or attorney and must contain:

- (1) an account, itemized by month, of the rent for which the lien is claimed;
- (2) the name and address of the tenant or subtenant, if any;
- (3) a description of the leased premises; and
- (4) the beginning and termination dates of the lease.

(c) Each county clerk shall index alphabetically and record the rental lien statements filed in the clerk's office.

[Acts 1983, 68th Leg., p. 3559, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.023. Exemptions

This subchapter does not affect a statute exempting property from forced sale.

[Acts 1983, 68th Leg., p. 3560, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.024. Duration of Lien

The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building.

[Acts 1983, 68th Leg., p. 3560, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.025. Distress Warrant

The person to whom rent is payable under a building lease may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

- (1) owes rent;
- (2) is about to abandon the building; or
- (3) is about to remove the tenant's property from the building.

[Acts 1983, 68th Leg., p. 3560, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 54.026 to 54.040 reserved for expansion]

**SUBCHAPTER C. RESIDENTIAL
LANDLORD'S LIEN**

§ 54.041. Lien

A landlord of a single or multifamily residence has a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or that the tenant has stored in a storage room.

[Acts 1983, 68th Leg., p. 3560, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.042. Exemptions

A lien under this subchapter does not attach to:

- (1) wearing apparel;

(2) tools, apparatus, and books of a trade or profession;

- (3) schoolbooks;
- (4) a family library;
- (5) family portraits and pictures;
- (6) one couch, two living room chairs, and a dining table and chairs;
- (7) beds and bedding;
- (8) kitchen furniture and utensils;
- (9) food and foodstuffs;
- (10) medicine and medical supplies;
- (11) one automobile and one truck;
- (12) agricultural implements;
- (13) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; and
- (14) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

[Acts 1983, 68th Leg., p. 3560, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.043. Enforceability of Contractual Provisions

(a) A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement.

(b) A provision of a lease that purports to waive or diminish a right, liability, or exemption of this subchapter is void to the extent limited by this subchapter.

[Acts 1983, 68th Leg., p. 3561, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.044. Seizure of Property

(a) The landlord or the landlord's agent may not seize exempt property and may seize nonexempt property only under a written lease agreement.

(b) If the tenant has abandoned the residence, the landlord or the landlord's agent may remove its contents.

[Acts 1983, 68th Leg., p. 3561, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 54.045. Violation by Landlord

If a landlord or the landlord's agent wilfully violates this subchapter, the tenant is entitled to actual damages, one month's rent, and reasonable attorney's fees, less any amount for which the tenant is liable.

[Acts 1983, 68th Leg., p. 3561, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 55. HOSPITAL LIEN

- Sec.
- 55.001. Definitions.
- 55.002. Lien.

Sec.

- 55.003. Property to Which Lien Attaches.
 55.004. Amount of Lien.
 55.005. Securing Lien.
 55.006. Discharge of Lien.
 55.007. Validity of Release.
 55.008. Hospital Records.

§ 55.001. Definitions

In this chapter:

(1) "Hospital" means a person or institution maintaining a facility that provides hospital services in this state.

(2) "Person" does not include a county, common, or independent school district.

[Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.002. Lien

(a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury.

[Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.003. Property to Which Lien Attaches

(a) The lien attaches to:

(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital; and

(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital.

(b) The lien does not attach to:

(1) a claim under the workers' compensation law of this state,¹ the Federal Employees Liability Act,² or the Federal Longshoremen's or Harbor Workers' Compensation Act;³

(2) a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services; or

(3) the proceeds of an insurance policy in favor of the injured individual or the injured individual's

beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision.

[Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Civil Statutes, art. 8306 et seq.

² 45 U.S.C.A. § 51 et seq.

³ 33 U.S.C.A. § 901 et seq.

§ 55.004. Amount of Lien

(a) The lien is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization, except that the lien does not cover:

(1) charges for operating costs that exceed the cost limits established under Section 405.460, 42 Code of Federal Regulations; or

(2) charges for other services that exceed a reasonable and regular rate for the services.

(b) The lien is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual.

[Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.005. Securing Lien

(a) To secure the lien, a hospital must file written notice of the lien with the county clerk of the county in which the injury occurred. The notice must be filed before money is paid to an entitled person because of the injury.

(b) The notice must contain:

(1) the injured individual's name and address;

(2) the date of the accident;

(3) the name and location of the hospital; and

(4) the name of the person alleged to be liable for damages arising from the injury, if known.

(c) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital and shall index the record in the name of the injured individual.

[Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.006. Discharge of Lien

(a) To discharge the lien, the hospital authorities or the person in charge of the finances of the hospital must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

(c) The filing of the certificate and recording of the memorandum discharge the lien.

[Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.007. **Validity of Release**

(a) A release of a cause of action or judgment to which the lien may attach is not valid unless:

- (1) the hospital's charges were paid in full before the execution and delivery of the release;
- (2) the hospital's charges were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or
- (3) the hospital is a party to the release.

(b) A judgment to which the lien has attached remains in effect until the hospital's charges are paid in full or to the extent set out in the judgment.

[Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 55.008. **Hospital Records**

(a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

(b) The hospital may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury.

[Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 56. LIENS AGAINST MINERAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 56.001. Definitions.
- 56.002. Lien.
- 56.003. Property Subject to Lien.
- 56.004. Priority.
- 56.005. Accrual of Indebtedness.
- 56.006. Liability of Owner.

[Sections 56.007 to 56.020 reserved for expansion]

SUBCHAPTER B. SECURING LIEN

- 56.021. Securing Lien.
- 56.022. Contents of Affidavit.
- 56.023. Contents of Mineral Subcontractor's Notice.
- 56.024. Filing in New County.

[Sections 56.025 to 56.040 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec.

- 56.041. Enforcement.
- 56.042. Sale or Removal of Property.
- 56.043. Retention of Payment.
- 56.044. Forfeiture of Leasehold.
- 56.045. Equitable or Contingent Interest.

SUBCHAPTER A. GENERAL PROVISIONS

§ 56.001. **Definitions**

In this chapter:

(1) "Mineral activities" means digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry.

(2) "Mineral contractor" means a person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a mineral property owner or with a trustee, agent, or receiver of a mineral property owner.

(3) "Mineral property owner" means an owner of land, an oil, gas, or other mineral leasehold, an oil or gas pipeline, or an oil or gas pipeline right-of-way.

(4) "Mineral subcontractor" means a person who:

(A) furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor;

(B) performs labor used in mineral activities under contract with a mineral contractor; or

(C) performs labor used in mineral activities as an artisan or day laborer employed by a subcontractor.

[Acts 1983, 68th Leg., p. 3565, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.002. **Lien**

A mineral contractor or subcontractor has a lien to secure payment for labor or services related to the mineral activities.

[Acts 1983, 68th Leg., p. 3566, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.003. **Property Subject to Lien**

(a) The following property is subject to the lien:

(1) the material, machinery, and supplies furnished or hauled by the lien claimant;

(2) the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or material, machinery, or supplies were furnished or hauled, and the buildings and appurtenances on this property;

(3) other material, machinery, and supplies used for mineral activities and owned by the owner of the property listed in Subdivision (2); and

(4) other wells and pipelines used in operations related to oil, gas, and minerals and located on property listed in Subdivision (2).

(b) A lien created by performing labor or furnishing or hauling material, machinery, or supplies for a leaseholder does not attach to the fee title to the property.

[Acts 1983, 68th Leg., p. 3566, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.004. Priority

(a) The lien does not affect an encumbrance that attached to land or a leasehold before the lien's inception.

(b) The lien on material, machinery, supplies, or a specific improvement takes priority over an earlier encumbrance on the land or leasehold on which the material, machinery, supplies, or improvement is placed or located.

[Acts 1983, 68th Leg., p. 3567, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.005. Accrual of Indebtedness

(a) The indebtedness for labor performed by the day or week accrues at the end of each week during which the labor is performed.

(b) The indebtedness for material or services accrues on the date the material or services were last furnished. All material or services that a person furnishes for the same land, leasehold interest, oil or gas pipeline, or oil or gas pipeline right-of-way are considered to be furnished under a single contract unless more than six months elapse between the dates the material or services are furnished.

[Acts 1983, 68th Leg., p. 3567, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.006. Liability of Owner

An owner of land or a leasehold may not be subjected to liability under this chapter greater than the amount agreed to be paid in the contract for furnishing material or performing labor.

[Acts 1983, 68th Leg., p. 3567, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 56.007 to 56.020 reserved for expansion]

SUBCHAPTER B. SECURING LIEN

§ 56.021. Securing Lien

(a) Not later than six months after the day the indebtedness accrues, a person claiming the lien must file an affidavit with the county clerk of the county in which the property is located.

(b) Not later than the 10th day before the day the affidavit is filed, a mineral subcontractor claiming the lien must serve on the property owner written notice that the lien is claimed.

[Acts 1983, 68th Leg., p. 3567, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.022. Contents of Affidavit

(a) A lien claimant's affidavit must include:

(1) the name of the mineral property owner involved, if known;

(2) the name and mailing address of the claimant;

(3) the dates of performance or furnishing;

(4) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved; and

(5) an itemized list of amounts claimed.

(b) A mineral subcontractor's affidavit must in addition include:

(1) the name of the person for whom labor was performed or material was furnished or hauled; and

(2) a statement that the subcontractor timely served written notice that the lien is claimed on the property owner or the owner's agent, representative, or receiver.

[Acts 1983, 68th Leg., p. 3568, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.023. Contents of Mineral Subcontractor's Notice

A mineral subcontractor's notice to the property owner must include the amount of the lien, the name of the person indebted to the subcontractor, and a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved.

[Acts 1983, 68th Leg., p. 3568, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.024. Filing in New County

(a) Not later than the 90th day after the day that property to which the lien has attached is removed from a county in which the lien affidavit covering the property has been filed, the lienholder may file with the clerk of the county to which the property has been moved an itemized inventory of the property showing the unpaid amount due.

(b) The lien attaches to all property subject to the lien located in a county in which an inventory is filed under this section.

(c) An inventory filed under this section is notice of the lien's existence.

[Acts 1983, 68th Leg., p. 3568, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 56.025 to 56.040 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

§ 56.041. Enforcement

(a) A claimant must enforce the lien within the same time and in the same manner as a mechanic's, contractor's, or materialman's lien under Chapter 53.

(b) A holder of a prior encumbrance on land or a leasehold is not a necessary party to a suit to foreclose the lien.

[Acts 1983, 68th Leg., p. 3569, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.042. Sale or Removal of Property

(a) A mineral property owner, contractor, subcontractor, or purchaser or an agent, trustee, or receiver of one of those persons may not sell property to which the lien has attached or remove it from the land on which it was to be used, unless the lienholder consents in writing.

(b) On a violation of this section, a lienholder is entitled to possession of the property regardless of where it is found, and the lienholder may have the property sold to satisfy the debt on which the lien is based regardless of whether the debt is due.

[Acts 1983, 68th Leg., p. 3569, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.043. Retention of Payment

A property owner who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed. The owner is not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received.

[Acts 1983, 68th Leg., p. 3569, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.044. Forfeiture of Leasehold

Forfeiture of a leasehold does not impair a lien on material, machinery, supplies, or an improvement located on the leasehold if:

- (1) the lien attached to the property before the leasehold was forfeited;
- (2) the property is not permanently attached to the land; and
- (3) the lienholder pays the owner of the land the damages caused to the land by removal of the property.

[Acts 1983, 68th Leg., p. 3569, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 56.045. Equitable or Contingent Interest

Failure of an equitable interest to become legal title or nonfulfillment of a condition subsequent on which a legal interest is contingent does not impair a lien on material, machinery, supplies, or an improvement located on the land covered by the equitable interest if the lien attached to the material, machinery, supplies, or improvement before the failure.

[Acts 1983, 68th Leg., p. 3570, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 57. RAILROAD LABORER'S LIEN

Sec.

- 57.001. Railroad Laborer's Lien.
- 57.002. Priority.
- 57.003. Duration of Lien.
- 57.004. Enforcement.
- 57.005. Venue.
- 57.006. Parties.

§ 57.001. Railroad Laborer's Lien

A mechanic, laborer, or other person who works or uses tools or a team in the construction, operation, or repair of a railroad or railroad equipment has a lien on the railroad and equipment for the amount owed for the labor or the use of the tools or team.

[Acts 1983, 68th Leg., p. 3570, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 57.002. Priority

A lien under this chapter takes priority over all other liens on the same property.

[Acts 1983, 68th Leg., p. 3570, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 57.003. Duration of Lien

A lien under this chapter ceases to exist 12 months after the day that it is created, unless the lien claimant has sued to foreclose the lien.

[Acts 1983, 68th Leg., p. 3570, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 57.004. Enforcement

A court in a suit to foreclose the lien shall render judgment for the amount due and order to be sold as much of the railroad right-of-way and equipment as is necessary to satisfy the judgment only if:

- (1) the work was performed at the instance of the railroad company or the company's agent, contractor, or subcontractor; and
- (2) the amount claimed is due.

[Acts 1983, 68th Leg., p. 3571, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 57.005. Venue

A suit to foreclose a lien under this chapter may be brought in a county in which:

- (1) the work was performed or any part of the cause of action accrued; or
- (2) the principal office of the railroad company is located.

[Acts 1983, 68th Leg., p. 3571, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 57.006. Parties

Holders of other liens on the same property are not necessary parties to a suit to foreclose a lien under this chapter but may intervene in the suit.

[Acts 1983, 68th Leg., p. 3571, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 58. FARM, FACTORY, AND STORE WORKER'S LIENS

Sec.

- 58.001. Definitions.
- 58.002. Lien.
- 58.003. Property Subject to Lien.
- 58.004. Securing Lien.
- 58.005. Priority.
- 58.006. Duration of Lien.
- 58.007. Purchase of Property to Which Lien Has Attached.
- 58.008. Assignment of Lien.
- 58.009. Payment of Wages.

§ 58.001. Definitions

In this chapter:

(1) "Employer" means a person with whom a worker contracts, directly or through an agent, receiver, or trustee of the person, for the performance of labor or a service by the worker. The contract may be oral or in writing.

(2) "Worker" means a clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarry worker, common laborer, or farmhand.

[Acts 1983, 68th Leg., p. 3571, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.002. Lien

(a) A worker has a lien as provided by this chapter if, under the contract with the employer, the worker:

- (1) labors or performs a service in an office, store, hotel, rooming house or boardinghouse, restaurant, shop, factory, mine, quarry, or mill or on a farm; or
- (2) performs a service:

(A) in cutting, preparing, hauling, or transporting logs or timber to a place of disposition;

(B) on a means of transportation of logs or timber; or

(C) in constructing or maintaining a tram or railroad constructed or used for transporting logs or timber to their owner or a point of disposition.

(b) The amount of the lien is the amount owed under the contract.

[Acts 1983, 68th Leg., p. 3572, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.003. Property Subject to Lien

Each thing of value owned by or in the possession or control of the employer or the employer's agent, receiver, or trustee is subject to the lien if:

- (1) created in whole or in part by the lien claimant's work;
- (2) used by or useful to the lien claimant in the performance of the work; or
- (3) necessarily connected with the performance of the work.

[Acts 1983, 68th Leg., p. 3572, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.004. Securing Lien

(a) Not later than the 30th day after the day that the indebtedness accrues, a worker who has not received payment for work performed and who wishes to claim the lien must:

- (1) serve a copy of an account of the services, stating the amount due, on the employer or the employer's agent, receiver, or trustee; and
- (2) file a copy of the account with the county clerk of the county in which the services were performed.

(b) The party making an account must execute an affidavit verifying the contents of the account.

(c) Substantial compliance with this section secures the lien.

[Acts 1983, 68th Leg., p. 3572, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.005. Priority

(a) A lien under this chapter is a first lien, except that a farmhand's lien is subordinate to a landlord's lien provided by law.

(b) Liens under this chapter take priority in the order that the accounts are filed with the county clerk.

[Acts 1983, 68th Leg., p. 3573, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.006. Duration of Lien

The lien ceases to exist six months after the day that it is secured unless the lien claimant has sued to foreclose the lien.

[Acts 1983, 68th Leg., p. 3573, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.007. Purchase of Property to Which Lien Has Attached

(a) A person who purchases from its owner property to which the lien has attached and who has no actual or constructive notice of the lien takes the property free from the lien.

(b) An account filed with the county clerk under this chapter or a suit to foreclose a lien is constructive notice of the lien's existence.

[Acts 1983, 68th Leg., p. 3573, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.008. Assignment of Lien

The lien may be assigned. An assignee receives the rights and privileges held by the assignor under the lien.

[Acts 1983, 68th Leg., p. 3573, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 58.009. Payment of Wages

For purposes of this chapter, wages are due weekly for work performed by the day or week and monthly for work performed by the month, and an employer shall pay wages in United States legal tender.

[Acts 1983, 68th Leg., p. 3573, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 59. SELF-SERVICE STORAGE FACILITY LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 59.001. Definitions.
- 59.002. Applicability.
- 59.003. Applicability of Other Statutes.
- 59.004. Variation by Agreement and Waiver.
- 59.005. Damages for Violation.
- 59.006. Attachment and Priority of Lien.
- 59.007. Purchase of property.
- 59.008. Redemption.
- 59.009. Residential Use.

[Sections 59.010 to 59.020 reserved for expansion]

SUBCHAPTER B. STATUTORY LIEN

- 59.021. Statutory Lien.
- 59.022. Enforcement of Statutory Lien.

[Sections 59.023 to 59.040 reserved for expansion]

SUBCHAPTER C. CONTRACTUAL LANDLORD'S LIEN

- 59.041. Enforcement of Contractual Landlord's Lien.
- 59.042. Procedure for Seizure and Sale.
- 59.043. Contents and Delivery of Notice of Claim.

Sec.

- 59.044. Notice of Sale.
- 59.045. Conduct of Sale.
- 59.046. Excess Proceeds of Sale.

SUBCHAPTER A. GENERAL PROVISIONS

§ 59.001. Definitions

In this chapter:

- (1) "lessor" means an owner, lessor, sublessor, or managing agent of a self-service storage facility.
- (2) "Rental agreement" means a written or oral agreement that establishes or modifies the terms of use of a self-service storage facility.
- (3) "Self-service storage facility" means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant.
- (4) "Tenant" means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

[Acts 1983, 68th Leg., p. 3574, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.002. Applicability

This chapter applies to a self-service storage facility rental agreement that is entered into, extended, or renewed after September 1, 1981.

[Acts 1983, 68th Leg., p. 3574, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.003. Applicability of Other Statutes

(a) Subchapter B, Chapter 54,¹ does not apply to a self-service storage facility.

(b) Unless a lessor issues a warehouse receipt, bill of lading, or other document of title relating to property stored at the facility, the following statutes do not apply to a self-service storage facility:

- (1) Chapter 7, Business & Commerce Code, as amended;
- (2) Subchapter A, Chapter 14, Agriculture Code, as amended; and
- (3) Sections 14.201, 14.204 through 14.214, and 14.216, Agriculture Code.

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 54.021 et seq.

§ 59.004. Variation by Agreement and Waiver

Except as expressly provided by this chapter, a lessor or tenant may not vary the provisions of this chapter by agreement or waive rights conferred by this chapter.

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.005. Damages for Violation

A person injured by a violation of this chapter may sue for damages under the Deceptive Trade Practices—Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).¹

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Business and Commerce Code, § 17.41 et seq.

§ 59.006. Attachment and Priority of Lien

A lien under this chapter attaches on the date the tenant places the property at the self-service storage facility. The lien takes priority over all other liens on the same property.

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.007. Purchase of Property

A good faith purchaser of property sold to satisfy a lien under this chapter takes the property free of a claim by a person against whom the lien was valid, regardless of whether the lessor has complied with this chapter.

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.008. Redemption

A tenant may redeem property seized under a judicial order or a contractual landlord's lien prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred under this chapter.

[Acts 1983, 68th Leg., p. 3575, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.009. Residential Use

A tenant may not use or allow the use of a self-service storage facility as a residence.

[Acts 1983, 68th Leg., p. 3576, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 59.010 to 59.020 reserved for expansion]

SUBCHAPTER B. STATUTORY LIEN**§ 59.021. Statutory Lien**

A lessor has a lien on the property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant.

[Acts 1983, 68th Leg., p. 3576, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.022. Enforcement of Statutory Lien

A lessor may enforce a lien under this subchapter only under a judgment by a court of competent

jurisdiction that forecloses the lien and orders the sale of the property to which it is attached.

[Acts 1983, 68th Leg., p. 3576, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 59.023 to 59.040 reserved for expansion]

SUBCHAPTER C. CONTRACTUAL LANDLORD'S LIEN**§ 59.041. Enforcement of Contractual Landlord's Lien**

A lessor may enforce a contractual landlord's lien by seizing and selling the property to which the lien is attached if the terms of the lien are underlined or printed in conspicuous bold print in a written rental agreement between the lessor and tenant.

[Acts 1983, 68th Leg., p. 3576, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.042. Procedure for Seizure and Sale

(a) A lessor who wishes to enforce a contractual landlord's lien by seizing and selling or otherwise disposing of the property to which it is attached must deliver written notice of the claim to the tenant.

(b) If the tenant fails to satisfy the claim until the 15th day after the day that the notice is delivered, the lessor must publish or post notices advertising the sale as provided by this subchapter.

(c) If notice is by publication, the lessor may sell the property until the 15th day after the day that the first notice is published. If notice is by posting, the lessor may sell the property after the 10th day after the day that the notices are posted.

[Acts 1983, 68th Leg., p. 3576, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.043. Contents and Delivery of Notice of Claim

(a) The lessor's notice to the tenant of the claim must contain:

- (1) an itemized account of the claim;
- (2) the name, address, and telephone number of the lessor or the lessor's agent;
- (3) a statement that the contents of the self-service storage facility have been seized under the contractual landlord's lien; and
- (4) a statement that if the claim is not satisfied before the 15th day after the day that the notice is delivered, the property may be sold at public auction.

(b) The lessor must deliver the notice in person or by certified mail to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. Notice by mail is considered delivered when the notice, proper-

ly addressed with postage prepaid, is deposited with the United States Postal Service.

[Acts 1983, 68th Leg., p. 3577, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.044. Notice of Sale

(a) The notice advertising the sale must contain:

- (1) a general description of the property;
- (2) a statement that the property is being sold to satisfy a landlord's lien;
- (3) the tenant's name;
- (4) the address of the self-service storage facility; and
- (5) the time, place, and terms of the sale.

(b) The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation in the county in which the self-service storage facility is located. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other conspicuous locations near the facility.

[Acts 1983, 68th Leg., p. 3577, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.045. Conduct of Sale

A sale under this subchapter must be a public sale at the self-service storage facility or a reasonably near public place. The lessor must conduct the sale according to the terms specified in the notice advertising the sale and sell the property to the highest bidder.

[Acts 1983, 68th Leg., p. 3578, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 59.046. Excess Proceeds of Sale

If the proceeds of a sale under this subchapter are greater than the amount of the lien and the reasonable expenses of the sale, the lessor shall deliver written notice of the excess to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. The lessor shall retain the excess and deliver it to the tenant if the tenant requests it before two years after the date of the sale. If the tenant does not request the excess before two years after the date of the sale, the lessor owns the excess.

[Acts 1983, 68th Leg., p. 3578, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 60. NEWSPAPER EMPLOYEE'S LIEN

Sec.

- 60.001. Lien.
- 60.002. Property Subject to Lien.

§ 60.001. Lien

A worker in the editorial, reportorial, advertising, or business department of a newspaper, periodical, or other publication who labors or performs a service for the publication under a written or an oral contract with any person has a first lien under this chapter for the amount due under the contract.

[Acts 1983, 68th Leg., p. 3578, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 60.002. Property Subject to Lien

The lien attaches to all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or other things of value that are created wholly or partly by the labor of the workers or that are necessarily connected with the performance of their labor or service and that are owned by or in possession of the person with whom the workers contracted.

[Acts 1983, 68th Leg., p. 3578, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 61 to 69 reserved for expansion]

CHAPTER 70. MISCELLANEOUS LIENS

SUBCHAPTER A. POSSESSORY LIENS

Sec.

- 70.001. Worker's Lien.
- 70.002. Liens on Garments.
- 70.003. Stable Keeper's, Garageman's, and Pasturer's Liens.
- 70.004. Possession of Motor Vehicle.
- 70.005. Sale of Property Other Than Motor Vehicle.
- 70.006. Sale of Motor Vehicle.
- 70.007. Unclaimed Excess.
- 70.008. Attorney's Fees.

[Sections 70.009 to 70.100 reserved for expansion]

SUBCHAPTER B. LIENS ON VESSELS

- 70.101. General Lien on Vessels.
- 70.102. Lien of Navigation District or Port.
- 70.103. Property Subject to Lien.
- 70.104. Persons Who May Bind Vessel.

[Sections 70.105 to 70.200 reserved for expansion]

SUBCHAPTER C. STOCK BREEDER'S LIEN

- 70.201. Stock Breeder's Lien.
- 70.202. Enforcement of Lien.

SUBCHAPTER A. POSSESSORY LIENS

§ 70.001. Worker's Lien

(a) A worker in this state who by labor repairs an article, including a vehicle, may retain possession of the article until:

- (1) the amount due under the contract for the repairs is paid; or
- (2) if no amount is specified by contract, the reasonable and usual compensation is paid.

(b) If a worker relinquishes possession of a motor vehicle in return for a written order for payment on which payment is stopped, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle until the amount due is paid, unless the vehicle is possessed by a person who became a bona fide purchaser of the vehicle after the stop payment order was made.

[Acts 1983, 68th Leg., p. 3579, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4064, ch. 636, § 5

Section 5 of Acts 1983, 68th Leg., p. 4064, ch. 636, eff. Aug. 29, 1983, purported to amend subds. (a) and (b) of Civil Statutes, art. 5503 [now, this section], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subds. (a) and (b) read:

"(a) Whenever any article, implement, utensil, motorboat, vessel, outboard motor, or vehicle shall be repaired with labor and material, or with labor and without furnishing material by any carpenter, mechanic, artisan, or other workman in this State, such carpenter, mechanic, artisan, or other workman is authorized to retain possession of said article, implement, utensil, motorboat, vessel, outboard motor, or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan, or other workman shall retain possession of such article, implement, utensil, motorboat, vessel, outboard motor, or vehicle, until all reasonable, customary and usual compensation shall be paid in full.

"(b) In the event that a mechanic or other workman shall relinquish possession of a motor vehicle, motorboat, vessel, or outboard motor due to the acceptance or receipt of any check, draft, or written order for the payment of the indebtedness due thereon, and in the event that payment is stopped on such check, draft, or written order, the possessory lien established by the preceding paragraph (a) shall not be deemed to be released or relinquished, and the person to whom said lien has accrued shall be entitled to possession of said motor vehicle, motorboat, vessel, or outboard motor, until the indebtedness due thereon shall have been paid. This paragraph (b) shall not be applicable to a bona fide purchaser of such motor vehicle, motorboat, vessel, or outboard motor subsequent to any stop payment order."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 70.002. Liens on Garments

A person with whom a garment is left for repair, alteration, dyeing, cleaning, laundering, or pressing may retain possession of the garment until:

- (1) the amount due the person under the contract for the work is paid; or
- (2) if no amount is specified by contract, the reasonable and usual compensation is paid.

[Acts 1983, 68th Leg., p. 3580, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.003. Stable Keeper's, Garageman's, and Pasturer's Liens

(a) A stable keeper or garageman with whom an animal or vehicle is left for care has a lien on the animal or vehicle for the amount of the charges for the care.

(b) An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing.

[Acts 1983, 68th Leg., p. 3580, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.004. Possession of Motor Vehicle

(a) A holder of a lien under Section 70.003 on a motor vehicle who obtains possession of the vehicle under a state law or city ordinance shall give notice to the last known registered owner and each lienholder of record not later than the 10th day after the day possession is obtained.

(b) The notice must be sent by certified mail with return receipt requested and must contain:

- (1) a request to remove the vehicle;
- (2) a request for payment;
- (3) the location of the vehicle; and
- (4) the amount of accrued charges.

(c) A person is entitled to fees for towing, preservation, and notification and to reasonable storage fees for up to 10 days before the day that the notice is mailed. After the day that the notice is mailed, the person is entitled to reasonable storage fees until the vehicle is removed and accrued charges are paid.

[Acts 1983, 68th Leg., p. 3580, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4065, ch. 636, § 6

Section 6 of Acts 1983, 68th Leg., p. 4065, ch. 636, eff. Aug. 29, 1983, purported to amend subd. (c) of Civil Statutes, art. 5504a [now, this section], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subd. (c) reads:

"Notwithstanding Sections (a) and (b) of this article, if possession of a motor vehicle, motorboat, vessel, or outboard motor subject to a lien acquired under Article 5503, Revised Civil Stat-

utes of Texas, 1925, or Article 5238b, Revised Statutes, was obtained pursuant to the provisions of state law or city ordinance, the person having the special lien shall within 10 days after the day of obtaining such possession notify the last known registered owner and all lienholders of record to pick up the vehicle, motorboat, vessel, or outboard motor and shall request payment. Such notice shall be sent by certified mail, return receipt requested, and shall state the location of the vehicle, motorboat, vessel, or outboard motor and the accrued charges. A person shall be entitled to towing, preservation, and notification charges and to reasonable storage fees for a maximum of 10 days only until such notice is mailed. After such notice is mailed, storage fees may continue until the vehicle, motorboat, vessel, or outboard motor is removed and all accrued charges are paid."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 70.005. Sale of Property Other Than Motor Vehicle

(a) A person holding a lien under this subchapter on property other than a motor vehicle subject to the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), who retains possession of the property for 60 days after the day that the charges accrue shall request the owner to pay the unpaid charges due if the owner's residence is in this state and known. If the charges are not paid before the 11th day after the day of the request, the lienholder may, after 20 days' notice, sell the property at a public sale, or if the lien is on a garment, at a public or private sale.

(b) If the residence of the owner of property subject to sale under this section is not in this state or not known, the lienholder may sell the property without notice at a public sale after the 60th day after the day that the unpaid charges accrued.

(c) The lienholder shall apply the proceeds of a sale under this section to the charges. If the lien is on a garment, the lienholder shall apply the proceeds to the charges and the reasonable costs of holding the sale. The lienholder shall pay excess proceeds to the person entitled to them.

[Acts 1983, 68th Leg., p. 3581, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.006. Sale of Motor Vehicle

(a) A holder of a lien under this subchapter on a motor vehicle subject to the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil

Statutes), who retains possession of the vehicle for 30 days after the day that the charges accrue shall give written notice to the owner and each holder of a lien recorded on the vehicle's certificate of title. The notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment.

(b) If the charges are not paid before the 31st day after the day that the notice is mailed, the lienholder may sell the vehicle at a public sale and apply the proceeds to the charges. The lienholder shall pay excess proceeds to the person entitled to them.

[Acts 1983, 68th Leg., p. 3581, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4065, ch. 636, § 6

Section 6 of Acts 1983, 68th Leg., p. 4065, ch. 636, eff. Aug. 29, 1933, purported to amend subds. (a) and (b) of Civil Statutes, art. 5504a [now, this section], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subds. (a) and (b) read:

"(a) When a person having a possessory lien on a motor vehicle that is subject to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) or on a motorboat, vessel, or outboard motor that is covered by the Certificate of Title for Motorboats and Outboard Motors, Sections 31.045 to 31.055, Parks and Wildlife Code, as amended, retains possession of the vehicle, motorboat, vessel, or outboard motor for 30 days after the day on which the charges accrue and the charges are unpaid, the person shall give written notice of the amount of charges to the owner and all lienholders whose liens are recorded on the certificate of title and shall request payment. A person shall send the notice by certified mail, return receipt requested.

"(b) If a person entitled to notice under Section (a) of this article does not pay the charges due within 30 days after the day on which notice of the amount of charges was mailed, the possessory lienholder may sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale. The possessory lienholder shall apply the proceeds to the payment of the charges and shall pay the balance to the person entitled to it."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 70.007. Unclaimed Excess

(a) If a person entitled to excess proceeds under this subchapter is not known or has moved from this state or the county in which the lien accrued,

the person holding the excess shall pay it to the county treasurer of the county in which the lien accrued. The treasurer shall issue the person a receipt for the payment.

(b) If the person entitled to the excess does not claim it before two years after the day it is paid to the treasurer, the excess becomes a part of the county's general fund.

[Acts 1983, 68th Leg., p. 3582, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.008. Attorney's Fees

The court in a suit concerning possession of a motor vehicle and a debt due on it may award reasonable attorney's fees to the prevailing party.

[Acts 1983, 68th Leg., p. 3582, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4064, ch. 636, § 5

Section 5 of Acts 1983, 68th Leg., p. 4064, ch. 636, eff. Aug. 29, 1983, purported to amend subd. (c) of Civil Statutes, art. 5503 [now, this section], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subd. (c) reads:

"In the event of a lawsuit relating to possession of a motor vehicle, motorboat, vessel, or outboard motor and the indebtedness due thereon a Court, in its discretion, may award reasonable attorney's fees to the prevailing party."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 70.009 to 70.100 reserved for expansion]

SUBCHAPTER B. LIENS ON VESSELS

§ 70.101. General Lien on Vessels

A person who furnishes supplies or materials or who performs repairs or labor for or on account of a domestic vessel that is owned in whole or part in this state has a lien for the person's charges.

[Acts 1983, 68th Leg., p. 3582, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.102. Lien of Navigation District or Port

(a) A navigation district or port within the territorial limits of this state that furnishes supplies or materials, performs repairs or labor, or provides a facility or service for which charges are specified in its official published port tariff for or on account of a domestic vessel that is owned in whole or part in this state has a maritime lien for the amount of its charges.

(b) A lien under this section may be enforced in rem. A plaintiff in an action to enforce the lien need not allege or prove that credit was given to the vessel.

[Acts 1983, 68th Leg., p. 3582, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.103. Property Subject to Lien

A lien under this subchapter attaches to the vessel and its tackle, apparel, furniture, and freight money.

[Acts 1983, 68th Leg., p. 3583, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.104. Persons Who May Bind Vessel

(a) The following persons are presumed to be authorized by the owner of a vessel to incur charges that give rise to a lien under this subchapter:

- (1) the managing owner;
- (2) the ship's husband;
- (3) the master;
- (4) the local agent; and
- (5) a person entrusted with management of the vessel at the port of supply.

(b) A person tortiously or unlawfully in possession or charge of a vessel may not bind the vessel.

[Acts 1983, 68th Leg., p. 3583, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 70.105 to 70.200 reserved for expansion]

SUBCHAPTER C. STOCK BREEDER'S LIEN

§ 70.201. Stock Breeder's Lien

An owner or keeper of a stallion, jack, bull, or boar confined to be bred for profit has a preference lien on the offspring of the animal for the amount of the charges for the breeding services, unless the owner or keeper misrepresents the animal by false pedigree.

[Acts 1983, 68th Leg., p. 3583, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 70.202. Enforcement of Lien

The lien may be enforced in the same manner as a statutory landlord's lien. The lien remains in force for 10 months from the day that the offspring is born, but the lien may not be enforced until five months after the date of birth of the offspring.

[Acts 1983, 68th Leg., p. 3583, ch. 576, § 1, eff. Jan. 1, 1984.]

TITLE 6. ESCHEAT

CHAPTER 71. ESCHEAT OF DECEDENT'S ESTATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

71.001. Escheat.

71.002. Presumption of Death.

Sec.

- 71.003. Presumption of Intestacy.
- 71.004. Presumption of Death Without Heirs.
- 71.005. Act of Ownership.
- 71.006. Review of Probate Decree.
- 71.007. Reporting and Delivery.

[Sections 71.008 to 71.100 reserved for expansion]

SUBCHAPTER B. ESCHEAT PROCEEDINGS

- 71.101. Petition for Escheat.
- 71.102. Citation.
- 71.103. Party to Proceeding.
- 71.104. Appearance of Claimants.
- 71.105. Trial.
- 71.106. Default Judgment.
- 71.107. Judgment for State.
- 71.108. Costs Paid by State.
- 71.109. Appeal; Writ of Error.

[Sections 71.110 to 71.200 reserved for expansion]

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

- 71.201. Seizure and Sale of Personal Property.
- 71.202. Real Property in Permanent School Fund.
- 71.203. Account of Escheated Property.

[Sections 71.204 to 71.300 reserved for expansion]

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

- 71.301. Suit for Escheated Personal Property.
- 71.302. Recovery of Personal Property.
- 71.303. Suit for Escheated Real Property.
- 71.304. State as Party in Suit for Assets.

SUBCHAPTER A. GENERAL PROVISIONS

§ 71.001. Escheat

If an individual dies intestate and without heirs, the real and personal property of that individual escheats to and vests in the state.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.002. Presumption of Death

An individual is presumed dead for the purpose of determining if the individual's real or personal property, other than traveler's checks, escheats if the individual:

- (1) is absent from the individual's place of residence for seven years or longer; and
- (2) is not known to exist.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.003. Presumption of Intestacy

An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.004. Presumption of Death Without Heirs

An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

- (1) a lawful claim to the individual's property has not been asserted; and
- (2) a lawful act of ownership of the individual's property has not been exercised.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.005. Act of Ownership

For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.006. Review of Probate Decree

(a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.

[Acts 1983, 68th Leg., p. 3585, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.007. Reporting and Delivery

(a) Each person, other than a banking organization or life insurance company, holding personal property that escheats under this chapter is subject to the reporting and delivery requirements of Chapter 72.

(b) Each depository to which Chapter 73 applies and that holds personal property that escheats under this chapter is subject to the reporting and delivery requirements of Chapter 73.

(c) Each life insurance company holding personal property that escheats under this chapter is subject to the reporting and delivery requirements of Article 4.08, Insurance Code.

[Acts 1983, 68th Leg., p. 3586, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 71.008 to 71.100 reserved for expansion]

SUBCHAPTER B. ESCHEAT PROCEEDINGS

§ 71.101. Petition for Escheat

(a) If the attorney general or a district attorney, criminal district attorney, or county attorney is informed or has reason to believe that real or personal property is subject to escheat under this chapter,

the attorney shall file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

- (1) a description of the property;
- (2) the name of the deceased owner of the property;
- (3) the name of the tenants or persons claiming the estate, if known; and
- (4) the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action.

[Acts 1983, 68th Leg., p. 3586, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.102. Citation

(a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

- (1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;
- (2) any person required by this chapter to be cited; and
- (3) persons interested in the estate.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

- (1) briefly state the contents of the petition; and
- (2) request all persons interested in the estate to appear and answer at the next term of the court.

[Acts 1983, 68th Leg., p. 3587, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.103. Party to Proceeding

(a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

- (1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence; or
- (2) service of citation on a person's agent if the person is a nonresident or a resident who cannot

be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

[Acts 1983, 68th Leg., p. 3587, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.104. Appearance of Claimants

Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.

[Acts 1983, 68th Leg., p. 3588, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.105. Trial

(a) If a person appears and denies the state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

[Acts 1983, 68th Leg., p. 3588, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.106. Default Judgment

If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

[Acts 1983, 68th Leg., p. 3588, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.107. Judgment for State

(a) If the property escheats to the state, the court shall render judgment for the state to recover the property and may award court costs to the state.

(b) If the judgment is for real property, the court shall fix the minimum price for which the state may sell the property, and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession for the property.

(c) If the judgment is for personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.

[Acts 1983, 68th Leg., p. 3588, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.108. Costs Paid by State

If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

[Acts 1983, 68th Leg., p. 3588, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.109. Appeal; Writ of Error

A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

[Acts 1983, 68th Leg., p. 3589, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 71.110 to 71.200 reserved for expansion]

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

§ 71.201. Seizure and Sale of Personal Property

(a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

(b) The sheriff shall:

- (1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and
- (2) deposit into the State Treasury the proceeds of the sale, less court costs.

[Acts 1983, 68th Leg., p. 3589, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.202. Real Property in Permanent School Fund

(a) Real property that escheats to the state under this title becomes a part of the permanent school fund.

(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

- (1) a certified copy of the judgment; and
- (2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated permanent school land when the commissioner receives:

- (1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or

- (2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state.

[Acts 1983, 68th Leg., p. 3589, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.203. Account of Escheated Property

The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.

[Acts 1983, 68th Leg., p. 3590, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 71.204 to 71.300 reserved for expansion]

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

§ 71.301. Suit for Escheated Personal Property

(a) If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the attorney general not later than the 20th day preceding the return day of the process.

[Acts 1983, 68th Leg., p. 3590, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.302. Recovery of Personal Property

(a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.

[Acts 1983, 68th Leg., p. 3590, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.303. Suit for Escheated Real Property

(a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.

[Acts 1983, 68th Leg., p. 3590, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 71.304. State as Party in Suit for Assets

A suit brought for the collection of assets delivered to the State Treasurer under this chapter must be brought in the name of this state.

[Acts 1983, 68th Leg., p. 3591, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 72. ESCHEAT OF PERSONAL PROPERTY HELD BY PERSON OTHER THAN BANKING ORGANIZATION OR LIFE INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

72.001. Reciprocity; Application of Chapter.

[Sections 72.002 to 72.100 reserved for expansion]

SUBCHAPTER B. PROPERTY REPORT

72.101. Personal Property Subject to Escheat.

72.102. Traveler's Check.

72.103. Restoration of Charges.

72.104. Property Report.

72.105. Verification of Report.

[Sections 72.106 to 72.200 reserved for expansion]

SUBCHAPTER C. NOTICE OF ABANDONED PROPERTY

72.201. Notice to Sheriff.

72.202. Published Notice.

72.203. Notice for Item with Value Not Exceeding \$50.

72.204. Notice to Owner.

[Sections 72.205 to 72.300 reserved for expansion]

SUBCHAPTER D. ESCHEAT AND DELIVERY

72.301. Escheat of Property.

72.302. Delivery of Property to State Treasurer.

72.303. Effect of Late Notice.

72.304. Liability After Delivery.

72.305. Suit to Compel Delivery.

72.306. Unclaimed Property Held by Federal Government.

[Sections 72.307 to 72.400 reserved for expansion]

SUBCHAPTER E. DISPOSITION OF ESCHEATED PROPERTY

72.401. Sale of Property.

72.402. Notice of Sale.

72.403. Purchaser's Title.

[Sections 72.404 to 72.500 reserved for expansion]

SUBCHAPTER F. CLAIM FOR ESCHEATED PROPERTY

72.501. Filing of Claim.

72.502. Consideration of Claim.

72.503. Hearing.

72.504. Payment of Claim.

72.505. Appeal.

72.506. Fee for Recovery.

[Sections 72.507 to 72.600 reserved for expansion]

SUBCHAPTER G. ESCHEAT EXPENSE AND REIMBURSEMENT FUND

Sec.

72.601. Fund.

72.602. Transfers from Executive Department.

72.603. Use of Fund.

72.604. Audit; Appropriation.

[Sections 72.605 to 72.700 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

72.701. Rules.

72.702. Examination of Records.

72.703. Additional Personnel.

72.704. Assistance in Enforcement.

72.705. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 72.001. Reciprocity; Application of Chapter

(a) Specific property is not presumed abandoned and is not subject to this chapter if:

(1) the property is held for or owed or distributable to an owner whose last known address is in another state;

(2) the holder of the property is subject to the jurisdiction of the other state;

(3) the property has been claimed as abandoned or has escheated under the laws of the other state; and

(4) the other state has a reciprocal legal provision that property is not presumed abandoned or escheatable by the other state if the property is held for or owed or distributable to an owner whose last known address is in this state and the holder of the property is subject to the jurisdiction of this state.

(b) This chapter applies to tangible and intangible personal property held in this state and to tangible and intangible personal property held outside this state for a person whose last known address is in this state.

(c) This chapter does not apply to property held by a bank, savings and loan association, or other banking organization.

(d) This chapter supplements Chapter 71, and either procedure may be followed to the extent applicable.

[Acts 1983, 68th Leg., p. 3592, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.002 to 72.100 reserved for expansion]

SUBCHAPTER B. PROPERTY REPORT

§ 72.101. Personal Property Subject to Escheat

Personal property, other than traveler's checks, is presumed abandoned and subject to escheat if, for longer than seven years:

(1) the existence and location of the owner of the property is unknown to the holder of the property;

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised; and

(3) a will of the owner of the property has not been recorded or probated in the county in which the property is located.

[Acts 1983, 68th Leg., p. 3593, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.102. Traveler's Check

(a) A traveler's check is not presumed to be abandoned or subject to escheat to this state under this chapter unless:

(1) the records of the issuer of the check indicate that the check was purchased in this state;

(2) the issuer's principal place of business is in this state and the issuer's records do not indicate the state in which the check was purchased; or

(3) the issuer's principal place of business is in this state, the issuer's records indicate that the check was purchased in another state, and the laws of that state do not provide for the escheat or custodial taking of the check.

(b) A traveler's check to which Subsection (a) applies is presumed to be abandoned and subject to escheat on the latest of:

(1) the 15th anniversary of the date on which the check was issued;

(2) the 15th anniversary of the date on which the issuer of the check last received from the owner of the check written communication concerning the check; or

(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the check.

[Acts 1983, 68th Leg., p. 3593, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.103. Restoration of Charges

If the personal property subject to escheat is a dormant deposit or a dormant account on which a deduction for service, maintenance, or other charges would be restored under the policy or procedure of the holder of the property on request of the owner, the amount subject to escheat includes the amount of the deduction that would be restored.

[Acts 1983, 68th Leg., p. 3594, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.104. Property Report

Before the 61st day after the day on which personal property becomes subject to escheat under this chapter or under Chapter 71, each person holding the property shall file with the State Treasurer

three copies of a property report compiled in accordance with this section. After an initial filing, a person may file with the State Treasurer three copies of an updated report before May 2 of each year.

(b) The property report must include:

(1) the name, if known, and the last known address, if any, of each person who, from the records of the holder of the property, appears to be the owner of the property, or the name and address, if known, of any person who is entitled to the property;

(2) a brief description of the property including the balance of a deposit;

(3) the date that the property became payable, demandable, or returnable;

(4) the date of the last transaction with the owner concerning the property;

(5) any deduction made by the holder of the property for a service, maintenance, or other charge, unless fully restored under Section 72.103 and included in the amount reported, and

(6) other information that the State Treasurer by rule requires to be disclosed as necessary for the administration of this chapter.

(c) If a person holds proceeds from mineral interests for more than one owner, the holder shall assign an identifying number to each owner's account of proceeds. For mineral proceeds, a property report must include:

(1) the nature of the proceeds and the identifying number of the account, if any, or a description of the proceeds;

(2) credits grouped by the county from which the credited proceeds were derived, including credits that were previously disposed of in any manner other than by payment to the owner;

(3) the name and last known address of the owner of the proceeds;

(4) the fractional mineral interest of the owner;

(5) the description and location of the land from which the minerals were produced;

(6) the name of the person who operated the well or mine;

(7) the period during which the proceeds accumulated;

(8) the price for which the minerals were sold; and

(9) the amount that, according to records, is due from each interest, except as provided by Subsection (d).

(d) Amounts due from mineral interests that individually are less than \$10 may be reported in the aggregate.

[Acts 1983, 68th Leg., p. 3594, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.105. Verification of Report

(a) The person preparing a property report shall place at the end of each copy of the report verification made under oath and executed by:

- (1) the individual holding the reported property;
- (2) a partner if the holder is a partnership;
- (3) an officer if the holder is an unincorporated association or a private corporation; or
- (4) the chief fiscal officer if the holder is a public corporation.

(b) The verification must include the following sentence:

"The foregoing report contains a full and complete list of all personal property held by the undersigned that, from the knowledge and records of the undersigned, is subject to escheat to the State of Texas."

[Acts 1983, 68th Leg., p. 3595, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.106 to 72.200 reserved for expansion]

SUBCHAPTER C. NOTICE OF ABANDONED PROPERTY

§ 72.201. Notice to Sheriff

(a) Before the 61st day after the day on which a property report is received, the State Treasurer shall mail a notice of its receipt to the sheriff of the county of the domicile or principal place of business of the person who filed the report. The notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and must contain:

- (1) the names, listed alphabetically, and the last known addresses, if any, of the persons listed in the report; and
- (2) a statement that, by addressing an inquiry to the person who filed the report, any person who possesses or claims an interest in the property may obtain information concerning the amount and description of the property and the name and address of the holder.

(b) Before the 11th day after the day on which the notice is received, the sheriff shall post the notice on the door or bulletin board of the courthouse. The notice must remain posted for at least 30 days.

(c) When the notice is removed, the sheriff shall return it to the State Treasurer with the sheriff's certification indicating the date and the time of the posting.

[Acts 1983, 68th Leg., p. 3596, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.202. Published Notice

(a) Except as provided by Section 72.203, the State Treasurer, before the 121st day after the day

on which a property report is filed, shall have a notice published in an English language newspaper of general circulation:

(1) in the county in which is located the last known address of a person required to be named in the notice; or

(2) if the address of a person listed is not set out in the report or if it is outside of the state, in the county in which the holder of the abandoned property has its principal place of business, registered office, or agent for service in this state.

(b) The published notice must be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property' and must contain:

(1) the names, listed alphabetically, and last known addresses, if any, of the persons listed in the property report;

(2) a statement that, by addressing an inquiry to the State Treasurer, any person possessing an interest in the reported property may obtain information concerning the amount and description of the property and the name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 72.302, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer.

[Acts 1983, 68th Leg., p. 3596, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.203. Notice for Item With Value Not Exceeding \$50

In the notice required by Section 72.202, the State Treasurer is not required to publish information regarding an item having a value that does not exceed \$50 unless the State Treasurer determines that publication of that information is in the public interest.

[Acts 1983, 68th Leg., p. 3597, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.204. Notice to Owner

(a) Before the 121st day after the day on which a property report is received, the State Treasurer shall mail a notice to each person whose address appears in the report and who appears to be entitled to the reported property that is valued at more than \$50.

(b) The notice must contain:

(1) a statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears to be entitled;

(2) the name and address of the person holding the property and any necessary information re-

garding changes of name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 72.302, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer.

[Acts 1983, 68th Leg., p. 3597, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.205 to 72.300 reserved for expansion]

SUBCHAPTER D. ESCHEAT AND DELIVERY

§ 72.301. Escheat of Property

Reported personal property is considered to be abandoned and escheats to the state if the property remains unclaimed:

- (1) on the 91st day after the day on which notice is published; or
- (2) if publication is not required, on the 121st day after the day on which the report is filed.

[Acts 1983, 68th Leg., p. 3598, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.302. Delivery of Property to State Treasurer

(a) If the owner of property for which notice is published does not establish the owner's right to the property before the 61st day after the day on which notice is published, the holder of the property shall deliver the property to the State Treasurer after the 90th day after the day on which the notice is published.

(b) If publication of notice is not required, the person who filed the property report shall deliver the property identified by the report to the State Treasurer within a reasonable time after the 120th day after the day on which the report was filed.

(c) Instead of delivering to the State Treasurer reported property for which publication of notice is required, the holder shall file with the State Treasurer a verified written explanation of the proof of claim or the error in the presumption of abandonment if:

- (1) the owner establishes the owner's right to the property to the satisfaction of the holder of the property within the time specified by this section; or
- (2) it appears that for some other reason the presumption of abandonment is erroneous.

[Acts 1983, 68th Leg., p. 3598, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.303. Effect of Late Notice

Failure of the State Treasurer to give notice within the period prescribed by Section 72.202 does not affect:

- (1) the owner's right to claim the property from the holder before the 61st day after the day on which the notice is actually published; or
- (2) the holder's duty to deliver the property to the State Treasurer after the 90th day after the day on which the notice is actually published.

[Acts 1983, 68th Leg., p. 3599, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.304. Liability After Delivery

If reported property is delivered to the State Treasurer:

- (1) the state shall assume custody of the property and responsibility for its safekeeping; and
- (2) the person who delivers the property is relieved of liability, to the extent of the value of the property, for any claim made concerning the property.

[Acts 1983, 68th Leg., p. 3599, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.305. Suit to Compel Delivery

(a) If a person fails to deliver property to the State Treasurer in accordance with this subchapter, the attorney general shall bring an action in the name of this state on the relation of the State Treasurer to compel the delivery of the property.

(b) Venue for a suit brought under this section is in a district court of Travis County, Texas.

(c) The fact that a suit seeks to compel delivery of property from more than one holder is not grounds for an objection concerning the misjoinder of parties or causes of action.

(d) In a suit filed under this section, the attorney general must show that the notice required by Sections 72.202 and 72.204 has been given. When introduced into evidence, the verified property report, unless rebutted, is sufficient evidence that the property is abandoned and has escheated for entry of a judgment transferring the property to the State Treasurer.

[Acts 1983, 68th Leg., p. 3599, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.306. Unclaimed Property Held by Federal Government

(a) If the federal government enacts a law that provides for the discovery of unclaimed property held by the federal government and that furnishes or makes that information available to the states, the State Treasurer may pay to the federal government from the escheat expense and reimbursement

fund the proportional share of the necessary cost of examining records.

(b) If the federal government delivers unclaimed property to the State Treasurer, this state shall hold the federal government harmless from claims made by owners of the property after the delivery.

[Acts 1983, 68th Leg., p. 3600, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.307 to 72.400 reserved for expansion]

SUBCHAPTER E. DISPOSITION OF ESCHEATED PROPERTY

§ 72.401. Sale of Property

(a) Except as provided by Subsection (c), the State Treasurer shall sell at public sale all property other than money delivered to the State Treasurer in accordance with Section 72.302. The State Treasurer shall conduct the sale in the city in this state that the State Treasurer determines affords the most favorable market for the particular property.

(b) The State Treasurer shall sell the property to the highest bidder. If the State Treasurer determines that the highest bid is insufficient, the State Treasurer may decline that bid and again offer the property for sale.

(c) The State Treasurer is not required to offer property for sale if the State Treasurer determines that the probable cost of the sale of that property exceeds its value.

[Acts 1983, 68th Leg., p. 3600, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4157, ch. 655, § 1

Section 1 of Acts 1983, 68th Leg., p. 4157, ch. 655, eff. Sept. 1, 1983, purported to amend § 5 of Civil Statutes, art. 3272a by amending subsec. (a) [now, this section], and adding subsec. (d) without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 5(a) and (d) reads:

“(a) All abandoned property, other than money and securities, delivered to the State Treasurer under this Article which has been escheated and the title thereto vested in the State of Texas shall be sold by the State Treasurer to the highest bidder at public sale in whatever city in the State in his judgment affords the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer such property for sale if he considers such bid insufficient. He need not offer any property for sale, if, in his opinion, the probable cost of sale is in excess of the value of the property.”

“(d) The State Treasurer may sell securities to the highest bidder at public sale in whatever city in the State in the judgment of the State Treasurer

er is the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for public or private sale if in the judgment of the State Treasurer the bid is insufficient. If in the judgment of the State Treasurer the probable cost of sale exceeds the value of the property, it need not be offered for sale. The purchaser of securities at a sale conducted by the State Treasurer under this Subsection takes the securities free of all claims of the owner or previous holder of the securities.”

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 72.402. Notice of Sale

(a) Before the 21st day preceding the day on which a public sale is held under this subchapter, the State Treasurer shall publish notice of the sale once in an English language newspaper of general circulation in the county where the sale is to be held.

(b) The amount paid for the publication of notice shall be computed at the rate provided by Article 29, Revised Statutes, as amended.

[Acts 1983, 68th Leg., p. 3601, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4157, ch. 655, § 1

Section 1 of Acts 1983, 68th Leg., p. 4157, ch. 655, eff. Sept. 1, 1983, purported to amend § 5(b) of Civil Statutes, art. 3272a [now, this section] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 5(b) reads:

“Any sale, other than sales of securities, held under this Section shall be preceded by a single publication of notice thereof at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold, which shall be paid for at the rate provided in Article 29, Vernon's Civil Statutes.”

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 72.403. Purchaser's Title

(a) At a sale held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior

holder of the property and all persons claiming through or under them.

(b) The State Treasurer shall execute all documents necessary to complete the transfer of title. [Acts 1983, 68th Leg., p. 3601, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4157, ch. 655, § 1

Section 1 of Acts 1983, 68th Leg., p. 4157, ch. 655, eff. Sept. 1, 1983, purported to amend § 5(c) of Civil Statutes, art. 3272a [now, this section] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 5(c) reads:

"The purchaser at any sale conducted by the State Treasurer pursuant to this Subsection, shall receive title to the property purchased, free from all claims of the owner or prior holder thereof, and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 72.404 to 72.500 reserved for expansion]

SUBCHAPTER F. CLAIM FOR ESCHEATED PROPERTY

§ 72.501. Filing of Claim

A claim for property delivered to the State Treasurer under this chapter must be filed in accordance with procedures and on forms prescribed by the State Treasurer.

[Acts 1983, 68th Leg., p. 3601, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4158, ch. 655, § 2

Section 2 of Acts 1983, 68th Leg., p. 4158, ch. 655, eff. Sept. 1, 1983, purported to amend § 6(a) of Civil Statutes, art. 3272a [now, this section, in part] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 6(a) reads:

"Any person claiming an interest in any property or proceeds from the sale of property paid or delivered to the State Treasurer which have been presumed abandoned and escheated to the State under the provisions of this Article may file a claim to such property with the State Treasurer, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. Provided that any such person claiming an inter-

est in money which has been paid to the State Treasurer by any insurance company may file his claim to such property with the insurance company where such money was originally deposited, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. Upon approval of any such claim the insurance company shall pay the amount of any such claim. Any insurance company paying such a claim may file a claim for reimbursement as provided for in Section 7 of this Act."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 72.502. Consideration of Claim

The State Treasurer and the attorney general or their authorized agents jointly shall consider the validity of each claim filed under this chapter.

[Acts 1983, 68th Leg., p. 3601, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.503. Hearing

(a) The State Treasurer and the attorney general may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the State Treasurer and the attorney general consider that a hearing is necessary to determine the validity of a claim, both shall sign findings and a decision on the claim that state the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the State Treasurer and the attorney general determine that a claim is valid, they shall approve and sign the claim.

[Acts 1983, 68th Leg., p. 3601, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.504. Payment of Claim

(a) If a claim is for money and has been approved under this subchapter, the State Treasurer shall pay the claim.

(b) If a claim is for personal property other than money and has been approved under this subchapter, the State Treasurer promptly shall deliver the property to the claimant unless the State Treasurer has sold the property. If the property has been sold, the State Treasurer shall pay to the claimant the full amount of the claim without deduction for any costs of administration, service charges, or publication of notice.

[Acts 1983, 68th Leg., p. 3602, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.505. Appeal

(a) A person aggrieved by the decision of a claim filed under this subchapter may appeal the decision before the 61st day after the day on which it was rendered.

(b) If a claim has not been decided before the 91st day after the day on which it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the day of filing.

(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County, Texas, or in the county in which the claimed funds were deposited. The state's immunity from suit without consent is abolished with respect to suits brought under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

[Acts 1983, 68th Leg., p. 3602, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.506. Fee for Recovery

(a) Except as provided by Subsection (b), a person who holds a power of attorney for a claimant and who files a claim under this subchapter on behalf of a claimant may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered.

(b) If a suit has been filed under this subchapter, the holder of the power of attorney may contract for and receive from the claimant a fee for services fixed by the court not to exceed 25 percent of the value of the property recovered.

[Acts 1983, 68th Leg., p. 3603, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.507 to 72.600 reserved for expansion]

SUBCHAPTER G. ESCHAT EXPENSE AND REIMBURSEMENT FUND

§ 72.601. Fund

(a) The State Treasurer shall maintain a revolving fund known as the escheat expense and reimbursement fund.

(b) The State Treasurer shall deposit into the fund:

(1) all money delivered to the State Treasurer under this chapter; and

(2) all proceeds from the sale of property delivered to the State Treasurer under this chapter.

(c) If the amount in the escheat expense and reimbursement fund exceeds \$100,000, the excess shall be transferred to the General Revenue Fund, but the amount in the escheat expense and reim-

bursement fund may not be reduced below \$100,000 by such a transfer.

[Acts 1983, 68th Leg., p. 3603, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.602. Transfers From Executive Department

The governor may transfer from any appropriation made to the executive department to the escheat expense and reimbursement fund amounts not exceeding \$20,000.

[Acts 1983, 68th Leg., p. 3603, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.603. Use of Fund

(a) One-half of the amount in the escheat expense and reimbursement fund may be used only to reimburse persons who obtain decisions or judgments under this chapter entitling them to escheated funds.

(b) The State Treasurer and attorney general shall use the other one-half of the amount in the fund to pay expenses necessary to enforce this chapter, including payments for examinations, travel, court costs, witness fees, publication of notices, and employment of additional personnel.

(c) Each expenditure from the fund and each voucher for the payment of an expenditure must be approved by the State Treasurer and the attorney general.

[Acts 1983, 68th Leg., p. 3603, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.604. Audit; Appropriation

The escheat expense and reimbursement fund is subject to audit by the State Auditor and to appropriation by the legislature for enforcing this chapter.

[Acts 1983, 68th Leg., p. 3604, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 72.605 to 72.700 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

§ 72.701. Rules

The State Treasurer may adopt rules necessary to carry out this chapter.

[Acts 1983, 68th Leg., p. 3604, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.702. Examination of Records

(a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the State Treasurer, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of any person.

(b) The State Treasurer, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not use that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party.

[Acts 1983, 68th Leg., p. 3604, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.703. Additional Personnel

(a) The State Treasurer and the attorney general may employ, in the office of either official, additional personnel necessary to enforce this chapter.

(b) The salary rate of additional personnel may not exceed the rate paid to other state employees for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 72.603.

[Acts 1983, 68th Leg., p. 3604, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.704. Assistance in Enforcement

If requested by the State Treasurer or the attorney general, the State Auditor, state comptroller, banking commissioner, securities commissioner, insurance commissioner, department of public safety, or any district or county attorney shall assist the State Treasurer or attorney general in enforcing this chapter.

[Acts 1983, 68th Leg., p. 3605, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 72.705. Penalties

(a) A person commits an offense if the person:

- (1) wilfully fails to file a report required by this chapter;
- (2) refuses to permit examinations of records in accordance with this chapter; or
- (3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds.

(b) An offense under this section is punishable by:

- (1) a fine of not less than \$500 or more than \$1,000;
- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement.

(c) In addition to a criminal penalty, a person who commits an offense under Subdivision (1) or (2) of Subsection (a) is subject to a civil penalty not to exceed \$100 for each day of the failure or refusal. The attorney general shall collect the civil penalty by bringing suit on behalf of the state in a district court of Travis County, Texas.

[Acts 1983, 68th Leg., p. 3605, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 73. ESCHEAT OF INACTIVE ACCOUNTS HELD BY BANKING ORGANIZATIONS

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Sec.

73.001. Definitions.

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73.003. Preservation of Inactive Account.

[Sections 73.004 to 73.100 reserved for expansion]

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SUBCHAPTER C. REPORT AND DELIVERY OF PROPERTY

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73.301. Claim.

73.302. Claim Filed With Depository.

[Sections 73.303 to 73.400 reserved for expansion]

SUBCHAPTER E. STATE CONSERVATOR FUND

73.401. Fund.

73.402. Use of Fund.

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SUBCHAPTER F. ENFORCEMENT

73.501. Rules.

73.502. Examination of Records.

73.503. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 73.001. Definitions

In this chapter:

(1) "Account" means a demand, savings, or other deposit of money, or its equivalent in banking practice, or any other evidence of indebtedness that is held by a depository for repayment to the depositor or for the depositor's order.

(2) "Depositor" means a person who has an ownership interest in an account.

[Acts 1983, 68th Leg., p. 3607, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.002. Depository

For the purposes of this chapter, a depository is a bank, savings and loan and loan association, or other banking organization that:

(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.

[Acts 1983, 68th Leg., p. 3607, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.003. Preservation of Inactive Account

Except as provided by Section 73.104, a depository shall preserve an account that has remained inactive continuously for longer than one year without a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository. The depository may not by any procedure, including the imposition of a service charge, transfer, convert, or reduce such an account to the profits or assets of the depository.

[Acts 1983, 68th Leg., p. 3607, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4159, ch. 655, §§ 3, 4

Sections 3 and 4 of Acts 1983, 68th Leg., p. 4159, ch. 655, eff. Sept. 1, 1983, purported to amend §§ 1 and 2 of Civil Statutes, art. 3272b [now, this subchapter] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, §§ 1 and 2 read:

“Section 1. Every depository holding inactive deposit boxes, dormant deposits, or inactive accounts of depositors or owners whose existence and whereabouts are unknown to the depository, shall preserve intact the contents of the boxes, deposits, and accounts so long as they remain in a dormant or inactive status.

“a. The term ‘depository’ as used in this Article means any bank, savings and loan association, banking institution or organization which receives and holds for others deposits of money or its equivalent in banking practice or other personal property in this State, or in other States for residents last known to have resided in this State.

“b. The terms ‘dormant deposits’ and ‘inactive accounts’ mean those demand, savings, or other deposits of money or its equivalent in banking practice, including but not limited to sums due on certified checks, dividends, notes, accrued interest, or other evidences of indebtedness, held by a depository for repayment to the depositor or creditor, or his order, which on or after the effective date of this Article have continuously remained inactive for a period of more than one (1) year without credit or debit whatsoever through the act of the depositor, either in person or through an authorized agent other than the depository itself. ‘Dormant deposits’ and ‘inactive accounts’ lose their status as such when a deposit is made by the depositor, or a check is drawn or

withdrawal is made therefrom by such depositor, either in person or through an authorized agent other than the depository itself.

“c. The term ‘inactive safe deposit boxes’ means those boxes whose rental is delinquent for a period of more than one (1) year.”

“Sec. 2. It shall be unlawful for any depository to transfer, convert or reduce any inactive safe deposit box, dormant deposit, or inactive account to the profits or assets of the depository, either through book transfer, assessments, service charges or any other procedures so long as the box, deposit, or account remains in a dormant or inactive status. This shall not apply to the charges hereinafter specifically authorized for efforts to locate the depositors or owners. Nothing in this Article shall affect the provisions of Chapter IX, The Texas Banking Code of 1943 (Article 342-906, Vernon’s Texas Civil Statutes).”

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 73.004 to 73.100 reserved for expansion]

SUBCHAPTER B. NOTICE FOR INACTIVE ACCOUNTS SUBJECT TO ESCHEAT

§ 73.101. Notice for Certain Inactive Accounts

(a) In May of each year, a depository shall publish notice concerning an account if:

(1) the account has been inactive for at least seven years;

(2) the location of the depositor of the account is unknown to the depository; and

(3) the amount of the account has not been delivered to the State Treasurer in accordance with Section 73.201.

(b) To satisfy the seven-year period of inactivity required by Subdivision (1) of Subsection (a), the account must have been inactive for a continuous period beginning not later than May 1 of the seventh year preceding the year in which notice is published.

(c) The notice must be entitled “Notice of the Names of Persons Appearing as the Owners of Unclaimed Amounts Held by (name and address of depository)” and must contain:

(1) the names of the missing depositors, listed alphabetically, and the last known address of each, if any; and

(2) a statement that if proof of ownership is presented within the nine-month period immediately following the day on which the notice is published, the unclaimed accounts will be paid to the owner of the depository, but if amounts re-

main unclaimed after that period, they are subject to report to and conservation by the State Treasurer under this chapter.

(d) The notice must be published in a newspaper, as defined by Subdivision (2), Section 1, Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 28a, Vernon's Texas Civil Statutes), in the city or county in which the depository is located or, if such a newspaper is not published in that county, in an adjoining county.

(e) The notice may not list the amounts credited to the accounts.

[Acts 1983, 68th Leg., p. 3607, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4160, ch. 655, § 5

Section 5 of Acts 1983, 68th Leg., p. 4160, ch. 655, eff. Sept. 1, 1983, purported to amend § 3 of Civil Statutes, art. 3272b [now, this subchapter] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 3 reads:

"When, on or after the effective date of this Article, inactive safe deposit boxes, dormant deposits, or inactive accounts have remained in such condition for more than seven (7) years, and the depository does not know the whereabouts of the depositors or any owners thereof, the depository, during the first month of May following the seven (7) year period, shall cause to be published once in a newspaper, published in the city or county in which the depository is located, a notice entitled 'Notice of the names of persons appearing as the owners of unclaimed safe deposit boxes and amounts held by (name and address of depository)' which shall list the names, in alphabetical order, and the last known address, if any, of such missing depositors and owners, but not the amounts of such deposits nor the contents of the box. Newspapers eligible for such publications shall be those defined in Section 2 of Article 28a, Revised Civil Statutes of Texas, 1925, as amended, and if no such newspaper is published in the county of a depository, publication shall be made in a newspaper published in an adjoining county.

"Annually thereafter during the month of May of each year the depository shall again publish in like manner the names of such owners, depositors, or creditors whose boxes, deposits, or accounts have not been reported and delivered to the State in accordance with Section 4 hereof, if the whereabouts of any owner thereof still remains unknown to the depository and their boxes, deposits, or accounts still remain in a dormant or inactive status as herein defined.

"Each of such publications shall state that the unclaimed boxes and amounts will be paid or delivered upon proof of ownership at the office of the depository within nine (9) months, and that if

unclaimed thereafter they may be subject to report to and management by the State Treasurer in accordance with Article 3272b. Duplicate copies of each publication shall be mailed to the State Treasurer together with sworn proof of publication, and the publication thereof shall constitute notice on the part of the depository and the State that the listed boxes, deposits, or accounts may be subject to the provisions of this Article. The depository shall certify under oath of the subscribing officer that the attached list is a full and complete list of the names of all owners, depositors, and creditors for whom inactive safe deposit boxes, dormant deposits, or inactive accounts have been held for more than seven (7) years and whose existence and whereabouts are unknown to the depository, and that such listed owners, depositors, and creditors have not asserted any claim or exercised any act of ownership with respect to their boxes, deposits, or accounts during the past seven (7) years.

"Newspapers shall charge for such publications not to exceed the rate for legal notice publications fixed in Article 29, Revised Civil Statutes of Texas, 1925, as amended. The amount paid to a newspaper for such publications may be charged equally against the accounts owing to the persons whose names are published."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 73.102. Notice Mailed to State Treasurer

The depository shall mail to the State Treasurer:

- (1) two copies of each notice required to be published by Section 73.101;
- (2) sworn proof of publication of the notice; and
- (3) certification, under the oath of the subscribing officer, that the notice contains a complete list of the names of all depositors for which notice is required.

[Acts 1983, 68th Leg., p. 3608, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.103. Notice That Accounts are Subject to Chapter

Publication of notice in accordance with Section 73.101 is notice by the depository and this state that the accounts of the listed depositors are subject to this chapter.

[Acts 1983, 68th Leg., p. 3609, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.104. Charge for Publication of Notice

(a) A newspaper may not charge a rate for the publication of notice under this chapter that exceeds the rate provided by Article 29, Revised Statutes, as amended.

(b) A depository may charge the amount paid to a newspaper for the publication of notice equally against the accounts for which notice is required.

[Acts 1983, 68th Leg., p. 3609, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 73.105 to 73.200 reserved for expansion]

SUBCHAPTER C. REPORT AND DELIVERY OF PROPERTY

§ 73.201. Report; Delivery of Account

(a) Before May 2 of the year following the year in which notice is published under this chapter, a depository shall file with the State Treasurer:

(1) two copies of a certified report compiled in accordance with this section; and

(2) an amount equal to the total of the accounts listed in the report.

(b) The report must contain information for each account required to be listed in the published notice if at the time the report is filed:

(1) the existence and location of any depositor of the account remains unknown to the depository; and

(2) the account remains inactive.

(c) For accounts described by Subsection (b), the report must state:

(1) the names of the depositors, listed alphabetically, and the last known address of each depositor;

(2) the identification number, if any, of each account;

(3) the date that each account became an inactive account and the amount due to the depositor on that date;

(4) the amount credited to each account on the day of the report; and

(5) the date of the last transaction with each depositor.

(d) If the amount credited to an account on the date the report is compiled is less than the amount credited to the account on the date that it became inactive, disregarding a reduction for the account's share of the cost for publication under Section 73-104, the report must contain the reason for the reduction.

[Acts 1983, 68th Leg., p. 3609, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4162, ch. 655, § 6

Section 6 of Acts 1983, 68th Leg., p. 4162, ch. 655, eff. Sept. 1, 1983, purported to amend § 4 of Civil

Statutes, art. 3272b [now, this section and §§ 73.202 and 73.203] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 4 reads:

"On or before May 1st of the year following the first publication required by this Article, the depository shall submit in duplicate copies a report to the State Treasurer listing the names of all such owners, depositors, or creditors whose names were published, whose whereabouts and the whereabouts of any owner of such box, deposit, or credit still remain unknown, and each of whose boxes, deposits, or accounts still remain in a dormant or inactive status. Such report shall set forth in alphabetical order the name and last known address of the owner, depositor, or creditor, the date and amount appear to be due each depositor or creditor when the account first became dormant or inactive, or on January 1, 1959, whichever date is later, the amount credited to such account at the time of the report, the date of the last transaction with the owner, depositor, or creditor, and its identification number, if any. If the amount then credited to an account is less than the amount of the initial dormant deposit or inactive account, except for its share of publication costs, the reason for such reduction shall be stated.

"The subscribing officer shall certify under oath that the report is a complete and correct statement of all inactive safe deposit boxes, dormant deposits, and inactive accounts held by the depository subject to the reporting provisions of Section 4 of Article 3272b; that the existence and whereabouts of the listed owners, depositors, or creditors are unknown to the depository; and that the listed depositors or creditors have not asserted any claim or exercised any act of ownership with respect to the reported boxes and accounts during the past seven (7) years.

"Together with the foregoing report, the depository shall deliver to the State Treasurer a sum equal to the total amount of the accounts listed in the report and all contents of safe deposit boxes listed in the report, and the State Treasurer shall sign a receipt therefor and shall assume custody and management thereof. The State shall be responsible for the custody and management thereof, and any depository delivering such boxes, deposits, or accounts to the State Treasurer under this Act is relieved of all liability for any claim which then exists or which may thereafter arise or be made in respect to the property."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 73.202. Certification of Report

The officer of a depository who is responsible for certification of a report filed under this chapter shall certify under oath that:

- (1) the report is a complete and correct statement of all accounts subject to this chapter that are held by the depository;
- (2) the existence and location of listed depositors are unknown to the depository; and
- (3) the listed depositors have not asserted a claim or exercised an act of ownership with respect to the depositors' reported accounts within the preceding seven-year period.

[Acts 1983, 68th Leg., p. 3610, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.203. Receipt of Report; Liability for Account

(a) When the State Treasurer receives a report and the accompanying payment in accordance with Section 73.201, the State Treasurer shall sign a receipt for and assume custody of the amount delivered.

(b) After the State Treasurer receives a report and payment, the state is responsible for the safekeeping of the delivered amount, and the depository is relieved of all liability for any claim to the account.

[Acts 1983, 68th Leg., p. 3610, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.204. Truth of Report

A sworn report of a depository filed under this chapter or evidence of such a report offered under oath is prima facie evidence of the truth of the facts stated in the report.

[Acts 1983, 68th Leg., p. 3610, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.205. Presumption of Intestate Death Without Heirs

A person is presumed to have died intestate and without heirs if the person:

- (1) owns an account reported as inactive under Section 73.201; and
- (2) has not asserted a claim to or exercised an act of ownership of the account since the report was filed.

[Acts 1983, 68th Leg., p. 3611, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4165, ch. 655, § 9

Section 9 of Acts 1983, 68th Leg., p. 4165, ch. 655, eff. Sept. 1, 1983, purported to amend § 7 of Civil Statutes, art. 3272b [now, § 73.204 and this section], without reference to the repeal of said arti-

cle by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 7 reads:

"Any person or persons who shall have inactive safe deposit boxes, dormant deposits, or inactive accounts held by any depository for seven (7) years or more, whose existence and whereabouts are reported under oath to be unknown to the depository after advertising therefor, and who shall not have asserted any claim thereto or exercised any act of ownership thereof for a period of seven (7) years, shall be presumed, unless shown to the contrary, to have died intestate and without heirs. The sworn report of any depository filed under this Article or any evidence thereof adduced under oath shall constitute prima facie evidence of the facts stated therein."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 73.206. List of Depositors

(a) Before June 2 of each year, the State Treasurer shall compile and revise an alphabetical list of the names and last known addresses of the depositors listed in the reports and the amount credited to each account.

(b) The State Treasurer shall make the list available for public inspection during all reasonable business hours.

[Acts 1983, 68th Leg., p. 3611, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4163, ch. 655, § 7

Section 7 of Acts 1983, 68th Leg., p. 4163, ch. 655, eff. Sept. 1, 1983, purported to amend Civil Statutes, art. 3272b [now, this chapter], by adding a § 5a without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so added, § 5a reads:

"SALE OF CONTENTS OF SAFE DEPOSIT BOXES. If after investigation the State Treasurer determines that property delivered from a safe deposit box or other repository has insubstantial commercial value, the State Treasurer may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the State, an officer of the State, or the holder of the property for or because of any action taken by the State Treasurer under this Article.

"The State Treasurer may sell property delivered from a safe deposit box or other safekeeping repository to the highest bidder at public sale in whatever city in the State in the judgment of the State Treasurer is the most favorable market for

the property involved. The State Treasurer may decline the highest bid and reoffer the property for public or private sale if in the judgment of the State Treasurer the bid is insufficient. If in the judgment of the State Treasurer the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this Subsection must be preceded by a single publication of notice, at least three (3) weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold. The purchaser of property at a sale conducted by the State Treasurer under this Subsection takes the property free of all claims of the owner or previous holder of the property and of all persons claiming through or under them."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 73.207. Transfers From Banking Commissioner

(a) The state banking commissioner shall transfer to the State Treasurer funds that were formerly owned by or deposited in liquidated depositories and that have been held by the commissioner for longer than 20 years if the location of the depositors of the funds has been unknown to the commissioner for longer than 20 years.

(b) The state banking commissioner shall send with the transferred funds:

(1) certification under oath by the commissioner that the funds are subject to this section;

(2) a list of the names of the liquidated depositories; and

(3) a list of the names and the last known addresses of the depositors of the funds and the amount credited to each depositor.

(c) The State Treasurer shall deposit the funds delivered under this section in the state conservator fund.

[Acts 1983, 68th Leg., p. 3611, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 73.208 to 73.300 reserved for expansion]

SUBCHAPTER D. CLAIM FOR ESCHEATED ACCOUNT

§ 73.301. Claim

(a) A person who claims an interest in property delivered to the state and deposited in the state conservator fund may file a claim:

(1) with the State Treasurer in the same manner as a claim filed under Chapter 72; or

(2) with the depository that delivered the property to the state.

(b) Determinations of claims and all rights, fees, procedures, and actions with respect to a claim filed under Subdivision (1) of Subsection (a) shall be made in the same manner as a claim filed under Chapter 72 except that payments shall be made from the state conservator fund.

[Acts 1983, 68th Leg., p. 3612, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4164, ch. 655, § 8

Section 8 of Acts 1983, 68th Leg., p. 4164, ch. 655, eff. Sept. 1, 1983, purported to amend § 6 of Civil Statutes, art. 3272b [now, this subchapter], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 6 reads:

"Any person claiming an interest in any property or proceeds from the sale of property delivered to the State and deposited in the State Conservator Fund may file a claim thereto and receive payment thereof from the State Conservator Fund by following the procedures set out in Sections 6 and 7 of Article 3272a. All of such claims, determinations thereof, and all other rights, fees, procedures, and actions with respect thereto, shall be governed by and conducted in accordance with the applicable provisions of Sections 6, 7 and 8 of Article 3272a, the same as if the delivery of funds had been made to the State Treasurer under that Article, except that payments to owners shall be made from the State Conservator Fund.

"Provided, however, that any person claiming an interest in money which has been paid to the State Treasurer by a depository under this Article may file his claim with the depository, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. If the depository finds in good faith that such claim is valid, the depository may pay the same, and if the amount is One Hundred Dollars (\$100) or less, the State Treasurer shall reimburse the depository upon receipt of a written statement subscribed and sworn to by an officer of the depository, listing the name and address of the person to whom payment was made and stating that the depository believes in good faith that such claim was and is valid. If the amount is in excess of One Hundred Dollars (\$100), the claim and any supporting affidavit or evidence thereof shall be examined, approved, and signed by the State Treasurer and the Attorney General, after which reimbursement shall be made to the depository. Any such reimbursements shall be made by the State Treasurer out of the State Conservator Fund."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part,

that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 73.302. Claim Filed With Depository

(a) If a claim is filed with a depository under this subchapter and the depository determines in good faith that the claim is valid, the depository may pay the amount of the claim.

(b) If the amount paid under Subsection (a) is \$100 or less, the State Treasurer shall reimburse the depository on receipt of a written statement, subscribed and sworn to by an officer of the depository, that states:

- (1) the name and address of the person to whom payment was made; and
- (2) that the depository believes in good faith that the claim is valid.

(c) If the amount paid under Subsection (a) is more than \$100, the State Treasurer and the attorney general shall examine the claim and any supporting affidavit or evidence of the claim. Before the State Treasurer may reimburse a depository for a claim under this subsection, the claim must be approved and signed by the State Treasurer and the attorney general.

(d) The State Treasurer shall prescribe the forms and procedures for filing claims with depositories.

[Acts 1983, 68th Leg., p. 3612, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 73.303 to 73.400 reserved for expansion]

SUBCHAPTER E. STATE CONSERVATOR FUND

§ 73.401. Fund

(a) The State Treasurer shall maintain a fund known as the state conservator fund.

(b) The State Treasurer shall deposit to the credit of the state conservator fund:

- (1) all funds delivered to the State Treasurer under this chapter;
- (2) all funds held by a depository that have escheated to the state; and
- (3) the income from investments of the amount in the fund.

(c) If the amount in the state conservator fund exceeds \$250,000, the excess shall be transferred to the available school fund, but the amount in the state conservator fund may not be reduced below \$250,000 by such a transfer.

(d) The State Treasurer, from time to time, shall invest the amount in the state conservator fund that

exceeds \$50,000 in investments approved by law for the investment of state funds.

[Acts 1983, 68th Leg., p. 3613, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.402. Use of Fund

(a) The State Treasurer shall use the state conservator fund:

- (1) to pay the claims of persons who establish their ownership of accounts delivered to the State Treasurer under this chapter; and
- (2) to maintain a revolving expense fund in the amount of \$25,000.

(b) The amount credited to the revolving expense fund may be used only to pay expenses incurred by the State Treasurer in the enforcement of this chapter including the expenses of publications, forms, notices, examinations, travel, and employment of necessary personnel.

[Acts 1983, 68th Leg., p. 3613, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 73.403 to 73.500 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

§ 73.501. Rules

The State Treasurer may adopt rules necessary to carry out this chapter.

[Acts 1983, 68th Leg., p. 3614, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.502. Examination of Records

The State Treasurer may examine the records of a depository to determine if the depository is complying with this chapter.

[Acts 1983, 68th Leg., p. 3614, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 73.503. Penalties

(a) A person commits an offense if the person:

- (1) wilfully fails to publish notice as required by Section 73.101;
- (2) fails to file copies of a report as required by Section 73.201; or
- (3) violates any other provision of this chapter.

(b) An offense under this section is a misdemeanor or punishable by:

- (1) a fine of not less than \$500 or more than \$1,000;
- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement.

(c) In addition to being subject to criminal penalty, a person who commits an offense under Subsection (a) is subject to a civil penalty that may not exceed \$100 for each day of the violation. The attorney general shall collect the civil penalty for

the state by bringing suit in a district court of Travis County, Texas.

[Acts 1983, 68th Leg., p. 3614, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 74 to 80 reserved for expansion]

TITLE 7. CONDOMINIUMS

CHAPTER 81. CONDOMINIUMS

SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

Sec.

- 81.001. Short Title.
- 81.002. Definitions.
- 81.003. Applicability of Local Ordinances and Regulations.

[Sections 81.004 to 81.100 reserved for expansion]

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

- 81.101. Creation of Condominium.
- 81.102. Contents of Declaration, Master Deed, or Master Lease.
- 81.103. Public Records.
- 81.104. Apartment Ownership.
- 81.105. Apartment Boundaries.
- 81.106. Apartment Deeds.
- 81.107. Interests in Common Elements.
- 81.108. Partition of Common Elements.
- 81.109. Conveyance of Common Elements.
- 81.110. Termination of Condominium Regime.

[Sections 81.111 to 81.200 reserved for expansion]

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

- 81.201. Authority of Council of Owners.
- 81.202. Bylaws.
- 81.203. Voting Majority.
- 81.204. Maintenance of Condominium.
- 81.205. Insurance.
- 81.206. Disposition of Insurance Proceeds.
- 81.207. Insufficient Insurance.
- 81.208. Assessments Due on Conveyance.
- 81.209. Condominium Records.
- 81.210. Loans as Eligible Investments.

SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

§ 81.001. Short Title

This chapter may be cited as the Condominium Act.

[Acts 1983, 68th Leg., p. 3616, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.002. Definitions

In this chapter:

(1) "Apartment" means an enclosed space, regardless of whether it is designed for residential or other use, that consists of one or more rooms in a building and that has a direct exit to a thoroughfare or to a common space that leads to a thoroughfare.

(2) "Building" includes each principal structure on or to be erected on real property dedicated in a declaration to a condominium regime.

(3) "Condominium" means a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements.

(4) "Council of owners" means all the apartment owners in a condominium project.

(5) "Declaration" means the instrument that establishes property under a condominium regime.

(6) "General common elements" means the property that is part of a condominium regime other than property that is part of or belongs to an apartment in the regime, including:

(A) land on which the building is erected;

(B) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways;

(C) basements, flat roofs, yards, and gardens, except as otherwise provided;

(D) premises for the lodging of janitors or persons in charge of the building, except as otherwise provided;

(E) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoirs, water tanks and pumps, and swimming pools; and

(F) elevators and elevator shafts, garbage incinerators, and all other devices and installations generally existing for common use.

(7) "Limited common elements" means a portion of the common elements allocated by unanimous agreement of a council of owners for the use of one or more but less than all of the apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and similar areas or facilities.

(8) "Master deed" means a deed that establishes property under a condominium regime.

(9) "Master lease" means a lease that establishes property under a condominium regime.

(10) "Project" means a plan to offer for sale or to sell real property consisting of four or more apartments, rooms, office spaces, or other units in an existing or proposed building as a condominium.

(11) "Property" means real property, whether leased or owned, the improvements on the property, and the incorporeal rights that are appurtenant to the property.

[Acts 1983, 68th Leg., p. 3616, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.003. Applicability of Local Ordinances and Regulations

(a) A planning or zoning commission of a county or municipality may adopt regulations governing condominium regimes that supplement this chapter.

(b) A local zoning ordinance must be construed to treat similar structures, lots, or parcels in a similar manner regardless of whether the property is a condominium or is leased.

[Acts 1983, 68th Leg., p. 3617, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 81.004 to 81.100 reserved for expansion]

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

§ 81.101. Creation of Condominium

An owner or developer of an existing or a planned building establishes a condominium regime by recording a master deed, master lease, or declaration under Section 81.102.

[Acts 1983, 68th Leg., p. 3618, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.102. Contents of Declaration, Master Deed, or Master Lease

(a) A declaration, master deed, or master lease for a condominium must contain:

(1) the legal description of the real property dedicated to the condominium regime, depicted by a plat of the property that locates and identifies by letter each existing or proposed building;

(2) a general description of each apartment, including the square footage, location, number, and other information necessary for identification of the apartment, depicted by a plat of the floor of the building in which the apartment is located that identifies the building by letter and the floor and the apartment by number;

(3) a general description of each area not already described that is subject to individual ownership and exclusive control, such as a garage or carport, depicted by a plat that shows the area and appropriately identifies it by letter or number;

(4) a description of the general common elements that are not described under Subdivision 1;

(5) a description of the limited common elements; and

(6) each apartment's fractional or percentage interest in the entire condominium regime.

(b) A declaration, master deed, or master lease for a condominium may contain any covenants or other matters the declarant considers appropriate.

[Acts 1983, 68th Leg., p. 3618, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4488, ch. 724, § 2

Section 2 of Acts 1983, 68th Leg., p. 4488, ch. 724, eff. Aug. 29, 1983, purported to amend § 7(B) of Civil Statutes, art. 1301a [now, this section and § 81.104], by adding new subsds. (7) and (8) and renumbering former subd. (7) as subd. (9) without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so added, subsds. (7) and (8) read:

"(7) A provision that the declaration may only be amended at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium.

"(8) A provision that an amendment of the declaration may not alter or destroy a unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 81.103. Public Records

(a) Each county clerk shall maintain suitable records called "Condominium Records" in which the clerk shall record master deeds, master leases, and declarations for condominiums.

(b) A county clerk shall record plats and other instruments in a declaration without prior approval from any other authority.

(c) A document required or authorized by this chapter to be recorded must be recorded according to law in the real property records of the county in which the property to which the document relates is located.

[Acts 1983, 68th Leg., p. 3618, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1984, 68th Leg., p. 4489, ch. 724, § 3

Section 3 of Acts 1983, 68th Leg., p. 4489, ch. 724, eff. Aug. 29, 1983, purported to amend § 7 of Civil Statutes, art. 1301a [now, §§ 81.102 to 81.104], by adding a subsec. (D) without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so added, subsec. (D) reads:

"After a condominium declaration is recorded with a county clerk the declaration may not be amended except at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 81.104. Apartment Ownership

(a) An owner of an apartment in a condominium regime owns it exclusively, and the owner may possess, convey, or encumber the apartment, or subject it to judicial acts, independently of the other apartments in the condominium regime.

(b) An individual title or interest in an apartment in a condominium regime is recordable.

(c) The entire interest in the condominium regime shall be divided among the apartments.

(d) A person may own an apartment in a condominium regime jointly or in common with others.

[Acts 1983, 68th Leg., p. 3619, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4488, ch. 724, § 1

Section of Acts 1983, 68th Leg., p. 4488, ch. 724, eff. Aug. 29, 1983, purported to amend § 6 of Civil Statutes, art. 1301a [now, this section and § 81.107], without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, § 6 reads:

"(a) An apartment owner shall have an exclusive ownership to his apartment and shall have a common right to a share, with other co-owners, in the common elements of the property. Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, as shown on the plat or expressed in the declaration or the by-laws, without hindering or encroaching upon the lawful rights of the other co-owners.

"(b) A condominium association may not alter or destroy a unit or a limited common element without the consent of all owners affected and the first lien mortgagees of all affected owners."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 81.105. Apartment Boundaries

(a) The boundaries of an apartment in a condominium regime are the interior surfaces of the apartment's perimeter walls, floors, and ceilings, and the exterior surfaces of the apartment's balconies and terraces.

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(b) Except for common elements, the portions of a building on the boundaries of an apartment in a condominium regime and the airspace within those boundaries are part of the apartment.

(c) In interpreting a legal instrument relating to an apartment or to an apartment that has been reconstructed substantially according to the original plans of the apartment, the physical boundaries of the apartment are conclusively presumed to be the proper boundaries of the apartment regardless of settling, rising, or lateral movement of the building containing the apartment and regardless of variances between boundaries shown on the plat of the building and the actual boundaries of the building.

[Acts 1983, 68th Leg., p. 3619, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.106. Apartment Deeds

A deed to an apartment in a condominium regime must:

- (1) include by reference the plats in the declaration;
- (2) state the encumbrances against the apartment;
- (3) describe the apartment according to the plat; and
- (4) state the apartment's fractional or percentage interest in the condominium regime.

[Acts 1983, 68th Leg., p. 3620, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.107. Interests in Common Elements

An owner of an apartment in a condominium regime shares ownership of the regime's common elements with the other apartment owners. An apartment owner may use the common elements according to their intended purposes, as expressed in the plat, declaration, or bylaws of the condominium regime, without interfering with the rights of the other apartment owners.

[Acts 1983, 68th Leg., p. 3620, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.108. Partition of Common Elements

(a) The ownership of the general and the limited common elements of a condominium regime may not be judicially partitioned or divided while they are suitable for a condominium regime.

(b) A person may not initiate an action for partition of the limited or general common elements of a condominium regime unless the mortgages on the property are paid or the consent of the mortgagees is obtained.

(c) An agreement contrary to this section is void.

[Acts 1983, 68th Leg., p. 3621, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.109. Conveyance of Common Elements

An apartment in a condominium regime and the undivided interest of an apartment owner in the common elements of the regime that are attributable to the apartment may not be conveyed separately. If a conveyance of an apartment does not refer to the common elements, the undivided interest of the apartment owner in the general and the limited common elements of the regime attributable to the apartment is conveyed with the apartment.

[Acts 1983, 68th Leg., p. 3622, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.110. Termination of Condominium Regime

(a) By unanimous agreement the owners of a building in a condominium regime may terminate the regime and request the county clerk of the county in which the regime is located to merge the records of the estates that comprise the condominium regime, if any creditors in whose behalf encumbrances against the building are recorded agree to accept the undivided portions of the property owned by the debtors as security.

(b) If a condominium regime is terminated, each apartment owner owns an undivided interest in the common property that corresponds to the undivided interest previously owned by the apartment owner in the common elements.

(c) Property that has been removed from a condominium regime may be dedicated to another condominium regime at any time.

[Acts 1983, 68th Leg., p. 3621, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 81.111 to 81.200 reserved for expansion]

**SUBCHAPTER C. CONDOMINIUM
MANAGEMENT**

§ 81.201. Authority of Council of Owners

(a) The council of owners of a condominium regime may adopt and amend bylaws.

(b) A council of owners of a condominium regime may institute litigation on behalf of two or more apartment owners concerning a matter related to the common elements of two or more apartments. The council of owners may delegate its authority under this subsection by designating in the bylaws a person who may exercise the authority. This subsection does not limit the right of an apartment owner to bring an action in the apartment owner's own behalf.

[Acts 1983, 68th Leg., p. 3621, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.202. Bylaws

The bylaws of a condominium regime govern the administration of the buildings that comprise the regime.

[Acts 1983, 68th Leg., p. 3621, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.203. Voting Majority

For the purposes of this chapter, the apartment owners who own at least 51 percent of the interests in a condominium regime, as determined under the declaration, are a majority of the apartment owners.

[Acts 1983, 68th Leg., p. 3621, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.204. Maintenance of Condominium

(a) An apartment owner in a condominium regime is responsible for the apartment owner's pro rata share of:

- (1) the expenses to administer the condominium regime and to maintain and repair the general common elements;
- (2) in proper cases, the expenses to administer the limited common elements of the buildings in the condominium regime; and
- (3) other expenses approved by the council of owners.

(b) An apartment owner in a condominium regime is not exempted from the obligation under this section to contribute toward the expenses of the condominium regime by waiving the use of the common elements or abandoning the apartment.

[Acts 1983, 68th Leg., p. 3622, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.205. Insurance

(a) By resolution of a majority of the council of owners or in the manner provided or required by the declaration or bylaws, the council of owners may acquire the insurance it deems appropriate for the protection of the buildings and the apartment owners.

(b) Insurance may be written in the name of the council of owners, or in the name of a person designated in the declaration or bylaws, as trustee for the apartment owners and their mortgagees. Each apartment owner and mortgagee of an apartment owner is a beneficiary of the policy, whether named as a beneficiary or not, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

(c) The acquisition of insurance by the council of owners does not prejudice the right of an apartment owner in a condominium regime to obtain insurance for the apartment owner's own benefit.

[Acts 1983, 68th Leg., p. 3622, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.206. Disposition of Insurance Proceeds

(a) Except as provided by Subsection (b), if a building in a condominium regime is damaged by a casualty against which it is insured, the proceeds of the insurance policy shall be used to reconstruct the building. The council of owners or the bylaws of the condominium regime govern the conduct of the reconstruction.

(b) If more than two-thirds of a building in a condominium regime requires reconstruction because of a casualty against which it is insured, the council of owners may elect not to reconstruct the building. Unless the council of owners unanimously agrees otherwise, the insurance proceeds shall be paid to the individual apartment owners or their mortgagees, as their interest may appear, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

[Acts 1983, 68th Leg., p. 3622, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.207. Insufficient Insurance

(a) If under Section 81.206 a damaged building in a condominium regime must be reconstructed but insurance proceeds are insufficient to pay for the cost of reconstruction, the apartment owners directly affected by the damage shall pay the difference between the cost of reconstruction and the insurance proceeds, unless the bylaws provide otherwise. Each affected apartment owner shall contribute an amount for reconstruction that is proportionate to the interest of the apartment owner in the condominium regime.

(b) If one or more but less than a majority of the affected apartment owners refuse to make a payment required under this section, after a resolution by the majority of the affected apartment owners stating the circumstances of the case and the cost of the work, the majority may repair the damage at the expense of all apartment owners benefited by the reconstruction.

(c) By a unanimous resolution subsequent to the date of a casualty, the apartment owners in a condominium regime who are concerned with the application of this section may elect to modify its effects.

[Acts 1983, 68th Leg., p. 3623, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.208. Assessments Due on Conveyance

If an apartment owner conveys the apartment and assessments against the apartment are unpaid, the apartment owner shall pay the past due assessments out of the sale price of the apartment, or the purchaser shall pay the assessments, in preference to any other charges against the property except:

- (1) assessments, liens, and charges in favor of this state or a political subdivision of this state

for taxes on the apartment that are due and unpaid; or

- (2) an obligation due under a validly recorded mortgage.

[Acts 1983, 68th Leg., p. 3623, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.209. Condominium Records

(a) The administrator or board of administration of a condominium regime or a person appointed by the bylaws of the regime shall keep a detailed written account of the receipts and expenditures related to the building and its administration that specifies the expenses incurred by the regime.

(b) The accounts and supporting vouchers of a condominium regime shall be made available to the apartment owners for examination on working days at convenient, established, and publicly announced hours.

(c) The books and records of a condominium regime must comply with good accounting procedures and must be audited at least once each year by an auditor who is not associated with the condominium regime.

[Acts 1983, 68th Leg., p. 3625, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 81.210. Loans as Eligible Investments

(a) If a fiduciary or a bank, savings and loan association, trust company, life insurance company, or other lending institution is authorized to make real estate loans, a loan on an apartment in a condominium regime and the undivided interest in the common elements of the regime that is appurtenant to the apartment is an eligible investment for the fiduciary or lending institution.

(b) A lender may not consider the existence of a prior lien for taxes, assessments, or other similar charges that are not delinquent in determining whether a mortgage or deed of trust is a first lien on the security for a loan under this section.

(c) For the purposes of this section, an apartment in a condominium regime and the undivided interest in the common elements appurtenant to the apartment are a single unit independent of the other units in the regime.

(d) This section does not affect any otherwise applicable provision of law that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

[Acts 1983, 68th Leg., p. 3625, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 82 to 90 reserved for expansion]

TITLE 8. LANDLORD AND TENANT

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS AND TENANTS

Sec.

- 91.001. Notice for Terminating Certain Tenancies.
- 91.002. Interruption of Utilities and Exclusion of Tenant.
- 91.003. Termination of Lease Because of Public Indecency Conviction.
- 91.004. Landlord's Breach of Lease; Lien.
- 91.005. Subletting Prohibited.

§ 91.001. Notice for Terminating Certain Tenancies

(a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

(c)¹ If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

(d)² Subsections (a), (b), and (c) do not apply if:

- (1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or
- (2) there is a breach of contract recognized by law.

[Acts 1983, 68th Leg., p. 3625, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ So in enrolled bill; probably should be "(d)".
² So in enrolled bill; probably should be "(e)".

§ 91.002. Interruption of Utilities and Exclusion of Tenant

(a) A landlord may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

- (1) bona fide repairs, construction, or an emergency;
- (2) removing the contents of premises abandoned by a tenant; or
- (3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.

(c) If a landlord changes the door lock of a tenant who is delinquent in paying rent, the landlord must:

- (1) place a written notice on the tenant's front door stating the name and location of the individual from whom the new key may be obtained; and
- (2) provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent.

(d) The tenant of a landlord who violates this section may:

- (1) either recover possession of the premises or terminate the lease; and
- (2) recover an amount equal to the sum of his actual damages, one month's rent, and reasonable attorney's fees, less any delinquent rents or other sums for which the tenant is liable.

(e) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

[Acts 1983, 68th Leg., p. 3626, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 91.003. Termination of Lease Because of Public Indecency Conviction

(a) A landlord may terminate a lease executed or renewed after June 15, 1981, if:

- (1) the tenant or occupant of the leasehold uses the property for an activity for which the tenant or occupant or for which an agent or employee of the tenant or occupant is convicted under Chapter 43, Penal Code, as amended; and
- (2) the convicted person has exhausted or abandoned all avenues of direct appeal from the conviction.

(b) The fee owner or an intermediate lessor terminates the lease by giving written notice of termination to the tenant or occupant within six months after the right to terminate arises under this section. The right to possess the property reverts to the landlord on the 10th day after the date the notice is given.

(c) This section applies regardless of a term of the lease to the contrary.

[Acts 1983, 68th Leg., p. 3627, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 91.004. Landlord's Breach of Lease; Lien

(a) If the landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure.

(b) To secure payment of the damages, the tenant has a lien on the landlord's nonexempt property in the tenant's possession and on the rent due to the landlord under the lease.

[Acts 1983, 68th Leg., p. 3627, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 91.005. Subletting Prohibited

During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord.

[Acts 1983, 68th Leg., p. 3627, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER A. GENERAL PROVISIONS

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- 92.001. Definitions.
- 92.002. Application.
- 92.003. Landlord's Agent for Service of Process.
- 92.004. Harassment.
- 92.005. Attorney's Fees.
- 92.006. Waiver or Expansion of Duties and Remedies.
- 92.007. Venue.

[Sections 92.008 to 92.050 reserved for expansion]

SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

- 92.051. Application.
- 92.052. Landlord's Duty to Repair or Remedy.
- 92.053. Burden of Proof.
- 92.054. Casualty Loss.
- 92.055. Closing the Rental Premises.
- 92.056. Landlord Liability and Tenant Remedies.
- 92.057. Retaliation by Landlord.
- 92.058. Retaliation by Tenant.
- 92.059. Forcible Entry and Detainer Suits.
- 92.060. Agents for Delivery of Notice.
- 92.061. Effect on Other Rights.

[Sections 92.062 to 92.100 reserved for expansion]

SUBCHAPTER C. SECURITY DEPOSITS

- 92.101. Application.
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- 92.103. Obligation to Refund.
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- 92.107. Tenant's Forwarding Address.
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[Sections 92.110 to 92.150 reserved for expansion]

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- 92.151. Definitions.
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[Sections 92.161 to 92.200 reserved for expansion]

SUBCHAPTER E. DISCLOSURE OF OWNERSHIP AND MANAGEMENT

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- 92.202. Landlord's Failure to Disclose Information.
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[Sections 92.209 to 92.250 reserved for expansion]

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- 92.251. Definition.
- 92.252. Application of Other Law; Municipal Regulation.
- 92.253. Exemptions.
- 92.254. Smoke Detector.
- 92.255. Installation and Location in New Construction.
- 92.256. Installation in Units Constructed or Occupied on or Before September 1, 1981.
- 92.257. Installation Procedure.
- 92.258. Inspection and Repair.
- 92.259. Landlord's Failure to Install, Inspect, or Repair.
- 92.260. Tenant Remedies.
- 92.261. Landlord's Defenses.
- 92.262. Agents for Delivery of Notice.

SUBCHAPTER A. GENERAL PROVISIONS

§ 92.001. Definitions

In this chapter:

(1) "Dwelling" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(2) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

(3) "Lease" means any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

(4) "Normal wear and tear" means deterioration that results from the intended use of a dwelling, including, for the purposes of Subchapter B,¹ breakage or malfunction due to age or deteriorat-

ed condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest of the tenant.

(5) "Premises" means a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

(6) "Tenant" means a person who is authorized by a lease to occupy a dwelling to the exclusion of others and, for the purposes of Subchapters D, E, and F,² who is obligated under the lease to pay rent.

[Acts 1983, 68th Leg., p. 3630, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.051 et seq.

² Sections 92.151 et seq., 92.201 et seq., and 92.251 et seq.

§ 92.002. Application

This chapter applies only to the relationship between landlords and tenants of residential rental property.

[Acts 1983, 68th Leg., p. 3631, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.003. Landlord's Agent for Service of Process

(a) In a lawsuit by a tenant under either a written or oral lease for a dwelling or in a suit to enforce a legal obligation of the owner as landlord of the dwelling, the owner's agent for service of process is determined according to this section.

(b) If written notice of the name and business street address of the company that manages the dwelling has been given to the tenant, the management company is the owner's sole agent for service of process.

(c) If Subsection (b) does not apply, the owner's management company, on-premise manager, or rent collector serving the dwelling is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant.

[Acts 1983, 68th Leg., p. 3631, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.004. Harassment

A party who files or prosecutes a suit under Subchapter B, D, E, or F¹ in bad faith or for purposes of harassment is liable to the defendant for one month's rent plus \$100 and for attorney's fees.

[Acts 1983, 68th Leg., p. 3631, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.051 et seq., 92.151 et seq., 92.201 et seq., or 92.251 et seq.

§ 92.005. Attorney's Fees

(a) A party who prevails in a suit brought under Subchapter B, D, E, or F¹ may recover the party's costs of court and reasonable attorney's fees in relation to work reasonably expended.

(b) This section does not authorize a recovery of attorney's fees in an action brought under Subchapter D, E, or F for damages that relate to or arise from property damage, personal injury, or a criminal act.

[Acts 1983, 68th Leg., p. 3631, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.051 et seq., 92.151 et seq., 92.201 et seq., or 92.251 et seq.

§ 92.006. Waiver or Expansion of Duties and Remedies

(a) A landlord's duty or a tenant's remedy under Subchapter C, D, or E¹ may not be waived. A landlord's duty to install a smoke detector under Subchapter F² may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal.

(b) The landlord's duty of inspection and repair under Subchapter F may be waived only by written agreement. The provisions of Subchapter B³ may be waived only if:

- (1) the lease is in writing;
- (2) the waiver is underlined or is in bold print in the lease or in a separate written addendum;
- (3) the waiver is specific and clearly lists the duty being waived; and
- (4) the waiver is made knowingly, voluntarily, and for consideration.

(c) The landlord's duties and the tenant's remedies under Subchapters D and E, and the landlord's duty concerning installation, inspection, or repair under Subchapter F may be enlarged only by specific written agreement.

[Acts 1983, 68th Leg., p. 3631, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.101 et seq., 92.151 et seq., 92.201 et seq.

² Section 92.251 et seq.

³ Section 92.051 et seq.

§ 92.007. Venue

Venue for an action under Subchapter D, E, or F¹ is in the county in which the dwelling is located. Venue for an action under Subchapter B² is in the county in which the premises are located.

[Acts 1983, 68th Leg., p. 3632, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.151 et seq., 92.201 et seq., or 92.251 et seq.

² Section 92.051 et seq.

[Sections 92.008 to 92.050 reserved for expansion]

SUBCHAPTER B. REPAIR OR CLOSING
OF LEASEHOLD

§ 92.051. Application

This subchapter applies to a lease executed, entered into, renewed, or extended on or after September 1, 1979.

[Acts 1983, 68th Leg., p. 3632, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.052. Landlord's Duty to Repair or Remedy

(a) A landlord shall make a diligent effort to repair or remedy a condition if:

- (1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;
- (2) the tenant is not delinquent in the payment of rent at the time notice is given; and
- (3) the condition materially affects the physical health or safety of an ordinary tenant.

(b) The landlord does not have a duty to repair or remedy a condition caused during the term of the lease, including a renewal or extension, by the tenant, a member of the tenant's family, or a guest of the tenant, unless the condition was caused by normal wear and tear.

(c) This subchapter does not require the landlord:

- (1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably available; or
- (2) to furnish security guards.

(d) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

[Acts 1983, 68th Leg., p. 3632, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.053. Burden of proof

(a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052.

(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse.

[Acts 1983, 68th Leg., p. 3633, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.054. Casualty Loss

(a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar

cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.

[Acts 1983, 68th Leg., p. 3633, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.055. Closing the Rental Premises

(a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, if any, stating that:

(1) the landlord is terminating the tenancy as soon as legally possible; and

(2) after the tenant moves out the landlord will either immediately demolish the rental unit or no longer use the unit for residential purposes.

(b) After a tenant receives the notice and moves out:

(1) the local health officer or building inspector may not allow occupancy of or utility service by separate meter to the rental unit until the officer certifies that he knows of no condition that materially affects the physical health or safety of an ordinary tenant; and

(2) the landlord may not allow reoccupancy or reconnection of utilities by separate meter within six months after the date the tenant moves out.

(c) If the landlord gives the tenant the notice closing the rental unit:

(1) before the tenant gives a repair notice to the landlord, the remedies of this subchapter do not apply;

(2) after the tenant gives a repair notice to the landlord but before the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under this section; or

(3) after the tenant gives a repair notice to the landlord and after the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subdivisions (3), (4), and (5) of Subsection (b) of Section 92.056 and under this section.

(d) If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the tenant moves out on or before the end of the rental term, the landlord must pay the tenant's actual and reasonable moving expenses, refund a pro rata portion of the tenant's rent from the date the tenant moves out, and, if otherwise required by law, return the tenant's security deposit.

(e) A landlord who violates Subsection (b) or (d) is liable to the tenant for an amount equal to the total of one month's rent plus \$100 and attorney's fees.

(f) The closing of a rental unit does not prohibit the occupancy of other apartments, nor does this subchapter prohibit occupancy of or utility service by master or individual meter to other rental units in an apartment complex that have not been closed under this section. If another provision of this subchapter conflicts with this section, this section controls.

[Acts 1983, 68th Leg., p. 3634, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.056. Landlord Liability and Tenant Remedies

(a) A landlord who has a duty to repair or remedy under Section 92.052 is liable to a tenant according to this section if:

(1) after receiving notice to repair the landlord has had a reasonable time, considering the nature of the problem and the reasonable availability of materials, labor, and utilities from a utility company, to repair or remedy the condition; and

(2) the landlord has not made a diligent effort to repair or remedy the condition before the eighth day after the tenant gives the landlord written notice that the tenant will terminate the lease or file suit under this subchapter unless the condition is repaired or remedied on or before the seventh day after the date the notice is given.

(b) The tenant of a landlord who is liable under Subsection (a) may either terminate the lease or obtain one or more of the following judicial remedies:

(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

(2) an order reducing the tenant's rent in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(3) a judgment against the landlord for one month's rent plus \$100;

(4) a judgment against the landlord for the amount of the tenant's actual damages; or

(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(c) A tenant who elects to terminate the lease is entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later, and to a refund of the tenant's security deposit as required by law, but is not entitled to a remedy provided by Subdivision (1) or (2) of Subsection (b).

(d) The county and district courts have exclusive jurisdiction of an action under Subdivision (1) or (2) of Subsection (b).

[Acts 1983, 68th Leg., p. 3635, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.057. Retaliation by Landlord

(a) If a tenant gives a landlord a notice to repair or exercises a remedy under this subchapter for the landlord's failure to repair, the landlord may not, within six months from the date the notice to repair was given, retaliate against the tenant by:

(1) filing an eviction proceeding except for the grounds stated in Subsection (c);

(2) depriving the tenant of the use of the premises except for reasons authorized by law;

(3) decreasing services to the tenant; or

(4) increasing the tenant's rent or terminating the tenant's lease.

(b) The landlord is not liable for retaliation under Subsection (a) if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.056, for:

(1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or

(2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multidwelling project.

(c) An eviction based on the following circumstances, which are valid grounds for eviction in any event, does not constitute retaliation:

(1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

(2) the tenant, a member of the tenant's family, or a guest of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

(3) the tenant has materially breached the lease other than by holding over, except as provided by this subsection;

(4) the tenant holds over after giving notice of termination or intent to vacate;

(5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the landlord does not receive actual notice from the tenant to repair until after the landlord gives notice of termination; or

(6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest of the tenant might:

(A) adversely affect the quiet enjoyment by other tenants or neighbors;

(B) materially affect the health or safety of the landlord, other tenants, or neighbors; or

(C) damage the property of the landlord, other tenants, or neighbors.

(d) The tenant of a landlord who retaliates against the tenant under this section may recover:

- (1) one month's rent plus \$100;
- (2) reasonable moving costs; and
- (3) court costs and attorney's fees.

[Acts 1983, 68th Leg., p. 3637, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.058. Retaliation by Tenant

(a) If after a landlord notifies a tenant of the penalties under this section the tenant withholds payment of any part of the rent owed the landlord in retaliation for an alleged failure by the landlord to repair or remedy a condition complained of by the tenant, the tenant is liable to the landlord for:

- (1) one month's rent plus \$100; and
- (2) attorney's fees.

(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises.

[Acts 1983, 68th Leg., p. 3638, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.059. Forcible Entry and Detainer Suits

The landlord's failure to repair or remedy a condition under Section 92.052 is not a defense in an eviction proceeding, but retaliation under Section 92.057 is a defense to eviction.

[Acts 1983, 68th Leg., p. 3638, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.060. Agents for Delivery of Notice

A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

[Acts 1983, 68th Leg., p. 3639, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.061. Effect on Other Rights

(a) The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and

duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties. However, Subchapter C¹ is cumulative of this subchapter.

(b) This subchapter does not affect a cause of action for personal injuries or property damages.

[Acts 1983, 68th Leg., p. 3639, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.101 et seq.

[Sections 92.062 to 92.100 reserved for expansion]

SUBCHAPTER C. SECURITY DEPOSITS

§ 92.101. Application

This subchapter applies to a lease executed or entered into after September 1, 1973.

[Acts 1983, 68th Leg., p. 3639, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.102. Security Deposit

A security deposit is any advance of money, other than an advance payment of rent, that is intended primarily to secure performance under a lease of a dwelling.

[Acts 1983, 68th Leg., p. 3639, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.103. Obligation to Refund

(a) Except as provided by Section 92.107, the landlord shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises.

(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord except a trustee in bankruptcy.

[Acts 1983, 68th Leg., p. 3639, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.104. Retention of Security Deposit; Accounting

(a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not

required to give the tenant a description and itemized list of deductions if:

- (1) the tenant owes rent when he surrenders possession of the premises; and
- (2) there is no controversy concerning the amount of rent owed.

[Acts 1983, 68th Leg., p. 3640, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.105. Cessation of Owner's Interest

(a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired.

(b) The person who no longer owns an interest in the rental premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

[Acts 1983, 68th Leg., p. 3640, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.106. Records

The landlord shall keep accurate records of all security deposits.

[Acts 1983, 68th Leg., p. 3641, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.107. Tenant's Forwarding Address

(a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord.

[Acts 1983, 68th Leg., p. 3641, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.108. Liability for Withholding Last Month's Rent

(a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad

faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

[Acts 1983, 68th Leg., p. 3641, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.109. Liability of Landlord

(a) A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of \$100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

- (1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and
- (2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

[Acts 1983, 68th Leg., p. 3641, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 92.110 to 92.150 reserved for expansion]

SUBCHAPTER D. SECURITY DEVICES

§ 92.151. Definitions

In this subchapter:

- (1) "Deadbolt lock" means a deadbolt lock in a door, with the lock operated from the exterior by a key and from the interior without a key by knob or lever.
- (2) "Doorknob lock" means a lock in a doorknob, with the lock operated from the exterior by a key and from the interior without a key.
- (3) "Night latch" means a door chain latch or a door lock, with the lock operated without a key and only from the interior by chain, knob, or lever.
- (4) "Pin lock" means a sliding glass door lock, with the lock operated without a key and only from the interior by inserting a pin or rod to prevent movement.

(5) "Window latch" means a lock on a window, with the lock operated without a key and only from the interior.

[Acts 1983, 68th Leg., p. 3642, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.152. Security Device

A latch or lock qualifies as a security device under this subchapter if it is acceptable to a landlord and a tenant, or if it is an operable window latch, deadbolt lock, night latch, or pin lock selected by the landlord.

[Acts 1983, 68th Leg., p. 3642, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.153. Duty to Install, Change, or Rekey

(a) The landlord shall install, change, or rekey a security device according to this subchapter after the landlord receives a request from the tenant of a dwelling. If the tenant's lease is in writing, the lease may require the request to be written.

(b) The landlord may select how and where a security device is installed in a tenant's dwelling. The landlord's obligation under Subsection (a) is limited to installing:

- (1) one window latch on each exterior window;
- (2) one pin lock on each exterior sliding glass door; and
- (3) one deadbolt lock and one night latch on each exterior door other than a sliding glass door, screen door, or garage door, but including a door between the living area and a garage.

(c) A tenant may require a security device to be changed or rekeyed an unlimited number of times.

(d) Before complying with a request to install, change, or rekey a security device, the landlord may require all the tenants of a dwelling to approve the request.

(e) The landlord must comply with the request to install, change, or rekey within a reasonable time, which is presumed to be before the 15th day after the date the request is received. The landlord may rebut the presumption by proving that despite the diligence of the landlord's representative a longer time is reasonable because:

- (1) without the fault of the landlord or his representative the landlord did not know of the tenant's request;
- (2) the landlord required a cotenant to approve the request, and the cotenant delayed approval or did not approve;
- (3) the tenant did not pay in advance charges requested by the landlord and authorized by Section 92.154;
- (4) materials, labor, or utilities were unavailable; or
- (5) the delay was caused by circumstances beyond the landlord's control, including the illness

or death of the landlord or a member of the landlord's family.

[Acts 1983, 68th Leg., p. 3642, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.154. Payment of Costs

(a) A tenant who requests the landlord to install, change, or rekey a security device under Subsection (a) of Section 92.153 must pay the total cost to the landlord for complying with the request, even though the work is performed by the landlord's employees or by an independent contractor selected by the landlord, except the landlord may not charge the tenant for any part of the cost to:

- (1) install a window latch if there has not been a window latch on the window during the tenant's occupancy;
- (2) install a deadbolt lock if there has not been either a deadbolt lock or a doorknob lock on the door during the tenant's occupancy; or
- (3) install a pin lock if there has not been a pin lock or other operable lock on the sliding glass door during the tenant's occupancy.

(b) The landlord may not charge a tenant more than the total cost for labor, materials, taxes, and extra keys. If the landlord's employees perform the work, the cost may include a reasonable charge for overhead but may not include a profit to the landlord.

(c) The landlord may require advance payment of charges authorized by this section.

[Acts 1983, 68th Leg., p. 3644, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.155. Removal of Security Device by Tenant

A security device installed, changed, or rekeyed under this subchapter becomes a fixture of the dwelling, and the tenant may not remove the security device or have it removed without the permission of the landlord. A written lease may require the landlord's permission to be in writing.

[Acts 1983, 68th Leg., p. 3644, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.156. Landlord's Failure to Comply

A landlord who does not comply with a request to install, change, or rekey a security device in the manner and within the time required by Section 92.153 is liable according to this subchapter if:

- (1) the tenant gives the landlord written notice that if the landlord does not comply with the request before the eighth day after the date the landlord receives the notice the tenant may exercise the remedies provided by this subchapter; and

(2) the landlord does not comply with the tenant's request before the eighth day after the date the tenant gave the landlord the notice.

[Acts 1983, 68th Leg., p. 3644, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.157. Tenant Remedies

The tenant of a landlord who is liable under Section 92.156 may:

- (1) if the tenant is in possession of the dwelling, obtain a court order directing the landlord to install, change, or rekey a security device as requested by the tenant under this subchapter;
- (2) obtain a judgment against the landlord for actual damages suffered by the tenant because of the landlord's violation;
- (3) obtain a judgment against the landlord for one month's rent plus \$100;
- (4) obtain a judgment against the landlord for court costs and attorney's fees; and
- (5) unilaterally terminate the lease without court proceedings.

[Acts 1983, 68th Leg., p. 3645, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.158. Landlord's Defenses

The landlord has a defense to liability under Section 92.156 if:

- (1) the tenant owes rent on the date the tenant gives a request under Subsection (a) of Section 92.153 or the notice required by Section 92.156; or
- (2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.154.

[Acts 1983, 68th Leg., p. 3645, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.159. Agents for Delivery of Notice

A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

[Acts 1983, 68th Leg., p. 3645, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.160. Effect on Other Landlord Duties and Tenant Remedies

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances relating to a residential landlord's duty to install, change, or rekey security devices at the request of a tenant. However, this subchapter does not affect a

duty of a landlord or a remedy of a tenant under Subchapter B.¹

[Acts 1983, 68th Leg., p. 3645, ch. 576, § 1, eff. Jan. 1, 1984.]

¹ Section 92.051 et seq.

[Sections 92.161 to 92.200 reserved for expansion]

SUBCHAPTER E. DISCLOSURE OF OWNERSHIP AND MANAGEMENT

§ 92.201. Disclosure of Ownership and Management

(a) A landlord shall disclose to a tenant according to this subchapter:

- (1) the name and either a street or post office box address of the holder of record title, according to the deed records in the county clerk's office, of the dwelling rented by the tenant; and
- (2) if an entity located off-site from the tenant's dwelling is primarily responsible for managing the dwelling, the name and street address of the management company.

(b) Disclosure under Subsection (a) must be made by:

- (1) giving the information in writing to the tenant on or before the seventh day after the day the landlord receives the tenant's request for the information;
- (2) continuously posting the information in a conspicuous place in the dwelling or the office of the on-site manager or on the outside of the entry door to the office of the on-site manager on or before the seventh day after the date the landlord receives the tenant's request for the information; or
- (3) including the information in a copy of the tenant's lease or in written rules given to the tenant before the tenant requests the information.

(c) Disclosure of information may be made under Subdivision (1) or (2) of Subsection (b) before the tenant requests the information.

(d) A correction to the information may be made by any of the methods authorized for providing the information.

(e) For the purposes of this section, an owner or property manager may disclose either an actual name or names or an assumed name if an assumed name certificate has been recorded with the county clerk.

[Acts 1983, 68th Leg., p. 3646, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.202. Landlord's Failure to Disclose Information

(a) A landlord is liable to a tenant according to this subchapter if:

(1) after the tenant makes a request for information under Section 92.201, the landlord does not provide the information; and

(2) the landlord does not give the information to the tenant before the eighth day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the tenant's request for the information within seven days.

(b) If the tenant's lease is in writing, the lease may require the tenant's initial request for information to be written.

[Acts 1983, 68th Leg., p. 3647, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.203. Landlord's Failure to Correct Information

A landlord who has provided information under Subdivision (2) or (3) of Subsection (b) of Section 92.201 is liable to a tenant according to this subchapter if:

(1) the information becomes incorrect because a name or address changes; and

(2) the landlord fails to correct the information on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the corrected information is not provided within seven days.

[Acts 1983, 68th Leg., p. 3647, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.204. Bad Faith Violation

A landlord acts in bad faith and is liable according to this subchapter if the landlord gives an incorrect name or address under Subsection (a) of Section 92.201 by wilfully:

(1) disclosing incorrect information under Subdivision (1) or (2) of Subsection (b) of Section 92.202; or

(2) failing to correct information given under Subdivision (1) or (2) of Subsection (b) of Section 92.201 that the landlord knows is incorrect.

[Acts 1983, 68th Leg., p. 3647, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.205. Tenant Remedies

A tenant of a landlord who is liable under Section 92.202, 92.203, or 92.204 may obtain or exercise one or more of the following remedies:

(1) a court order directing the landlord to make a disclosure required by this subchapter;

(2) a judgment against the landlord for an amount equal to the tenant's actual costs in discovering the information required to be disclosed by this subchapter;

(3) a judgment against the landlord for one month's rent plus \$100;

(4) a judgment against the landlord for court costs and attorney's fees; and

(5) unilateral termination of the lease without a court proceeding.

[Acts 1983, 68th Leg., p. 3648, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.206. Landlord's Defense

A landlord has a defense to liability under Section 92.202 or 92.203 if the tenant owes rent on the date the tenant gives a notice required by either of those sections. Rent delinquency is not a defense for a violation of Section 92.204.

[Acts 1983, 68th Leg., p. 3648, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.207. Agents for Delivery of Notice

A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

[Acts 1983, 68th Leg., p. 3648, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.208. Additional Enforcement by Local Ordinance

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of the common law, other statutory law, and local ordinances relating to the disclosure of ownership and management of a dwelling by a landlord to a tenant. However, this subchapter does not prohibit the adoption of a local ordinance that conforms to this subchapter but which contains additional enforcement provisions.

[Acts 1983, 68th Leg., p. 3648, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 92.209 to 92.250 reserved for expansion]

SUBCHAPTER F. SMOKE DETECTORS

§ 92.251. Definition

In this subchapter, "dwelling unit" means a home, mobile home, duplex unit, apartment unit, condominium unit, or any dwelling unit in a multiunit residential structure. It also means a "dwelling" as defined by Section 92.001.

[Acts 1983, 68th Leg., p. 3649, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.252. Application of Other Law; Municipal Regulation

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances re-

garding a residential landlord's duty to install, inspect, or repair a smoke detector in a dwelling unit. However, this subchapter does not:

- (1) affect a local ordinance adopted before September 1, 1981, that requires landlords to install smoke detectors in new or remodeled dwelling units before September 1, 1981, if the ordinance conforms with or is amended to conform with this subchapter;
- (2) otherwise limit or prevent adoption of a local ordinance relating to building or housing codes or prevent the adoption of a local ordinance that conforms to this subchapter but which contains additional enforcement provisions.

[Acts 1983, 68th Leg., p. 3649, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.253. Exemptions

- (a) This subchapter does not apply to:
 - (1) a dwelling unit that is occupied by its owner, no part of which is leased to a tenant;
 - (2) a dwelling unit in a building five or more stories in height in which smoke detectors are required or regulated by local ordinance; or
 - (3) a nursing or convalescent home licensed by the Texas Department of Health and certified to meet the Life Safety Code under federal law and regulations.
- (b) Notwithstanding this subchapter, a person licensed by the State Board of Insurance to install fire alarms or fire detection devices under Article 5.43-2, Insurance Code, shall comply with that article when installing smoke detectors.

[Acts 1983, 68th Leg., p. 3649, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.254. Smoke Detector

- (a) A smoke detector must be:
 - (1) designed to detect both the visible and invisible products of combustion;
 - (2) designed with an alarm audible to the bedrooms it serves;
 - (3) powered by battery, alternating current, or other power source;
 - (4) tested and listed for use as a smoke detector by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.; and
 - (5) in good working order.
- (b) The power system and installation procedure of a security device that is electrically operated rather than battery operated must comply with applicable local ordinances.

[Acts 1983, 68th Leg., p. 3650, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.255. Installation and Location in New Construction

- (a) Before the first tenant takes possession of a dwelling unit, the landlord shall install at least one smoke detector outside, but in the vicinity of, each separate bedroom in the dwelling unit, except:
 - (1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke detector must be located inside the room;
 - (2) if the bedrooms are served by the same corridor, at least one smoke detector must be installed in the corridor in the immediate vicinity of the bedrooms; and
 - (3) if at least one bedroom is located on a level above the living and cooking area, the smoke detector for the bedrooms must be placed in the center of the ceiling directly above the top of the stairway.

(b) In this section, "bedroom" means a room designed with the intent that it be used for sleeping purposes.

[Acts 1983, 68th Leg., p. 3650, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.256. Installation in Units Constructed or Occupied on or Before September 1, 1981

- (a) If the dwelling unit was occupied as a residence on or before September 1, 1981, or the building permit for the unit was issued on or before that date, the landlord shall install at least one smoke detector in accordance with Sections 92.255 and 92.257 on or before September 1, 1984.
- (b) Before September 1, 1984, a tenant may install a battery-operated smoke detector in the tenant's dwelling unit without the landlord's prior consent if the installation is made according to Sections 92.255 and 92.257. When the tenant's lease terminates, including after a renewal or extension, the tenant may remove the smoke detector, but the tenant is liable to the landlord for any unnecessary damages to the dwelling unit caused by the removal.

[Acts 1983, 68th Leg., p. 3651, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.257. Installation Procedure

- (a) Subject to Subsections (b) and (c), a smoke detector must be installed according to the manufacturer's recommended procedures.
- (b) A smoke detector must be installed on a ceiling or wall. If on a ceiling, it must be no closer than six inches to a wall. If on a wall, it must be no closer than six inches and no farther than 12 inches from the ceiling.

(c) A smoke detector may be located other than as required by Subsection (b) if a local ordinance or a local or state fire marshal approves.

[Acts 1983, 68th Leg., p. 3651, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.258. Inspection and Repair

(a) The landlord shall inspect and repair a smoke detector according to this section.

(b) The landlord shall determine that the smoke detector is in good working order by following the recommended test procedures of the manufacturer for the particular model:

(1) at the beginning of a tenant's possession if the dwelling unit contains a smoke detector; or

(2) at the time of installation if the landlord installs the smoke detector in the dwelling unit after the tenant has taken possession.

(c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke detector, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke detector be inspected or repaired. This duty does not exist with respect to damage or a malfunction caused by the tenant, the tenant's family, or the tenant's guests during the term of the lease or a renewal or extension, except that the landlord has a duty to repair or replace the smoke detector if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

(d) The landlord must comply with the tenant's request for inspection or repair within a reasonable time, considering the availability of material, labor, and utilities.

(e) The landlord has met the duty to inspect and repair if the smoke detector is in good working order after the landlord follows the recommended test procedures of the manufacturer for the particular model.

(f) The landlord is not obligated to provide batteries for a battery-operated smoke detector after a tenant takes possession if the smoke detector was in good working order at the time the tenant took possession.

[Acts 1983, 68th Leg., p. 3651, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.259. Landlord's Failure to Install, Inspect, or Repair

(a) A landlord is liable according to this subchapter if:

(1) after the tenant requested the landlord to install, inspect, or repair a smoke detector in the tenant's dwelling unit as required by this subchapter, the landlord did not install the smoke detector or inspect or repair the smoke detector within a reasonable time after the tenant's notice

of malfunction or request for repair, considering the availability of materials, labor, and utilities; and

(2) the landlord does not install, inspect, or repair the smoke detector on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the request within seven days.

(b) If the tenant's lease is in writing, the lease may require the tenant to make the initial request for installation, inspection, or repair in writing.

[Acts 1983, 68th Leg., p. 3652, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.260. Tenant Remedies

A tenant of a landlord who is liable under Section 92.259 may obtain or exercise one or more of the following remedies:

(1) a court order directing the landlord to comply with the tenant's request;

(2) a judgment against the landlord for damages suffered by the tenant because of the landlord's violation;

(3) a judgment against the landlord for one month's rent plus \$100;

(4) a judgment against the landlord for court costs and attorney's fees; and

(5) unilateral termination of the lease without a court proceeding.

[Acts 1983, 68th Leg., p. 3653, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.261. Landlord's Defenses

The landlord has a defense to liability under Section 92.259 if:

(1) on the date the tenant gives the notice required by Section 92.259 the tenant has not paid all rent due from the tenant; or

(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.258.

[Acts 1983, 68th Leg., p. 3653, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 92.262. Agents for Delivery of Notice

A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

[Acts 1983, 68th Leg., p. 3653, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 93 to 100 reserved for expansion]

TITLE 9. TRUSTS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

CHAPTER 101. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

Sec.

- 101.001. Conveyance by Trustee.
- 101.002. Payment of Money to Trustee.

§ 101.001. Conveyance by Trustee

(a) If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.

(b) Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

[Acts 1983, 68th Leg., p. 3654, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 101.002. Repealed by Acts 1983, 68th Leg., p. 3393, ch. 567, art. 2, § 9, eff. Jan. 1, 1984

[Chapters 102 to 110 reserved for expansion]

SUBTITLE B. TEXAS TRUST CODE: CREATION, OPERATION, AND TERMINATION OF TRUSTS

CHAPTER 111. GENERAL PROVISIONS

Sec.

- 111.001. Short Title.
- 111.002. Construction of Subtitle.
- 111.003. Trusts Subject to this Subtitle.
- 111.004. Definitions.
- 111.005. Reenactment of Common Law.
- 111.006. Application.

Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984, revised this Subtitle B of Title 9 as adopted by Acts 1983, 68th Leg., p. 3654, ch. 576, § 2, eff. Jan. 1, 1984.

§ 111.001. Short Title

This subtitle may be cited as the Texas Trust Code.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

Article 1 of the 1983 amendatory act enacted a Texas Trust Code to take effect only if S.B. No. 748 [ch. 576], Acts of the 68th Legislature, Regular Session, adopting the Property Code, was not

enacted or did not become law. Article 2 of the 1983 amendatory act, was to take effect only if S.B. No. 748 was enacted and became law. Article 2 did take effect upon such occurrence.

§ 111.002. Construction of Subtitle

(a) If the provisions of this subtitle and the terms of a trust conflict, the terms of the trust control except the settlor may not relieve a corporate trustee from the duties, restrictions, and liabilities under Section 113.052 or 113.053.

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

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 111.003. Trusts Subject to this Subtitle

For the purposes of this subtitle, a "trust" is an express trust only and does not include:

- (1) a resulting trust;
- (2) a constructive trust;
- (3) a business trust; or
- (4) a security instrument such as a deed of trust, mortgage, or security interest as defined by the Business & Commerce Code.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 111.004. Definitions

In this subtitle:

- (1) "Affiliate" means a person directly or indirectly controlling, controlled by, or under common control with another person, including a person with whom a trustee has an express or implied agreement regarding the direct or indirect purchase of trust investments by each from the other, except a broker or stock exchange.
- (2) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest.
- (3) "Court" means a court of appropriate jurisdiction.
- (4) "Express trust" means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.
- (5) "Income" is defined in Section 113.102.
- (6) "Interest" means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.
- (7) "Interested person" means a trustee, beneficiary, or any other person having an interest in

or a claim against the trust or any person who is affected by the administration of the trust. This meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(8) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended,¹ or any corresponding statute subsequently in effect.

(9) "Inventory value" means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.

(10) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest, including an individual or a corporation acting as a personal representative or in any other fiduciary capacity.

(11) "Principal" is defined in Section 113.102.

(12) "Property" means any type of property, whether real, tangible or intangible, legal, or equitable. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust, or other arrangement.

(13) "Relative" means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, sister, or spouse of any of them.

(14) "Settlor" means the person who creates the trust. The terms "grantor" and "trustor" mean the same as "settlor."

(15) "Terms of the trust" means the manifestation of intention of the settlor with respect to the trust expressed in a manner that admits of its proof in judicial proceedings.

(16) "Transaction" means any act performed by a settlor, trustee, or beneficiary in relation to a trust, including the creation or termination of a trust, the investment of trust property, a breach of duty, the receipt of trust property, the receipt of income or the incurring of expense, a distribution of trust property, an entry in the books and records of the trust, and an accounting by a trustee to any person entitled to receive an accounting.

(17) "Trust property" means property placed in trust by one of the methods specified in Section 112.001 or property otherwise transferred to or acquired or retained by the trustee for the trust.

(18) "Trustee" means the person holding the property in trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ 26 U.S.C.A. § 1 et seq.

§ 111.005. Reenactment of Common Law

If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is reestablished, except as the contents of the rule are changed by this subtitle.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 111.006. Application

This subtitle applies:

(1) to all trusts created on or after January 1, 1984, and to all transactions relating to such trusts; and

(2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

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- 112.054. Judicial Modification or Termination of Trusts.
- 112.055. Amendment of Charitable Trusts by Operation of Law.
- 112.056. Permissive Amendment by Trustee of Charitable Trust.

SUBCHAPTER A. CREATION

§ 112.001. **Methods of Creating Trust**

A trust may be created by:

- (1) a property owner's declaration that the owner holds the property as trustee for another person;
- (2) a property owner's inter vivos transfer of the property to another person as trustee for the transferor or a third person;
- (3) a property owner's testamentary transfer to another person as trustee for a third person;
- (4) an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person; or
- (5) a promise to another person whose rights under the promise are to be held in trust for a third person.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.002. **Intention to Create Trust**

A trust is created only if the settlor manifests an intention to create a trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.003. **Consideration**

Consideration is not required for the creation of a trust. A promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are present.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.004. **Statute of Frauds**

A trust in either real or personal property is enforceable only if there is written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent. A trust consisting of personal property, however, is enforceable if created by:

- (1) a transfer of the trust property to a trustee who is neither settlor nor beneficiary if the transferor expresses simultaneously with or prior to the transfer the intention to create a trust; or
- (2) a declaration in writing by the owner of property that the owner holds the property as

trustee for another person or for the owner and another person as a beneficiary.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.005. **Trust Property**

A trust cannot be created unless there is trust property.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.006. **Additions to Trust Property**

Property may be added to an existing trust from any source in any manner unless the addition is prohibited by the terms of the trust or the property is unacceptable to the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.007. **Capacity of Settlor**

A person has the same capacity to create a trust by declaration, inter vivos or testamentary transfer, or appointment that the person has to transfer, will, or appoint free of trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.008. **Capacity of Trustee**

(a) The trustee must have the legal capacity to take, hold, and transfer the trust property. If the trustee is a corporation, it must have the power to act as a trustee in this state.

(b) Except as provided by Section 112.034, the fact that the person named as trustee is also a beneficiary does not disqualify the person from acting as trustee if he is otherwise qualified.

(c) The settlor of a trust may be the trustee of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.009. **Acceptance by Trustee**

(a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust.

(b) A person named as trustee who does not accept the trust incurs no liability with respect to the trust.

(c) If the person named as the original trustee does not accept the trust or if the person is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust or the person selected as alternate trustee

according to a method prescribed in the terms of the trust may accept the trust. If a trustee is not named or if there is no alternate trustee designated or selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee on a petition of any interested person.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.010. Acceptance or Disclaimer by Beneficiary

(a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law.

(c) If a trust is created in any manner other than by will, a beneficiary, including a beneficiary of a spendthrift trust, who in his capacity as beneficiary has neither exercised dominion and control over the interest nor accepted any benefits from the trust, may disclaim an interest in whole or in part by:

(1) evidencing his irrevocable and unqualified refusal to accept the interest by written memorandum, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate; and

(2) delivering the memorandum to the trustee or, if there is not a trustee, to the transferor of the interest or his legal representative not later than the date that is nine months after the later of:

(A) the day on which the transfer creating the interest in the beneficiary is made;

(B) the day on which the beneficiary attains age 21; or

(C) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

(d) A disclaimer under this section is effective as of the date of the transfer of the interest involved, and the interest that is the subject of the disclaimer passes as if the person disclaiming had predeceased the transfer. A disclaimer under this section is irrevocable.

(e) Failure to comply with this section makes a disclaimer ineffective except as an assignment of the interest to those who would have received the interest being disclaimed had the person attempting the disclaimer died prior to the transferor of the interest.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 112.011 to 112.030 reserved for expansion]

SUBCHAPTER B. VALIDITY

§ 112.031. Trust Purposes

A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

V.T.C.A. Property Code, § 112.031.

§ 112.032. Active and Passive Trusts; Statute of Uses

(a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

(b) The title of a trustee in real property is not divested if the trustee's title is not merely nominal but is subject to a power or duty in relation to the property.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.033. Reservation of Interests and Powers by Settlor

If during the life of the settlor an interest in a trust or the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

(1) a beneficial life interest for himself;

(2) the power to revoke, modify, or terminate the trust in whole or in part;

(3) the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;

(4) the power to control the administration of the trust in whole or in part;

(5) the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or

(6) the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.034. Merger

(a) If a settlor transfers both the legal title and all equitable interests in property to the same per-

son or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter XI, Texas Probate Code.¹

(b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.

(c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ Probate Code, § 436 et seq.

§ 112.035. Spendthrift Trusts

(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest does not prevent his creditors from satisfying claims from his interest in the trust estate.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.036. Rule Against Perpetuities

The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all, not alter than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and as provided by Section 5.063.¹

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ So in enrolled bill; probably should read "5.043."

[Sections 112.037 to 112.050 reserved for expansion]

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS

§ 112.051. Revocation, Modification, or Amendment by Settlor

(a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

(b) The settlor may modify or amend a trust that is revocable, but the settlor may not enlarge the duties of the trustee without the trustee's express consent.

(c) If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.052. Termination

A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.053. Disposition of Trust Property on Failure of Trust

The settlor may provide in the trust instrument for disposition of the trust property in the event of failure, termination, or revocation of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.054. Judicial Modification or Termination of Trusts

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

- (1) the purpose of the trust has been fulfilled or has become illegal or impossible to fulfill; or
- (2) because of circumstances not known to or anticipated by the settlor, compliance with the

terms of the trust would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) in the manner that conforms as nearly as possible to the intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify or terminate, but the court is not precluded from exercising its discretion to modify or terminate solely because the trust is a spendthrift trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 112.055. Amendment of Charitable Trusts by Operation of Law

(a) Except as provided by Section 112.056 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, as amended,¹ a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, as amended,² or, to the extent that Section 508(e), Internal Revenue Code,³ is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, as amended,⁴ is considered to contain provisions stating that the trust:

(1) shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;⁵

(2) may not engage in an act of self-dealing that would be subject to tax under Section 4941, Internal Revenue Code;⁶

(3) may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;⁷

(4) may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code;⁸ and

(5) may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.⁹

(b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.

(c) This section applies regardless of any provision in a trust's governing instrument and regardless of any other law of this state, including the provisions of this title.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ 26 U.S.C.A. § 509.

² 26 U.S.C.A. § 4947(a)(1).

³ 26 U.S.C.A. § 508(e).

⁴ 26 U.S.C.A. § 4947(a)(2).

⁵ 26 U.S.C.A. § 4942.

⁶ 26 U.S.C.A. § 4941.

⁷ 26 U.S.C.A. § 4943.

⁸ 26 U.S.C.A. § 4944.

⁹ 26 U.S.C.A. § 4945.

§ 112.056. Permissive Amendment by Trustee of Charitable Trust

(a) If the settlor of a trust that is described under Subsection (a) of Section 112.055 of this Act is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly include or exclude the provisions required by Subsection (a) of Section 112.055 of this Act.

(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

CHAPTER 113. ADMINISTRATION

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[Sections 113.025 to 113.050 reserved for expansion]

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[Sections 113.060 to 113.080 reserved for expansion]

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[Sections 113.112 to 113.150 reserved for expansion]

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[Sections 113.153 to 113.170 reserved for expansion]

SUBCHAPTER F. COMMON TRUST FUNDS

- 113.171. Common Trust Funds.
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SUBCHAPTER A. POWERS OF TRUSTEE

§ 113.001. Limitation of Powers

A power given to a trustee by this subchapter does not apply to a trust to the extent that the instrument creating the trust, a subsequent court order, or another provision of this subtitle conflicts with or limits the power.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.002. General Powers

Except as provided by Section 113.001, a trustee may exercise any powers in addition to the powers authorized by this subchapter that are necessary or appropriate to carry out the purposes of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.003. Retention of Assets

A trustee may retain, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention,

any property that constitutes the initial trust corpus or that is added to the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.004. Additions to Trust Assets

A trustee may receive from any source additions to the assets of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.005. Acquisition of Undivided Interests

A trustee may acquire all or a portion of the remaining undivided interest in property in which the trust holds an undivided interest.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.006. General Authority to Manage and Invest Trust Property

A trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend beyond the term of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.007. Temporary Deposits of Funds

A trustee may deposit trust funds that are being held pending investment, distribution, or the payment of debts in a bank that is subject to supervision by state or federal authorities. However, a corporate trustee depositing funds with itself is subject to the requirements of Section 113.053¹ of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ So in enrolled bill; probably should read "Section 113.057".

§ 113.008. Business Entities

A trustee may invest in, continue, or participate in the operation of any business or other investment enterprise in any form, including a sole proprietorship, partnership, limited partnership, corporation, or association, and the trustee may effect any change in the organization of the business or enterprise.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.009. Real Property Management

A trustee may:

- (1) exchange, subdivide, develop, improve, or partition real property;
- (2) make or vacate public plats;
- (3) adjust boundaries;

(4) adjust differences in valuation by giving or receiving value;

(5) dedicate real property to public use or, if the trustee considers it in the best interest of the trust, dedicate easements to public use without consideration;

(6) raze existing walls or buildings;

(7) erect new party walls or buildings alone or jointly with an owner of adjacent property;

(8) make repairs; and

(9) make extraordinary alterations or additions in structures as necessary to make property more productive.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.010. Sale of Property

A trustee may contract to sell, sell and convey, or grant an option to sell real or personal property at public auction or private sale for cash or for credit or for part cash and part credit, with or without security.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.011. Leases

(a) A trustee may grant or take a lease of real or personal property for any term, with or without options to purchase and with or without covenants relating to erection of buildings or renewals, including the lease of a right or privilege above or below the surface of real property.

(b) A trustee may execute a lease containing terms or options that extend beyond the duration of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.012. Minerals

(a) A trustee may enter into mineral transactions, including:

(1) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest at any time forming a part of a trust;

(2) pooling and unitizing part or all of the land, mineral leasehold, mineral, royalty, or other interest of a trust estate with land, mineral leasehold, mineral, royalty, or other interest of one or more persons or entities for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(3) entering into contracts and agreements concerning the installation and operation of plans or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(4) conducting or contracting for the conducting of seismic evaluation operations;

(5) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(6) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests towards the drilling of wells;

(7) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(8) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;

(9) entering into farmout contracts or agreements committing a trust estate to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(10) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests; and

(11) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, whether or not the action is now or subsequently recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to a trust and receiving and receipting for the proceeds thereof on behalf of a trust.

(b) A trustee may enter into mineral transactions that extend beyond the term of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.013. Insurance

A trustee may purchase insurance of any nature, form, or amount to protect the trust property and the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.014. Payment of Taxes

A trustee may pay taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing authorities.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.015. Authority to Borrow

A trustee may borrow money from any source, including a trustee, purchase property on credit, and mortgage, pledge, or in any other manner encumber all or any part of the assets of the trust as is advisable in the judgment of the trustee for the advantageous administration of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.016. Management of Securities

A trustee may:

(1) pay calls, assessments, or other charges against or because of securities or other investments held by the trust;

(2) sell or exercise stock subscription or conversion rights;

(3) vote corporate stock, general or limited partnership interests, or other securities in person or by general or limited proxy;

(4) consent directly or through a committee or other agent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; and

(5) participate in voting trusts and deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve; sell any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights free of any restrictions upon sale otherwise contained in the trust instrument relative to the securities originally held; assent to corporate sales, leases, encumbrances, and other transactions.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.017. Corporate Stock or Other Securities Held in Name of Nominee

A trustee may:

(1) hold corporate stock or other securities in the name of a nominee;

(2) under Subchapter B, Chapter 161,¹ or other law, employ a bank incorporated in this state or a national bank located in this state as custodian of any corporate stock or other securities held in trust; and

(3) under Subchapter C, Chapter 161,² or other law, deposit or arrange for the deposit of securities with a Federal Reserve Bank or in a clearing corporation.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ Section 161.021 et seq.

² Section 161.051 et seq.

§ 113.018. Employment of Agents

A trustee may employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.019. Claims

A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.020. Burdensome or Worthless Property

A trustee may abandon property the trustee considers burdensome or worthless.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.021. Distribution to Minor or Incapacitated Beneficiary

(a) A trustee may make a distribution required or permitted to be made to any beneficiary in any of the following ways when the beneficiary is a minor or a person who in the judgment of the trustee is incapacitated by reason of legal incapacity or physical or mental illness or infirmity:

(1) to the beneficiary directly;

(2) to the guardian of the beneficiary's person or estate;

(3) by utilizing the distribution, without the interposition of a guardian, for the health, support, maintenance, or education of the beneficiary;

(4) to a custodian for the minor beneficiary under the Texas Uniform Gifts to Minors Act (Chapter 141) or a uniform gifts to minors act of another state; or

(5) by reimbursing the person who is actually taking care of the beneficiary, even though the person is not the legal guardian, for expenditures made by the person for the benefit of the beneficiary.

(b) The written receipts of persons receiving distributions under Subsection (a) of this section are full and complete acquittances to the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.022. Power to Provide Residence and Pay Funeral Expenses

A trustee of a trust that is not a charitable remainder unitrust, annuity trust, or pooled income fund that is intended to qualify for a federal tax deduction under Section 664, Internal Revenue Code,¹ may:

- (1) permit real estate held in trust to be occupied by a beneficiary who is currently eligible to receive distributions from the trust estate and who is a surviving spouse or minor child of the settlor;
- (2) if reasonably necessary for the maintenance of the beneficiary, invest trust funds in real property to be used for a home by the beneficiary; and
- (3) in the trustee's discretion, pay funeral expenses of a beneficiary who at the time of the beneficiary's death was eligible to receive distributions from the trust estate.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

¹ 26 U.S.C.A. § 664.

§ 113.023. Ancillary Trustee

(a) If trust property is situated outside this state, a Texas trustee may name in writing an individual or corporation qualified to act in the foreign jurisdiction in connection with trust property as ancillary trustee.

(b) Within the limits of the authority of the Texas trustee, the ancillary trustee has the rights, powers, discretions, and duties the Texas trustee delegates, subject to the limitations and directions of the Texas trustee specified in the instrument evidencing the appointment of the ancillary trustee.

(c) The Texas trustee may remove an ancillary trustee and appoint a successor at any time as to all or part of the trust assets.

(d) The Texas trustee may require security of the ancillary trustee, who is answerable to the Texas trustee for all trust property entrusted to or received by the ancillary trustee in connection with the administration of the trust.

(e) If the law of the foreign jurisdiction requires a certain procedure or a judicial order for the appointment of an ancillary trustee or to authorize an ancillary trustee to act, the Texas trustee and the ancillary trustee must satisfy the requirements.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.024. Implied Powers

The powers, duties, and responsibilities under this subtitle do not exclude other implied powers, duties,

or responsibilities that are not inconsistent with this subtitle.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 113.025 to 113.050 reserved for expansion]

SUBCHAPTER B. DUTIES OF TRUSTEE

§ 113.051. General Duty

The trustee shall administer the trust according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by the common law.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.052. Loan of Trust Funds to Trustee

(a) Except as provided by Subsection (b) of this section, a trustee may not lend trust funds to:

- (1) the trustee or an affiliate;
- (2) a director, officer, or employee of the trustee or an affiliate;
- (3) a relative of the trustee; or
- (4) the trustee's employer, employee, partner, or other business associate.

(b) This section does not prohibit:

- (1) a loan by a trustee to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust; or
- (2) a deposit by a corporate trustee with itself under Section 113.057 of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.053. Purchase or Sale of Trust Property by Trustee

(a) Except as provided by Subsections (b), (c), (d), and (e) a trustee shall not directly or indirectly buy or sell trust property from or to:

- (1) the trustee or an affiliate;
- (2) a director, officer, or employee of the trustee or an affiliate;
- (3) a relative of the trustee; or
- (4) the trustee's employer, partner, or other business associate.

(b) A national banking association or a state-chartered corporation with the right to exercise trust powers that is serving as executor, administrator, guardian, trustee, or receiver may sell shares of its own capital stock held by it for an estate to one or more of its officers or directors if a court:

- (1) finds that the sale is in the best interest of the estate that owns the shares;

(2) fixes or approves the sales price of the shares and the other terms of the sale; and
 (3) enters an order authorizing and directing the sale.

(c) If a corporate trustee, executor, administrator, or guardian is legally authorized to retain its own capital stock in trust, the trustee may exercise rights to purchase its own stock if increases in the stock are offered pro rata to shareholders.

(d) If the exercise of rights or the receipt of a stock dividend results in a fractional share holding and the acquisition meets the investment standard required by this subchapter, the trustee may purchase additional fractional shares to round out the holding to a full share.

(e) A trustee may:

(1) comply with the terms of a written executory contract signed by the settlor, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement; and

(2) sell the stock, bonds, obligations, or other securities of a corporation to the issuing corporation or to its corporate affiliate if the sale is made under an agreement described in Subdivision (1) or complies with the duties imposed by Section 113.056.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.054. Sales From One Trust to Another

A trustee of one trust may not sell property to another trust of which it is also trustee unless the property is:

- (1) a bond, note, bill, or other obligation issued or fully guaranteed as to principal and interest by the United States; and
- (2) sold for its current market price.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.055. Purchase of Trustee's Securities

(a) Except as provided by Subsection (b) of this section, a corporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of the trustee or an affiliate, and a non-corporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of a corporation with which the trustee is connected as director, owner, manager, or any other executive capacity.

(b) A trustee may:

- (1) retain stock already owned by the trust if the retention satisfies Section 113.056 of this Act; and

(2) exercise stock rights or purchase fractional shares under Section 113.053 of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.056. Standard for Trust Management and Investment

(a) Unless the terms of the trust instrument provide otherwise, in acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing trust property a trustee shall exercise the judgment and care under the current circumstances that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from as well as the probable increase in value and the safety of their capital.

(b) Within the limitations of Subsection (a) of this section, a trustee may acquire and retain every kind of property and every kind of investment, including bonds, debentures, and other corporate obligations, preferred or common stock, and interests in investment trusts and mutual funds, that persons of ordinary prudence, discretion, and intelligence acquire or retain for their own account.

(c) Within the limitations of Subsection (a) of this section, a trustee may indefinitely retain property acquired under this section without regard to its suitability for original purchase.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.057. Deposits by Corporate Trustee With Itself

(a) A corporate trustee may deposit trust funds with itself as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust created before January 1, 1984.

(b) A corporate trustee may deposit with itself trust funds that are being held pending investment, distribution, or payment of debts if, except as provided by Subsection (d) of this section:

- (1) it maintains under control of its trust department as security for the deposit a separate fund of securities legal for trust investments;
- (2) the total market value of the security is at all times at least equal to the amount of the deposit; and
- (3) the separate fund is marked as such.

(c) The trustee may make periodic withdrawals from or additions to the securities fund required by Subsection (b) of this section as long as the required value is maintained. Income from securities in the fund belongs to the trustee.

(d) Security for a deposit under this section is not required for a deposit under Subsection (a) or under Subsection (b) of this section to the extent the deposit is insured or otherwise secured under state or federal law.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.058. Bond

(a) A corporate trustee is not required to provide a bond to secure performance of its duties as trustee.

(b) Unless the instrument creating the trust provides otherwise, a noncorporate trustee must give bond:

(1) payable to each person interested in the trust, as their interests may appear; and

(2) conditioned on the faithful performance of the trustee's duties.

(c) The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination.

(d) Any interested person may bring an action to increase or decrease the amount of a bond or to substitute or add sureties.

(e) The trustee shall deposit the bond with the clerk of the court that issued the order requiring the bond. A suit on the bond may be maintained on a certified copy. Appropriate proof of a recovery on a bond reduces the liability of the sureties pro tanto.

(f) Failure to comply with this section does not make void or voidable or otherwise affect an act or transaction of a trustee with any third person.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.059. Power of Settlor to Alter Trustee's Responsibilities

(a) Except as provided by Subsection (b) of this section, the settlor by provision in an instrument creating, modifying, amending, or revoking the trust may relieve the trustee from a duty, liability, or restriction imposed by this subtitle.

(b) A settlor may not relieve a corporate trustee from the duties, restrictions, or liabilities of Section 113.052 or 113.053 of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 113.060 to 113.080 reserved for expansion]

SUBCHAPTER C. RESIGNATION OR REMOVAL OF TRUSTEE, AND AUTHORITY OF MULTIPLE AND SUCCESSOR TRUSTEES

§ 113.081. Resignation of Trustee

(a) A trustee may resign in accordance with the terms of the trust instrument, or a trustee may petition a court for permission to resign as trustee.

(b) The court may accept a trustee's resignation and discharge the trustee from the trust on the terms and conditions necessary to protect the rights of other interested persons.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.082. Removal of Trustee

(a) A trustee may be removed in accordance with the terms of the trust instrument, or, on the petition of an interested person and after hearing, a court may remove a trustee and deny part or all of the trustee's compensation if:

(1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust;

(2) the trustee becomes incompetent or insolvent; or

(3) in the discretion of the court, for other cause.

(b) A beneficiary, cotrustee, or successor trustee may treat a violation resulting in removal as a breach of trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.083. Appointment of Successor Trustee

(a) On the death, resignation, incapacity, or removal of a sole or surviving trustee, a successor trustee shall be selected according to the method, if any, prescribed in the trust instrument. If for any reason a successor is not selected under the terms of the trust instrument, a court may and on petition of any interested person shall appoint a successor in whom the trust shall vest.

(b) If a vacancy occurs in the number of trustees originally appointed under a valid charitable trust agreement and the trust agreement does not provide for filling the vacancy, the remaining trustees may fill the vacancy by majority vote.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.084. Powers of Successor Trustee

Unless otherwise provided in the trust instrument or by order of the court appointing a successor trustee, the successor trustee has the rights, powers, authority, discretion, and title to trust property conferred on the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.085. Exercise of Powers by Multiple Trustees

Except as otherwise provided by the trust instrument or by court order:

(1) a power vested in three or more trustees may be exercised by a majority of the trustees; and

(2) if two or more trustees are appointed by a trust instrument and one or more of the trustees die, resign, or are removed, the survivor or survivors may administer the trust and exercise the discretionary powers given to the trustees jointly.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 113.086 to 113.100 reserved for expansion]

SUBCHAPTER D. ALLOCATION OF PRINCIPAL AND INCOME

§ 113.101. Duty of Trustee as to Receipts and Expenditures

(a) A trustee shall administer the trust with due regard for the interests of income beneficiaries and remaindermen with respect to the allocation of receipts and expenditures by crediting a receipt or charging an expenditure to income or principal or partly to each:

(1) in accordance with the terms of the trust instrument;

(2) in the absence of any contrary terms of the trust instrument, in accordance with this subtitle; or

(3) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income and to principal.

(b) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference arises from the fact that the trustee makes an allocation contrary to this subtitle.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.102. Principal and Income

(a) Income is the return derived from the use of principal, including:

(1) rent on real or personal property, including sums received for cancellation or renewal of a lease;

(2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in Section 113.105 of this Act on bond premium and bond discount;

(3) corporate distributions as provided in Section 113.104 of this Act;

(4) accrued increments on bonds or other obligations issued at discount as provided in Section 113.105 of this Act;

(5) receipts from business and farming operations as provided in Section 113.106 of this Act;

(6) receipts from disposition of natural resources or timber as provided in Sections 113.107 and 113.108 of this Act;

(7) receipts from other principal subject to depletion as provided in Section 113.109 of this Act; and

(8) receipts from disposition of underproductive property as provided in Section 113.110 of this Act.

(b) Principal includes:

(1) consideration received by the trustee on the sale or other transfer of principal, repayment of the principal of a loan, or a refund, replacement, or change in the form of principal;

(2) proceeds of property taken on eminent domain proceedings;

(3) proceeds of insurance on property forming part of the principal, except proceeds of insurance upon a separate interest of an income beneficiary;

(4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 113.104 of this Act;

(5) receipts from the disposition of corporate securities as provided in Section 113.104 of this Act;

(6) royalties and other receipts from disposition of natural resources or timber as provided in Sections 113.107 and 113.108 of this Act;

(7) receipts from other principal subject to depletion as provided in Section 113.109 of this Act;

(8) profit resulting from any change in the form of principal, except as provided in Section 113.110 of this Act on underproductive property;

(9) receipts from disposition of underproductive property as provided in Section 113.110 of this Act; and

(10) allowances for depreciation established under Sections 113.106 and 113.111 of this Act.

(c) After determining income and principal in accordance with the terms of the trust instrument or this subtitle, the trustee shall charge to income or principal expenses and other charges as provided in Section 113.111 of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.103. When Right to Income Arises; Apportionment of Income

(a) An income beneficiary's right to income is determined from the date specified in the terms of a trust or, if none is specified, the date an asset becomes subject to the trust. If an asset becomes subject to a trust under a will, it becomes subject to the trust as of the date of the death of the testator, even though there is an intervening period of administration of the testator's estate. If an asset becomes subject to a trust because of the termina-

tion of or a distribution from another trust, it becomes subject to the trust as of the date of the event causing the termination or the date of distribution, whichever occurs first.

(b) Any receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date the asset became subject to the trust, except if an asset becomes subject to a trust under a will or because of the termination of or distribution from another trust:

(1) receipts due but not paid on the date of the death of the testator or on the date of the event causing the termination of or distribution from the other trust, as the case may be, are principal; and

(2) receipts in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, that are not due on the date of death of the testator or on the date of the event causing the termination of or distribution from the other trust shall be treated as accruing from day to day, and the portion of the receipt accruing before the applicable date is principal, and the balance is income.

(c) An income beneficiary whose interest is terminated or his estate is entitled to:

(1) income distributable but not distributed on the date of termination;

(2) distributable income due but not paid to the trustee on the date of termination; and

(3) income in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, and annuities, not due on the date of termination, as accrued from day to day.

(d) Corporate distributions to stockholders are to be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.104. Corporate Distributions

(a) Except as provided by Subsections (b) and (c) of this section, all corporate distributions are income, including:

(1) cash dividends;

(2) distributions of or rights to subscribe to shares, securities, or obligations of a corporation other than the distributing corporation;

(3) the proceeds from the disposition of a right or property that is income under this subsection; and

(4) the distribution chosen under an option given by the distributing corporation to receive the distribution either in cash or in its own shares.

(b) Except for the portion of a corporate distribution that the corporation indicates is a settlement of preferred or guaranteed dividends accrued since the trustee became a shareholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(1) a call of shares;

(2) a merger, consolidation, reorganization, or other plan by which assets of the distributing corporation are acquired by another corporation; or

(3) a total or partial liquidation of the corporation, including a distribution that the corporation indicates is a distribution in total or partial liquidation or a distribution of assets, other than cash, under a court decree or a final administrative order of a governmental agency.

(c) Property is principal if it is:

(1) a distribution of shares of the distributing corporation, including a distribution in the form of a stock split or stock dividend;

(2) a right of stockholders because of their stock ownership to subscribe to shares or other securities issued by the distributing corporation or the proceeds of a sale of the right; or

(3) any distribution except from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust, including a distribution from capital gains, depreciation, or depletion, regardless of whether the distribution is cash, an option to take new stock or cash, or an option to purchase additional shares.

(d) For the purpose of determining the source or character of dividends or a distribution of corporate assets under this section, the trustee may rely on a statement of the distributing corporation as to any relevant fact.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.105. Bond Premium and Discount

(a) Bonds and other obligations for the payment of money and the proceeds of their sale, redemption, or other disposition are principal. Amortization of bond premiums or accumulation for discount may be made in the trustee's discretion.

(b) The increase in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income to the beneficiary who is the income beneficiary at the time of the increase.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.106. Business and Farming Operations

(a) If a trustee uses part of the principal to continue a business of which the settlor was a sole proprietor or partner, the net profit of the business, computed in accordance with generally accepted accounting principles, is income, but a loss during an annual accounting period is chargeable against principal and may not be carried into any other annual accounting period for the purpose of calculating net income.

(b) Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.107. Natural Resources

(a) If part of the principal consists of a right to receive a royalty, overriding or limited royalty, working interest, delay rental, or other interest in minerals or other natural resources (other than timber) in, on, or under land, the proceeds of the right shall be allocated to principal and income in accordance with this section.

(b) If the proceeds are received as rent or extension payments on a lease, the proceeds are income.

(c) If the proceeds are received from a production payment, the proceeds are income to the extent of any factor for interest or its equivalent provided in the governing instrument, and the balance of the proceeds is principal.

(d) If the proceeds are received as a royalty, overriding or limited royalty, or bonus or from a working interest, net profit interest, or any other interest in minerals or other natural resources, proceeds not provided for in the preceding subsections shall be apportioned on a yearly basis in accordance with this subsection whether or not any natural resources were being taken from the land at the time the property was placed in the trust. Twenty-seven and one-half percent of the gross proceeds, but not to exceed 50 percent of the net, after deducting the expenses and carrying charges on the property, is principal, and the balance is income.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.108. Timber

If any part of the principal consists of land from which merchantable timber may be removed, the proceeds from taking the timber from the land shall be allocated in accordance with Subdivision (3) of Subsection (a) of Section 113.101 of this Act.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.109. Property Other Than Natural Resources Subject to Depletion

If part of the principal consists of property other than natural resources or timber that is depletable, such as a leasehold, patent, copyright, royalty, or right to receive payments on a contract for deferred compensation, and the trustee does not have a duty to change the form of the investment, the return from the property is income, but if the trustee has a duty under existing law or the instrument creating the trust to change the form of the investment, as soon as it may be done without sacrifice of value, the return from the property is income up to five percent a year of the inventory value of the property, and the remainder is principal.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.110. Underproductive Property

(a) Except as provided by Subsection (b) of this section, if part of the principal consists of any type of property that has been underproductive for more than one year and the trustee is required to change as soon as possible without sacrifice of value and if the change is delayed but is made before the principal is finally distributed, to the extent that the net proceeds from the sale exceed the inventory value of the property, the income beneficiary or the beneficiary's estate is entitled to a share of the net proceeds. The beneficiary's share is an amount equal to:

(1) the difference between the net proceeds and the amount which, if invested at four percent a year simple interest during the time the change was delayed, would have produced the net proceeds, less

(2) the income received by the income beneficiary from the property or the value of the income beneficiary's use of the property during the period the change was delayed.

(b) Property is underproductive if it does not produce an average annual net income, without considering depreciation or obsolescence, equal to at least one percent of its value.

(c) A change of an investment is delayed from the time a duty to make the change first arises, which is presumed in the absence of evidence to the contrary to be one year after the property becomes underproductive or one year after the trustee receives the property if it was underproductive at the time of receipt.

(d) If there are successive income beneficiaries, the delayed income shall be divided among them according to the time each was entitled to income.

(e) This section does not require a trustee to change the form of an investment, but if the trustee is otherwise required to change an investment, the trustee shall use reasonable care in determining the

necessity for and the time and manner of the change.

(f) For the purposes of this section:

(1) The "value" of property is:

(A) inventory value;

(B) if the property is part of the original principal and does not have an inventory value, market value;

(C) if the property is purchased after the principal is established and does not have an inventory value, its cost; or

(D) if the property is acquired through foreclosure of a mortgage held by the trust, the net investment in the property up to the date of resale by the trust, and not the bid price at the foreclosure sale.

(2) "Net proceeds" is gross proceeds received for the property less the sum of the expenses incurred in disposing of it and all carrying charges that were charged to principal while it was underproductive.

(3) "net investment" is all money invested and advanced.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.111. Charges Against Income and Principal

(a) The following charges shall be made against income:

(1) ordinary expenses incurred in the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance on the interests of an income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(2) a reasonable allowance for depreciation on improvements representing an addition of value to property held by the trustee as part of the principal if the improvements are subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation of the portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on the effective date of this subtitle for which the trustee is not then making an allowance for depreciation;

(3) court costs and other fees on periodic judicial accountings, unless the court directs otherwise;

(4) court costs, attorney's fees, and other fees on other accounting or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(5) all expenses reasonably incurred by the trustee for current management of principal and application of income;

(6) the portion of attorney's fees and the trustee's compensation for services in the management and administration of the trust estate, irrespective of the manner of computation, and for extraordinary and unusual services, including remuneration of the trustee for acceptance of the trust, distribution of the trust properties, termination of the trust estate, and all other fees of similar nature, as the trustee determines in its discretion to be just and equitable; and

(7) a tax levied on proceeds defined as income under this subchapter or the trust instrument that is payable by the trustee.

(b) The following charges shall be made against principal:

(1) the portion of the attorney's fees and the trustee's compensation not charged to income under Subdivision (6) of Subsection (a) of this section;

(2) expenses reasonably incurred in connection with principal and court costs primarily concerning matters of principal;

(3) charges not provided for in Subsection (a) of this section, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust, to protect the trust or the trust property, or to assure the title of trust property;

(4) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by Subdivision (2) of Subsection (a) of this section and by Section 113.106 of this Act;

(5) a tax levied on profit, gain, or other proceeds allocated to principal, notwithstanding characterization of the tax as an income tax by the taxing authority;

(6) if an estate tax, transfer tax, or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal; and

(7) regularly recurring charges payable from income to the same extent and in the same manner that income is apportioned under Section 113.103 of this Act.

(c) If charges against income are unusual in amount, the trustee may by use of reserves or other reasonable means apportion the charges over a rea-

sonable period of time and withhold from distribution sufficient amounts to regularize distributions.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 113.112 to 113.150 reserved for expansion]

SUBCHAPTER E. ACCOUNTING BY TRUSTEE

§ 113.151. Demand for Accounting

(a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement within a reasonable time after the demand is made, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust. The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.152. Contents of Accounting

A written statement of accounts shall show:

- (1) all trust property that has come to the trustee's knowledge or into the trustee's possession and that has not been previously listed or inventoried as property of the trust;
- (2) a complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately;
- (3) a listing of all property being administered, with an adequate description of each asset;

(4) the cash balance on hand and name and location of the depository where the balance is kept; and

(5) all known liabilities owed by the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 113.153 to 113.170 reserved for expansion]

SUBCHAPTER F. COMMON TRUST FUNDS

§ 113.171. Common Trust Funds

(a) A bank or trust company qualified to act as a fiduciary in this state may establish common trust funds to provide investments to itself as a fiduciary, including as a custodian under the Texas Uniform Gifts to Minors Act (Chapter 141) or a uniform gifts to minors act of another state or to itself and others as cofiduciaries.

(b) The fiduciary or cofiduciary may place investment funds in interests in common trust funds if:

- (1) the investment is not prohibited by the instrument or order creating the fiduciary relationship; and
- (2) if there are cofiduciaries, the cofiduciaries consent to the investment.

(c) A common trust fund includes a fund:

- (1) qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts; and
- (2) consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other employees' trusts that are exempt from federal income taxation.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 113.172. Affiliated Institutions

A bank or trust company that is a member of an affiliated group under Section 1504, Internal Revenue Code of 1954 (26 U.S.C. 1504), with a bank or trust company maintaining common trust funds may participate in one or more of the funds.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

CHAPTER 114. LIABILITIES, RIGHTS, AND REMEDIES OF TRUSTEES, BENEFICIARIES, AND THIRD PERSONS

SUBCHAPTER A. LIABILITY OF TRUSTEE

Sec.

- 114.001. Liability of Trustee to Beneficiary.
- 114.002. Liability of Successor Trustee for Breach of Trust by Predecessor.
- 114.003. Person Other Than Trustee in Control.
- 114.004. Actions Taken Prior to Knowledge or Notice of Facts.

Sec.

114.005. Release of Liability by Beneficiary.

114.006. Power Exercised by Majority.

[Sections 114.007 to 114.030 reserved for expansion]

SUBCHAPTER B. LIABILITY OF BENEFICIARY

114.031. Liability of Beneficiary to Trustee.

[Sections 114.032 to 114.060 reserved for expansion]

SUBCHAPTER C. RIGHTS OF TRUSTEE

114.061. Compensation.

114.062. Exoneration or Reimbursement for Tort.

114.063. General Right to Reimbursement.

[Sections 114.064 to 114.080 reserved for expansion]

SUBCHAPTER D. THIRD PERSONS

114.081. Payment of Money to Trustee.

114.082. Conveyance by Trustee.

114.083. Rights and Liabilities for Committing Torts.

114.084. Contracts of Trustee.

114.085. Partnerships.

SUBCHAPTER A. LIABILITY OF TRUSTEE

§ 114.001. Liability of Trustee to Beneficiary

(a) The trustee is accountable to a beneficiary for the trust property and, except for the trustee's compensation as provided by this chapter or by the terms of the trust instrument, for any profit made by the trustee through or arising out of the administration of the trust, even though the profit does not result from a breach of trust.

(b) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for a failure to make a profit that does not result from a failure to perform the duties set forth in Section 113.056 or for any other breach of trust.

(c) A trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust, including but not limited to:

(1) any loss or depreciation in value of the trust estate as a result of the breach of trust;

(2) any profit made by the trustee through the breach of trust; or

(3) any profit that would have accrued to the trust estate if there had been no breach of trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.002. Liability of Successor Trustee for Breach of Trust by Predecessor

A successor trustee is liable for a breach of trust of a predecessor only if he knows or should know of a situation constituting a breach of trust committed by the predecessor and the successor trustee:

(1) improperly permits it to continue;

(2) fails to make a reasonable effort to compel the predecessor trustee to deliver the trust property; or

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(3) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.003. Person Other Than Trustee in Control

If a trust instrument reserves or vests authority in any person to the exclusion of the trustee, including the settlor, an advisory or investment committee, or one or more cotrustees, to direct the making or retention of an investment or to perform any other act in the management or administration of the trust, the excluded trustee or cotrustee is not liable for a loss resulting from the exercise of the authority in regard to the investments, management, or administration of the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.004. Actions Taken Prior to Knowledge or Notice of Facts

A trustee is not liable for a mistake of fact made before the trustee has actual knowledge or receives written notice of the happening of any event that determines or affects the distribution of the income or principal of the trust, including marriage, divorce, attainment of a certain age, performance of education requirements, or death.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.005. Release of Liability by Beneficiary

(a) A beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations, except as to the duties, restrictions, and liabilities imposed on corporate trustees by Section 113.052 or 113.053 of this subtitle.

(b) The release must be in writing and delivered to the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.006. Power Exercised by Majority

(a) A trustee who does not join in exercising a power held by three or more cotrustees is not liable to a beneficiary of the trust or to others for the consequences of the exercise nor is a dissenting trustee liable for the consequences of an act in which the trustee joins at the direction of the majority trustees if the trustee expressed the dissent in writing to any of the cotrustees at or before the time of joinder.

(b) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 114.007 to 114.030 reserved for expansion]

SUBCHAPTER B. LIABILITY OF BENEFICIARY

§ 114.031. Liability of Beneficiary to Trustee

(a) A beneficiary is liable for loss to the trust if the beneficiary has:

- (1) misappropriated or otherwise wrongfully dealt with the trust property;
- (2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;
- (3) failed to repay an advance or loan of trust funds;
- (4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or
- (5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.

(b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary's interest in the trust estate, regardless of a spendthrift provision in the trust.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 114.032 to 114.060 reserved for expansion]

SUBCHAPTER C. RIGHTS OF TRUSTEE

§ 114.061. Compensation

(a) Unless the terms of the trust provide otherwise and except as provided in Subsection (b) of this section, the trustee is entitled to reasonable compensation from the trust for acting as trustee.

(b) If the trustee commits a breach of trust, the court may in its discretion deny him all or part of his compensation.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.062. Exoneration or Reimbursement for Tort

(a) Except as provided in Subsection (b) of this section, a trustee who incurs personal liability for a tort committed in the administration of the trust is entitled to exoneration from the trust property if the trustee has not paid the claim or to reimburse-

ment from the trust property if the trustee has paid the claim, if:

- (1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;
- (2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or
- (3) the tort increased the value of the trust property.

(b) A trustee who is entitled to exoneration or reimbursement under Subdivision (3) of Subsection (a) is entitled to exoneration or reimbursement only to the extent of the increase in the value of the trust property.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.063. General Right to Reimbursement

(a) A trustee may discharge or reimburse himself from trust principal or income or partly from both for:

- (1) advances made for the convenience, benefit, or protection of the trust or its property; and
- (2) expenses incurred while administering or protecting the trust or because of the trustee's holding or owning any of the trust property.

(b) The trustee has a lien against trust property to secure reimbursement under Subsection (a) of this section.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 114.064 to 114.080 reserved for expansion]

SUBCHAPTER D. THIRD PERSONS

§ 114.081. Payment of Money to Trustee

(a) A person who actually and in good faith pays to a trustee money that the trustee is authorized to receive is not responsible for the proper application of the money according to the trust.

(b) A right or title derived from the trustee in consideration of the monetary payment under Subsection (a) of this section may not be impeached or questioned because of the trustee's misapplication of the money.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.082. Conveyance by Trustee

(a) If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subse-

quent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.

(b) Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.083. Rights and Liabilities for Committing Torts

(a) A personal liability of a trustee or a predecessor trustee for a tort committed in the course of the administration of the trust may be collected from the trust property if the trustee is sued in a representative capacity and the court finds that:

(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or

(3) the tort increased the value of the trust property.

(b) A trust that is liable for the trustee's tort under Subdivision (3) of Subsection (a) is liable only to the extent of the permanent increase in value of the trust property.

(c) A plaintiff in an action against the trustee as the representative of the trust does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

(d) Subject to the rights of exoneration or reimbursement under Section 114.062, the trustee is personally liable for a tort committed by the trustee or by the trustee's agents or employees in the course of their employment.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.084. Contracts of Trustee

(a) If a trustee or a predecessor trustee makes a contract that is within his power as trustee and a cause of action arises on the contract, the plaintiff may sue the trustee in his representative capacity, and a judgment rendered in favor of the plaintiff is collectible by execution against the trust property. The plaintiff may sue the trustee individually if the trustee made the contract and the contract does not exclude the trustee's personal liability.

(b) The addition of "trustee" or "as trustee" after the signature of a trustee who is party to a contract is prima facie evidence of an intent to exclude the trustee from personal liability.

(c) In an action on a contract against a trustee in the trustee's representative capacity the plaintiff does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 114.085. Partnerships

(a) To the extent allowed by law, a trustee who takes the place of a deceased partner in a general partnership in accordance with the articles of partnership is liable to third persons only to the extent of the:

(1) deceased partner's capital in the partnership; and

(2) trust funds held by the trustee.

(b) A trustee who contracts to enter a general partnership in its capacity as trustee shall limit, to the extent allowed by law, the trust's liability to:

(1) the trust assets contributed to the partnership; and

(2) other assets of the trust under the management of the contracting trustee.

(c) If another provision of this subtitle conflicts with this section, this section controls. This section does not exonerate a trustee from liability for negligence.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS

SUBCHAPTER A. JURISDICTION AND VENUE

Sec.

115.001. Jurisdiction.

115.002. Venue

[Sections 115.003 to 115.010 reserved for expansion]

SUBCHAPTER B. PARTIES, PROCEDURE, AND JUDGMENTS

115.011. Parties.

115.012. Rules of Procedure.

115.013. Pleadings and Judgments.

115.014. Guardian Ad Litem.

115.015. Notice to Beneficiaries of Tort or Contract Proceeding.

115.016. Notice.

115.017. Waiver of Notice.

SUBCHAPTER A. JURISDICTION AND VENUE

§ 115.001. Jurisdiction

(a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings concerning trusts, including proceedings to:

(1) construe a trust instrument;

(2) determine the law applicable to a trust instrument;

(3) appoint or remove a trustee;

(4) determine the powers, responsibilities, duties, and liability of a trustee;

(5) ascertain beneficiaries;

(6) make determinations of fact affecting the administration, distribution, or duration of a trust;

(7) determine a question arising in the administration or distribution of a trust;

(8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

(9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and

(10) surcharge a trustee.

(b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

(c) Unless specifically directed by a written order of the court, a proceeding does not result in continuing supervision by the court over the administration of the trust.

(d) The jurisdiction of the district court over proceedings concerning trusts is exclusive except for jurisdiction conferred by law on a statutory probate court.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.002. **Venue.**

(a) The venue of an action under Section 115.001 of this Act is determined according to this section.

(b) If there is a single, noncorporate trustee, venue is in the county in which the trustee's residence is located.

(c) If any trustee is a corporation, venue is in the county in which the corporation's principal office is located, or, if two or more corporations are trustees of the trust, venue is in the county in which the principal office of any of the corporations is located.

(d) If there are two or more trustees, none of which is a corporation, venue is in the county in which the principal office of the trust is maintained.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Sections 115.003 to 115.010 reserved for expansion]

SUBCHAPTER B. PARTIES, PROCEDURE, AND JUDGMENTS

§ 115.011. **Parties**

(a) Any interested person may bring an action under Section 115.001 of this Act.

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001 of this Act. The only necessary parties to such an action are:

(1) a beneficiary on whose act or obligation the action is predicated;

(2) a person designated by name in the instrument creating the trust; and

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed.

(c) The attorney general shall be made a party to and given notice of any suit or judicial proceeding relating to charitable trusts to the extent and in the manner provided by Article 4412a, Revised Statutes, as amended.

(d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration or on a contract executed by the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.012. **Rules of Procedure**

Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and rules that are applicable to civil actions generally.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.013. **Pleadings and Judgments**

(a) Actions and proceedings involving trusts are governed by this section.

(b) An affected interest shall be described in pleadings that give reasonable information to an owner by name or class, by reference to the instrument creating the interest, or in other appropriate manner.

(c) A person is bound by an order binding another in the following cases:

(1) an order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power;

(2) to the extent there is no conflict of interest between them or among persons represented:

(A) an order binding a guardian of the estate or a guardian ad litem binds the ward; and

(B) an order binding a trustee binds beneficiaries of the trust in proceedings to review the acts or accounts of a prior fiduciary and in

proceedings involving creditors or other third parties;

(3) if there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend; and

(4) an unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(d) Notice under Section 115.014 of this Act shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.014. Guardian Ad Litem

(a) At any point in a proceeding a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If there is not a conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) A court shall appoint a guardian ad litem to defend an action under Section 114.083 of this Act for a beneficiary of the trust who is a minor or who has been adjudged incompetent.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.015. Notice to Beneficiaries of Tort or Contract Proceeding

(a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration unless the plaintiff proves that before the 31st day after the date the action began or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:

(1) each beneficiary known to the trustee who then had a present or contingent interest; or

(2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.

(b) The plaintiff shall give the notice required by Subsection (a) of this section by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party's last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before the 11th day after the date the plaintiff makes a written request for the information.

(c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.016. Notice

(a) If notice of hearing on a motion or other proceeding is required, the notice may be given in the manner prescribed by law or the Texas Rules of Civil Procedure, or, alternatively, notice may be given to any party or to his attorney if the party has appeared by attorney or requested that notice be sent to his attorney.

(b) If the address or identity of a party is not known and cannot be ascertained with reasonable diligence, on order of the court notice may be given by publishing a copy of the notice at least three times in a newspaper having general circulation in the county where the hearing is to be held. The first publication of the notice must be at least 10 days before the time set for the hearing. If there is no newspaper of general circulation in the county where the hearing is to be held, the publication shall be made in a newspaper of general circulation in an adjoining county.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

§ 115.017. Waiver of Notice

A person, including a guardian of the estate, a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his attorney and filed in the proceedings.

[Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.]

[Chapters 116 to 120 reversed for expansion]

SUBTITLE C. MISCELLANEOUS TRUSTS

CHAPTER 121. EMPLOYEES' TRUSTS

SUBCHAPTER A. PENSION TRUSTS

Sec.

121.001. Pension Trusts.

121.002. Employees of Controlled Corporations.

121.003. Application of Texas Trust Act.

121.004. Rule Against Perpetuities.

121.005. Accumulation of Income.

[Sections 121.006 to 121.050 reserved for expansion]

SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

Sec.

- 121.051. Definitions.
- 121.052. Payment of Death Benefit to Trustee.
- 121.053. Validity of Trust Declaration.
- 121.054. Unclaimed Benefits.
- 121.055. Exemption from Taxes and Debts.
- 121.056. Commingling of Assets.
- 121.057. Prior Designations Not Affected.
- 121.058. Construction.

SUBCHAPTER A. PENSION TRUSTS

§ 121.001. Pension Trusts

(a) For the purposes of this subchapter, a pension trust is an express trust:

- (1) containing or relating to property;
- (2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer's employees;
- (3) to which contributions are made by the employer, by some or all of the employees, or by both; and
- (4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

(b) This subchapter applies to a pension trust regardless of when the trust was created.

[Acts 1983, 68th Leg., p. 3691, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.002. Employees of Controlled Corporations

For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

[Acts 1983, 68th Leg., p. 3691, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.003. Application of Texas Trust Act

The Texas Trust Act (Chapters 111 through 115) applies to a pension trust.

[Acts 1983, 68th Leg., p. 3691, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.004. Rule Against Perpetuities

A pension trust may continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under the rule against perpetuities

or any other law restricting or limiting the duration of a trust.

[Acts 1983, 68th Leg., p. 3691, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.005. Accumulation of Income

Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust.

[Acts 1983, 68th Leg., p. 3692, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 121.006 to 121.050 reserved for expansion]

SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

§ 121.051. Definitions

(a) In this subchapter:

(1) "Death benefit" means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees' trust, a contract purchased by an employees' trust, or a retirement-annuity contract that is payable because of an employee's death to or for the benefit of the employee's beneficiary.

(2) "Employee" means a person covered by a plan containing an employees' trust, a person whose interest in an employees' trust has not been fully distributed, and a person covered by a plan containing a retirement-annuity contract.

(3) "Employees' trust" means a trust forming a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A.), and pension trusts under Subchapter A.

(4) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A.).

(5) "Trust" and "trustee" have the meanings assigned by the Texas Trust Act (Chapters 111 through 115), except that "trust" includes any trust, regardless of when it is created.

(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws.

[Acts 1983, 68th Leg., p. 3692, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.052. Payment of Death Benefit to Trustee

(a) A death benefit is payable to trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee's death, or to a trustee named or to be named as trustee of a trust

created under an employee's will, if the trustee is designated as beneficiary under the plan containing the employees' trust or under the retirement-annuity contract.

(b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.

(c) A death benefit under a will is not payable until the will is probated.

(d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee's death.

(e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:

(1) the will has been probated at the time of the employee's death; and

(2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust.

[Acts 1983, 68th Leg., p. 3693, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.053. Validity of Trust Declaration

The validity of a trust agreement or declaration is not affected by:

(1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;

(2) the employee's reservation of the right to designate another beneficiary of the death benefit; or

(3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration.

[Acts 1983, 68th Leg., p. 3693, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.054. Unclaimed Benefits

If a trustee does not claim a death benefit on or before the first anniversary of the employee's death or if satisfactory evidence is provided to a trustee or other fiduciary of the employees' trust or other obligor before the first anniversary of the employee's death that there is or will be no trustee to receive the death benefit, the death benefit shall be paid:

(1) according to the beneficiary designation under the plan containing the employees' trust or under the retirement-annuity contract; or

(2) if there is no designation in the plan or contract, to the personal representative of the deceased employee's estate.

[Acts 1983, 68th Leg., p. 3693, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.055. Exemption from Taxes and Debts

Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

(1) part of the deceased employee's estate;

(2) subject to the debts of the deceased employee or the employee's estate, or to other charges enforceable against the estate; or

(3) subject to the payment of taxes enforceable against the deceased employee's estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee.

[Acts 1983, 68th Leg., p. 3694, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.056. Commingling of Assets

A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received.

[Acts 1983, 68th Leg., p. 3694, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.057. Prior Designations Not Affected

This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit.

[Acts 1983, 68th Leg., p. 3694, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 121.058. Construction

(a) This subchapter is intended to be declaratory of the common law of this state.

(b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee's estate unless the trust receiving the benefit expressly provides otherwise.

(c) A death benefit shall not be included in property administered as part of a testator's estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust.

[Acts 1983, 68th Leg., p. 3694, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 122. CHARITABLE TRUSTS [REPEALED]

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

122.001 to 122.003. Repealed.

SUBCHAPTER B. AMENDMENT

Sec.

122.051 to 122.054. Repealed.

SUBCHAPTER A. GENERAL PROVISIONS

§§ 122.001 to 122.003. Repealed by Acts 1983, 68th Leg., p. 3393, ch. 567, art. 2, § 9, eff. Jan. 1, 1984

SUBCHAPTER B. AMENDMENT

§§ 122.051 to 122.054. Repealed by Acts 1983, 68th Leg., p. 3393, ch. 567, art. 2, § 9, eff. Jan. 1, 1984

[Chapters 123 to 140 reserved for expansion]

TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

SUBTITLE A. PERSONS UNDER DISABILITY

CHAPTER 141. GIFTS TO MINORS

Sec.

- 141.001. Short Title.
- 141.002. Definitions.
- 141.003. Gifts to Minors.
- 141.004. Manner of Making Gift.
- 141.005. Effect of Gift.
- 141.006. Duties and Powers of Custodian.
- 141.007. Custodian's Expenses, Compensation, Bond, and Liabilities.
- 141.008. Exemption of Third Persons From Liability.
- 141.009. Resignation, Death, or Removal of Custodian; Bond.
- 141.010. Successor Custodian.
- 141.011. Support of Minor.
- 141.012. Accounting.
- 141.013. Construction.
- 141.014. Property Held on August 27, 1973.

§ 141.001. Short Title

This chapter may be cited as the Texas Uniform Gifts to Minors Act.

[Acts 1983, 68th Leg., p. 3698, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.002. Definitions

In this chapter:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Bank" means a state or national bank, a state or federal savings and loan association, a federal credit union, or an insured credit union chartered under the laws of this state.
- (3) "Broker" means a person lawfully in the business of effecting transactions in securities for

the account of others. The term includes a bank that effects those transactions. It also includes a person who buys and sells securities for the person's own account, through a broker or otherwise, as part of a regular business.

(4) "Court" means a court with original probate jurisdiction.

(5) "Custodial property" includes the property given to a minor under this chapter, the income from the property, and the direct and indirect proceeds from the disposition of the property.

(6) "Custodian" means the person designated to hold property given to a minor under this chapter.

(7) "Guardian" means a general guardian, guardian, tutor, or curator of the property, estate, or person of a minor.

(8) "Issuer" means an individual, a firm, or a corporation that places its name on a security, other than as transfer agent, as evidence that the security represents a share, right of participation, or other interest in property or an enterprise or as evidence of a duty represented by the security, including a substitute for the responsibilities of the issuer.

(9) "Legal representative" means the executor, independent executor, administrator, independent administrator, general guardian, guardian, committee, conservator, tutor, or curator of a person's property or estate.

(10) "Life or endowment insurance policy" or "annuity contract" means a life or endowment insurance policy or annuity contract on the life of a minor or a member of the minor's family.

(11) "Member of a minor's family" means a minor's parent, grandparent, brother, sister, aunt, or uncle, whether by blood or adoption.

(12) "Minor" means an individual who is less than 18 years of age and who has never been married, except for an individual whose disabilities of minority have been generally removed.

(13) "Registered security" means a security that identifies the owner of the security or the rights it evidences, the transfer of which may be registered on the transfer books of the issuer.

(14) "Security" means any interest or instrument commonly known as a security, including a note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, an oil, gas, or mining title or lease, production payments under an oil, gas, or mining title or lease, as well as a certificate of interest or participation in, a temporary or interim receipt or certificate of deposit for, or a warrant or right to subscribe to or purchase a security. The term does not include an interest or instrument issued by the donor.

(15) "Transfer agent" means an individual, a firm, or a corporation that is an authenticating trustee, registrar, or other agent registering the issuance, transfer, or cancellation of securities for an issuer.

(16) "Trust company" means a bank or company authorized to exercise trust powers in this state.

[Acts 1983, 68th Leg., p. 3698, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.003. Gifts to Minors

(a) An adult may make an inter vivos gift under this chapter to an individual who is a minor on the date of the gift by beneficiary designation with a company that has issued a life or endowment insurance policy or annuity contract.

(b) An adult may make an inter vivos or a testamentary gift under this chapter to an individual who is a minor on the date of the gift if the gift is:

- (1) money;
- (2) a security;
- (3) a life or endowment insurance policy or its proceeds;
- (4) an annuity contract or its proceeds;
- (5) real property; or
- (6) tangible personal property.

(c) A legal representative of a decedent's estate who has received letters of office or a trustee of a trust on behalf of a minor who is an heir, legatee, or devisee of the decedent's estate or a beneficiary of the trust may pay or transfer to a custodian for the minor under this chapter or under a comparable Uniform Gifts to Minors Act of another jurisdiction, without a court order, property that is distributable to the minor and eligible for a gift if:

- (1) the representative or trustee considers the distribution to be in the best interest of the minor; and
- (2) the distribution is not expressly forbidden by a will, trust agreement, court order, or other instrument governing disposition of the property.

(d) A legal representative or trustee paying or transferring property under Subsection (c) shall designate an adult member of the minor's family or a guardian of the minor to serve as custodian of the property. The custodianship is governed by this chapter as though the representative or trustee were a donor. The legal representative or trustee is released from responsibility for the distributed assets on obtaining a receipt from the custodian.

(e) A gift under this chapter may not be made to more than one minor, and there may be only one custodian of the gift.

(f) A donor who makes a gift under this chapter shall promptly put the gift in the possession and

control of the custodian. The consummation of a gift under this chapter is not affected by:

- (1) the failure of the donor to deliver the gift;
- (2) the donor's designation of an ineligible person as custodian; or
- (3) refusal of the custodian to serve.

[Acts 1983, 68th Leg., p. 3700, ch. 576, § 1, eff. Jan. 1, 1984.]

141.004. Manner of Making Gift

(a) For the purpose of this chapter, gifts are made in the manner provided by this section.

(b) A donor makes a gift of a registered security by registering it in the name of the donor, another adult person, or a trust company followed, in substance, by: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(c) a donor makes a gift of an unregistered security by delivering to another adult person or to a trust company the security and a statement of gift signed by the donor and the custodian that states, in substance:

"GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian), as custodian for (name of minor), under the Texas Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered that is sufficient to identify it or them)
(signature of donor)
(name of custodian)

hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Texas Uniform Gifts to Minors Act.

Dated: _____
(signature of custodian)."

(d) A donor makes a gift of money by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult, or a bank with trust powers followed, in substance, by: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.

(e) A donor makes a gift of a life or endowment insurance policy or an annuity contract by delivering the policy or contract to the custodian after it has been assigned to the custodian, in the custodian's name, followed, in substance, by: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(f) A donor makes a gift of the proceeds of a life or endowment insurance policy or an annuity contract by making the proceeds payable to the custodian in the custodian's name, followed, in substance, by: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(g) A donor makes a gift of an interest in real property by executing and delivering the appropriate conveyance of the interest to the custodian in the custodian's name, followed, in substance, by: "as custodian for _____ (name of minor) _____ under the Texas Uniform Gifts to Minors Act."

(h) A donor makes a gift of an interest in tangible personal property by transferring the property by the appropriate document to the custodian in the custodian's name, followed, in substance, by: "as custodian for _____ (name of minor) _____ under the Texas Uniform Gifts to Minors Act."

(i) A donor makes a gift of property under a will or a trust by giving the property to an adult or to a trust company followed, in substance, by: "as custodian for _____ (name of minor) _____ under the Texas Uniform Gifts to Minors Act."

(j) If the donor of a gift under Subsection (i) does not designate a custodian or if the designated custodian dies or is unable or unwilling to serve, the personal representative or trustee shall designate a custodian from those that are eligible under this chapter to serve as successor custodian, and the representative or trustee shall transfer the gift to the custodian in the form and manner provided by this chapter. The custodian's receipt is a release and discharge for the gift.

(k) A personal representative may elect the procedures under this chapter to distribute a testamentary gift.

[Acts 1983, 68th Leg., p. 3702, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.005. Effect of Gift

(a) A gift under this chapter is irrevocable and indefeasibly vests legal title to the property in the minor, but a guardian of the minor has no right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(b) A donor who makes a gift under this chapter impliedly incorporates the provisions of this chapter in the donor's gift, trust, or will and grants to the custodian and third persons dealing with the custodian the powers, rights, and immunities provided by this chapter.

[Acts 1983, 68th Leg., p. 3704, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.006. Duties and Powers of Custodian

(a) A custodian shall collect, hold, manage, invest, and reinvest the custodial property.

(b) The custodian may pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the support, maintenance, education, and benefit of the minor:

(1) in the manner, at the time, and to the extent the custodian considers suitable and proper;

(2) without a court order;

(3) without regard to the duty or ability of the custodian or another person to support the minor;

(4) without regard to the minor's ability to provide support; and

(5) without regard to the minor's other income or property that may be applicable to or available for the minor's support.

(c) The custodian shall deliver or pay unexpended custodial property:

(1) to the minor, if the minor becomes 18 years of age or ceases to be a minor because of marriage or the general removal of disabilities of minority; or

(2) to the minor's estate, if the minor dies before becoming 18 years of age.

(d) Notwithstanding statutes restricting the investments of fiduciaries, the custodian shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of the person's capital, except that the custodian may retain, in the custodian's discretion and without liability to the minor or the minor's estate, a security given to the minor under this chapter.

(e) The custodian may dispose of custodial property in a manner, when, for the price, and on the terms the custodian considers desirable, but the custodian may only acquire as custodial property a security, money, a life or endowment insurance policy, an annuity contract, real property, or, if the custodian is a trust company, an interest in one or more common trust funds maintained by the custodian under Subchapter E, Chapter 113.¹

(f) If the issuer of a security that is custodial property is dissolved or liquidated, the custodian may receive the minor's share of any property resulting from the dissolution or liquidation and retain and manage it as custodial property, but the custodian may sell or exchange it only for property authorized to be acquired as custodial property.

(g) The custodian may vote a security, insurance policy, or annuity contract held as custodial property in person or by general or limited proxy.

(h) The custodian may consent directly or through a committee or other agent to any action by the issuer of a security held as custodial property, including the:

(1) reorganization, consolidation, merger, dissolution, or liquidation of the issuer; or

(2) sale, lease, pledge, or mortgage of property by or to the issuer.

(i) The custodian may execute and deliver any instrument the custodian considers advisable to carry out the custodian's powers.

(j) The custodian may perform the same acts regarding custodial real property as an unmarried adult or a trustee under the Texas Trust Act (Chapters 111 through 115) may perform in regard to real property.

(k) The custodian shall:

(1) register custodial securities that may be registered in the name of the custodian followed, in substance, by: "as custodian for _____ (name of minor) _____ under the Texas Uniform Gifts to Minors Act";

(2) deposit custodial money with a broker or in a bank in the name of the custodian followed, in substance, by: "as custodian for _____ (name of minor) _____ under the Texas Uniform Gifts to Minors Act"; and

(3) clearly identify other custodial property as custodial property and keep the custodial property separate from the custodian's own property.

(l) The custodian shall keep records of all transactions involving custodial property and shall allow inspection of the records at reasonable intervals by:

- (1) a parent of the minor;
- (2) a legal representative of the minor; or
- (3) the minor, if the minor is 14 years of age or older.

(m) The custodian has the same incidents of ownership concerning a life or endowment insurance policy or an annuity contract that is part of the custodial property that an owner would have, and the custodian may use custodial property to pay premiums on the policy or contract. If the policy or contract is on the life of the minor, the custodian shall designate the minor's estate as the beneficiary of the policy or contract. If the policy or contract is on the life of a person other than the minor, the custodian shall be the beneficiary as custodian for the minor.

(n) In addition to the custodian's other rights and powers under this chapter, the custodian has as a power in trust the same rights and powers regarding the custodial property as a guardian has regarding noncustodial property.

[Acts 1983, 68th Leg., p. 3704, ch. 576, § 1, eff. Jan. 1, 1984.]

¹See, now, Subchapter F, Chapter 113 (§ 113.171 et seq.).

§ 141.007. Custodian's Expenses, Compensation, Bond, and Liabilities

(a) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) The custodian may serve without compensation, or a custodian who is not the donor may receive from the custodial property a reasonable compensation for service determined, in the following order, by:

- (1) the instructions of the donor at the time the gift is made;
- (2) the statute applicable to guardians; or
- (3) a court order.

(c) Except as provided by Section 141.009, the custodian is not required to give a performance bond.

(d) A custodian that is not compensated for services is not liable for a loss to the custodial property unless the loss results from the custodian's:

- (1) bad faith;
- (2) intentional wrongdoing;
- (3) gross negligence; or
- (4) failure to maintain the standard of prudence required by this chapter in investing the custodial property.

[Acts 1983, 68th Leg., p. 3706, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.008. Exemption of Third Persons from Liability

An issuer, transfer agent, bank, broker, or other person acting on the instructions of or otherwise dealing with a person who purports to be a donor or custodian under this chapter is not responsible for:

- (1) determining if the person designated by the donor or acting as custodian has been duly designated;
- (2) determining if an act of the person, including a purchase, sale, or transfer to or by the person, is in accordance with or authorized by this chapter;
- (3) questioning the validity or propriety under this chapter of an instrument or any instructions executed or given by a person acting as donor or custodian; or
- (4) overseeing the application by a custodian of money or other property paid or delivered to the custodian.

[Acts 1983, 68th Leg., p. 3707, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.009. Resignation, Death, or Removal of Custodian; Bond

(a) A custodian, including a custodian who is the donor, may petition the court for permission to resign and for the designation of a successor custodian.

(b) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is 14 years of age or older may petition the court, for cause shown in the petition, to remove the custodian and permit the designation of a successor or alternatively to require the custodian to give a performance bond.

(c) On receiving a petition under this section, the court shall issue an order to the persons, returnable

on such notice as the court requires, to show cause why the petition should not be granted. The court may grant the relief the court considers in the best interest of the minor.

[Acts 1983, 68th Leg., p. 3708, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.010. Successor Custodian

(a) Only an adult member of the minor's family, a guardian of the minor, or a trust company is eligible to serve as successor custodian.

(b) The successor custodian has the same rights, powers, duties, and immunities as the original custodian.

(c) The successor custodian is:

(1) the person designated by the resigning custodian, other than the donor, in an instrument of resignation executed by the custodian in the presence of a subscribing witness, other than the successor, and delivered to the minor and the successor;

(2) if the custodian does not effectively designate a successor, an eligible person that is designated by the donor in a dated instrument of designation executed by the donor in the presence of a subscribing witness other than the successor;

(3) if neither the custodian nor the donor effectively designates a successor, the minor's guardian, or if there is no guardian but the minor is 14 years of age or older, the person designated by the minor in the manner prescribed for the designation of a successor;

(4) if the custodian, donor, or guardian does not effectively designate a successor and the minor is less than 14 years of age:

(A) the person designated by a parent of the minor; or

(B) if there is not a parent of the minor, the person designated by the court on the petition of an adult member of the minor's family.

(d) The designation of a successor custodian under Subsection (c) is effective as to each item of custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or the custodian's legal representative:

(1) causes a registered security, life or endowment insurance policy, annuity contract, or interest in real property to be registered in the name of or conveyed to the successor custodian as, in substance, "custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian the other custodial property, the instrument designating the successor

custodian, and any other instrument required for the transfer to the successor.

[Acts 1983, 68th Leg., p. 3708, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.011. Support of Minor

On the petition of a parent or guardian of the minor or on the petition of the minor if the minor is 14 years of age or older, the court may order the custodian to pay to or expend for the minor as much of the custodial property as is necessary for the minor's support, maintenance, or education.

[Acts 1983, 68th Leg., p. 3709, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.012. Accounting

(a) A donor, the legal representative of the donor, an adult member of the minor's family, the legal representative of the minor, or the minor if the minor is 14 years of age or older may petition the court for an accounting by the custodian or the custodian's legal representative.

(b) In a proceeding under this chapter or otherwise, the court may require or permit the custodian or the custodian's legal representative to account.

(c) If the court removes the custodian, the court shall:

(1) require an accounting;

(2) order delivery of the custodial property to the successor custodian; and

(3) order the execution of the instruments required for the transfer of the custodial property.

[Acts 1983, 68th Leg., p. 3709, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.013. Construction

This chapter is not the exclusive method for making a gift to a minor.

[Acts 1983, 68th Leg., p. 3710, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 141.014. Property Held on August 27, 1973

Text of section effective until September 1, 1995

(a) If a custodian held property under this chapter on August 27, 1973, the custodian may elect to apply this chapter with respect to the minor and the property held at that time, along with its proceeds and reinvestments, as though Chapter 626, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5923b, Vernon's Texas Civil Statutes), which lowered the age of majority from age 21 to age 18, had not been enacted.

(b) The custodian must notify the minor in writing of this election, after which the custodian shall treat any reference to the age of 18 in this chapter as a reference to the age of 21.

(c) The custodian may revoke any election made under this section.

(d) This section expires September 1, 1995.

[Acts 1983, 68th Leg., p. 3710, ch. 576, § 1, eff. Jan. 1, 1984.]

**CHAPTER 142. MANAGEMENT OF
PROPERTY RECOVERED IN SUIT
BY A NEXT FRIEND**

Sec.

- 142.001. Management by Decree.
- 142.002. Management by Bonded Manager.
- 142.003. Compensation and Duties of Managers.
- 142.004. Investment in Insured Financial Institutions.
- 142.005. Trust for Minor's Property.
- 142.006. Claims Against Property.

§ 142.001. Management by Decree

(a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, the court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or other person under the judgment in the suit.

(b) If the decree is made during vacation, it must be recorded in the minutes of the succeeding term of the court.

[Acts 1983, 68th Leg., p. 3711, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 142.002. Management by Bonded Manager

(a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, the court in which a judgment is rendered may by an order entered of record authorize the next friend or another person to take possession of money or other personal property recovered under the judgment for the minor or other person represented.

(b) The next friend or other person may not take possession of the property until he has executed a bond as principal that:

- (1) is in an amount at least double the value of the property or, if a surety on the bond is a solvent surety company authorized under the law of this state to execute the bond, is in an amount at least equal to the value of the property;
- (2) is payable to the county judge; and
- (3) is conditioned on the obligation of the next friend or other person to use the property under the direction of the court for the benefit of its owner, and to return the property, with interest or other increase, to the person entitled to receive the property when ordered by the court to do so.

[Acts 1983, 68th Leg., p. 3711, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 142.003. Compensation and Duties of Managers

(a) A person who manages property under Section 142.001 or 142.002 is entitled to receive compensation as allowed by the court.

(b) The person shall make dispositions of the property as ordered by the court and shall return the property into court on the order of the court.

[Acts 1983, 68th Leg., p. 3711, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 142.004. Investment in Insured Financial Institutions

(a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested by the next friend or the clerk of the court in:

- (1) savings accounts or certificates of a savings and loan association domiciled in this state and insured by the F.S.L.I.C.; or
- (2) interest-bearing time deposits in a bank doing business in this state and insured by the F.D.I.C.

(b) If the money invested under this section may not be withdrawn from the financial institution without an order of the court, a next friend who makes the investment is not required to execute a bond with respect to the money.

(c) When money invested under this section is withdrawn, the court may:

- (1) on a finding that the person entitled to receive the money is no longer under the disability, order the funds turned over to the person; or
- (2) order management of the funds under another provision of this chapter.

[Acts 1983, 68th Leg., p. 3712, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 142.005. Trust for Minor's Property

(a) In a suit in which a minor who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court may, on application by the next friend or the guardian ad litem and on a finding that the creation of a trust would be the best interests of the minor, enter a decree in the record directing the clerk to deliver any funds accruing to the minor under the judgment to a trust company or a state or national bank having trust powers in this state.

(b) The decree shall provide for the creation of a trust for the management of the funds for the benefit of the minor and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with the following mandatory provisions:

(1) the minor is the sole beneficiary of the trust;

(2) the trustee may disburse amounts of the trust's principal, income, or both as the trustee in his sole discretion determines to be reasonably necessary for the health, education, support, or maintenance of the beneficiary;

(3) the income of the trust not disbursed under Subdivision (2) is added to the principal of the trust;

(4) the trust terminates on the death of the beneficiary, on the beneficiary's attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first;

(5) the trustee serves without bond; and

(6) the trustee receives reasonable compensation paid from trust's income, principal, or both on application to and approval of the court.

(c) A trust established under this section may provide that:

(1) distributions of the trust principal before the termination of the trust may be made from time to time as the beneficiary attains designated ages and at designated percentages of the principal; and

(2) distributions, payments, uses, and applications of all trust funds may be made to the legal or natural guardian of the beneficiary or to the person having custody of the beneficiary or may be made directly to or expended for the benefit, support, or maintenance of the beneficiary without the intervention of any legal guardian or other legal representative of the beneficiary.

(d) A trust created under this section may be amended, modified, or revoked by the court at any time before its termination, but is not subject to revocation by the beneficiary or a guardian of the beneficiary's estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

(e) On the termination of the trust under its terms or on the death of the beneficiary, the trust principal and any undistributed income shall be paid to the beneficiary or to the representative of the estate of the deceased beneficiary.

(f) A trust established under this section prevails over any other law concerning minors or their property, and the trust continues in force and effect until terminated or revoked, notwithstanding the appointment of a guardian of the estate of the

minor or the attainment of the age of majority by the minor.

[Acts 1983, 68th Leg., p. 3712, ch. 576, § 1, eff. Jan. 1, 1984.]

Amendment by Acts 1983, 68th Leg., p. 4553, ch. 755, § 1

Section 1 of Acts 1983, 68th Leg., p. 4553, ch. 755, eff. Sept. 1, 1983 purported to amend subd. 6 of Civil Statutes, art. 1994 [now, this section] without reference to the repeal of said article by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6. As so amended, subd. 6 reads:

"If not otherwise invested in the manner provided in this article, the judge of the court in which the judgment is rendered upon application of the next friend or a duly appointed guardian ad litem for the minor or incapacitated person, or either or both of them, after hearing and upon a finding that the best interests of the minor or incapacitated person would be served thereby, may by decree entered of record direct the clerk to deliver any funds accruing under such judgment to any trust company or state or national bank in Texas having trust powers, as trustee, to be held and invested as a trust estate for the benefit of such minor or incapacitated person, under such terms and provisions of trust as may be provided by the court; provided, however, that any decree establishing such a trust estate shall contain the following trust provisions, in addition to such other terms, provisions, conditions, or limitations not inconsistent therewith as may be established by the court:

"(a) the minor or incapacitated person shall be the sole beneficiary of such trust;

"(b) the trustee shall be authorized to disburse such amounts of the corpus, income, or both, of the trust as may be reasonably necessary in the sole discretion of the trustee to provide for the health, education, support, or maintenance of the beneficiary. Any income not so distributed by the trustee shall be added to the corpus of the trust;

"(c) the trust shall provide for termination of a trust having a minor as beneficiary upon the death of the beneficiary or upon the beneficiary attaining a stated age, which shall not exceed 25 years of age. The trust shall provide for termination of a trust having an incapacitated person as a beneficiary upon the death of the beneficiary or upon the beneficiary's regaining his capacity. Upon termination, the then existing trust principal and any undistributed income shall be paid to the beneficiary or to the personal representative of the estate of a deceased beneficiary;

"(d) the trust shall provide that the trustee serve without bond and that the trustee receive reasonable compensation, to be paid out of the income or corpus of the trust, or both, upon

application and approval of the court. Any trust established by the court pursuant to this article may provide for distributions of a stated percentage of the then existing trust corpus prior to termination of the trust, as the beneficiary from time to time attains a particular stated age, and may also provide that all distributions and all uses and applications of trust funds, either income or corpus, may be made directly to or expended for the benefit of the beneficiary without the intervention of any legal guardian or other legal representative, and that the trustee may pay any income or principal distribution to or for the benefit of a beneficiary directly to such beneficiary; to the legal or natural guardian or person having custody of such beneficiary; or directly for the maintenance or support of such beneficiary. Any trust established by the court pursuant to this article shall not be subject to revocation by the beneficiary or any guardian of the beneficiary's estate, but shall remain subject to amendment, modification, or revocation by the court at any time prior to termination of the trust. If any trust established hereunder is revoked by the court prior to the beneficiary attaining the age of 18, the court may enter such further or additional orders concerning the trust corpus and any undistributed income as may be authorized by this article. If any trust established hereunder is revoked by the court after the beneficiary has attained the age of 18, after payment of all proper and necessary expenses, the trust corpus and any undistributed income shall be delivered to the beneficiary. Any trust established pursuant to this article shall take precedence over any existing law or statute concerning minors, incapacitated persons, or their property, and such trust shall continue in full force and effect until terminated or revoked notwithstanding the appointment of a guardian of the estate for such minor or incapacitated person, or because of such minor attaining his majority.

"For the purposes of this article, an 'incapacitated person' means a person who is impaired because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 142.006. Claims Against Property

If any person claims an interest in property subject to management under this chapter, the court having authority over the property may hear evidence on the interest and may order the claim or the portion of the claim found to be just to be paid to the person entitled to receive it.

[Acts 1983, 68th Leg., p. 3714, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 143 to 160 reserved for expansion]

SUBTITLE B. FIDUCIARIES

CHAPTER 161. MANAGEMENT AND CONTROL OF SECURITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 161.001. Definitions.
 - 161.002. Decree or Governing Instrument Controls.
- [Sections 161.003 to 161.020 reserved for expansion]

SUBCHAPTER B. CUSTODIAN OF SECURITIES

- 161.021. Authority of Fiduciary.
- 161.022. Separate Assets.
- 161.023. Expense of Custodianship.
- 161.024. Records.
- 161.025. Redelivery of Security Held by Nominee.
- 161.026. Disposition of Security Held by Nominee.
- 161.027. Liability.
- 161.028. Certification.

[Sections 161.029 to 161.050 reserved for expansion]

SUBCHAPTER C. DEPOSIT OF SECURITY WITH FEDERAL RESERVE BANK OR CLEARING CORPORATION

- 161.051. Application.
- 161.052. Authority of Fiduciary.
- 161.053. Bulk Holdings.
- 161.054. Records.
- 161.055. Regulation.
- 161.056. Book Transfers.
- 161.057. Liability.
- 161.058. Certification.

SUBCHAPTER A. GENERAL PROVISIONS

§ 161.001. Definitions

In this chapter:

(1) "Fiduciary" means an executor, administrator, or trustee of an express trust, including a corporation or a natural person acting as fiduciary, and a successor or substitute, whether or not designated in a trust instrument.

(2) "Clearing corporation" has the meaning assigned by Section 8.102, Business & Commerce Code, as amended.

[Acts 1983, 68th Leg., p. 3715, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.002. Decree or Governing Instrument Controls

The authority granted in this chapter is subject to contrary or limiting provisions in the instrument or court order appointing the fiduciary of the securities or in a subsequent court order.

[Acts 1983, 68th Leg., p. 3715, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 161.003 to 161.020 reserved for expansion]

SUBCHAPTER B. CUSTODIAN OF SECURITIES

§ 161.021. Authority of Fiduciary

A fiduciary who holds a security in a fiduciary capacity may:

- (1) employ a bank incorporated in this state or a national bank located in this state as custodian of the security; and
- (2) whether the fiduciary is an individual or a bank and if any individual who is a cofiduciary with the bank consents, authorize the security to be registered and held in the name of a nominee of the bank without disclosing the fiduciary relationship.

[Acts 1983, 68th Leg., p. 3716, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.022. Separate Assets

(a) A bank holding a security under this subchapter, whether in registered or bearer form, at all times shall keep the security separate from the bank's assets. The bank may:

- (1) hold separately the certificates representing securities that periodically comprise the assets of a particular fiduciary account from those of all other accounts; or
- (2) without certification as to ownership attached, hold in bulk certificates representing the same class of securities of the same issuer that periodically comprise the assets of different fiduciary accounts and, to the extent feasible, merge certificates of small denomination into one or more certificates of large denomination.

(b) A bank that holds security certificates in bulk is subject to the regulations issued by the Finance Commission of Texas if the bank is chartered by this state or by the comptroller of the currency if the bank is a national banking association.

[Acts 1983, 68th Leg., p. 3716, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.023. Expense of Custodianship

Unless the fiduciary is a corporation, the cost of employing a bank as a custodian of securities under

this subchapter is a charge against the estate or trust.

[Acts 1983, 68th Leg., p. 3716, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.024. Records

A bank holding a security under Section 161.021, whether in registered or bearer form, at all times shall keep records showing the ownership of the security.

[Acts 1983, 68th Leg., p. 3716, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.025. Redelivery of Security Held by Nominee

(a) A bank holding a security in the name of a nominee of the bank under this subchapter may not redeliver the security to the individual fiduciary who authorized its registration in the name of the nominee without registering the security in the name of the individual fiduciary, as fiduciary.

(b) A sale of the security by the bank at the direction of the individual fiduciary is not a redelivery.

[Acts 1983, 68th Leg., p. 3717, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.026. Disposition of Security Held by Nominee

A bank holding a security in the name of a nominee under this subchapter may make any disposition of the security that is authorized or ordered by a court having jurisdiction of the estate or trust.

[Acts 1983, 68th Leg., p. 3717, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.027. Liability

A bank holding a security in the name of a nominee under this subchapter is liable for a loss resulting from the acts of the bank's nominee with respect to the security.

[Acts 1983, 68th Leg., p. 3717, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.028. Certification

(a) On the demand of a fiduciary employing a bank to hold a security as custodian under this subchapter, the bank shall identify in a written certification the securities it holds for the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a bank holding a security in the name of a nominee under this subchapter, the bank shall identify in a written certification the securities it holds as fiduciary.

[Acts 1983, 68th Leg., p. 3717, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 161.029 to 161.050 reserved
for expansion]

SUBCHAPTER C. DEPOSIT OF SECURITY
WITH FEDERAL RESERVE BANK OR
CLEARING CORPORATION

§ 161.051. Application

(a) Except as provided by Subsection (b), this subchapter applies to a fiduciary holding a security in its fiduciary capacity and to a bank, trust company, or private banker holding a security as a fiduciary, custodian, custodian for a fiduciary, or managing agent, regardless of:

(1) the date of the agreement, instrument, or court order by which the fiduciary, custodian, or managing agent is appointed; and

(2) ownership by the fiduciary, custodian, or managing agent of capital stock of the clearing corporation.

(b) This subchapter does not apply to a security held by a fiduciary, bank, trust company, or private banker on behalf of a domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The board may grant approval to all domestic insurance companies generally, or to specific insurance companies on a case-by-case basis.

(c) For the purposes of this subchapter, "fiduciary" includes a state or national bank acting in a fiduciary capacity.

[Acts 1983, 68th Leg., p. 3717, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.052. Authority of Fiduciary

A fiduciary holding a security in its fiduciary capacity and a bank, trust company, or private banker holding a security as a custodian for a fiduciary, a managing agent, or a custodian may deposit or arrange for the deposit of the security with:

(1) the Federal Reserve Bank of Dallas if the United States has agreed to pay or has guaranteed payment of the security's principal and interest; or

(2) a clearing corporation, either in this state or elsewhere, regardless of whether the clearing corporation conducts or is authorized to conduct business in this state.

[Acts 1983, 68th Leg., p. 3718, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.053. Bulk Holdings

A clearing corporation may merge and hold in bulk certificates representing the same class of securities of the same issuer that are deposited with it under this subchapter, together with any other securities deposited with the clearing corporation by any person in the name of the nominee of the

clearing corporation, regardless of the ownership of the securities. Certificates of small denomination may be merged into one or more certificates of larger denomination.

[Acts 1983, 68th Leg., p. 3718, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.054. Records

A fiduciary, bank, trust company, or private banker depositing a security under this subchapter shall show in its records at all times the ownership of the securities deposited in the account.

[Acts 1983, 68th Leg., p. 3719, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.055. Regulation

A bank, trust company, or private banker depositing securities under this subchapter is subject to the regulations issued by the Finance Commission of Texas if the institution is chartered by this state or is private or by the comptroller of the currency if the institution is a national banking association.

[Acts 1983, 68th Leg., p. 3719, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.056. Book Transfers

The Federal Reserve Bank of Dallas or a clearing corporation holding securities deposited under this subchapter may transfer ownership of or other interests in the securities by making entries in the books of the bank or corporation and without physical delivery of certificates representing the securities.

[Acts 1983, 68th Leg., p. 3719, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.057. Liability

A fiduciary who deposits securities in a clearing corporation is liable to the beneficial owner of the securities for a loss resulting from the acts or omissions of the clearing corporation. This subchapter does not affect a liability between the fiduciary and the clearing corporation.

[Acts 1983, 68th Leg., p. 3719, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 161.058. Certification

(a) On the demand of a fiduciary for whom a bank, trust company, or private banker is acting as custodian, the bank, trust company, or private banker shall identify in a written certification the securities deposited by the bank, trust company, or private banker with the federal reserve bank or in the clearing corporation for the account of the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a fiduciary or by a bank, trust company, or private banker that is acting as a

fiduciary, a custodian, a custodian for a fiduciary, or a managing agent, the fiduciary, bank, trust company, or private banker shall identify in a written certification to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the federal reserve bank or the clearing corporation.

[Acts 1983, 68th Leg., p. 3719, ch. 576, § 1, eff. Jan. 1, 1984.]

CHAPTER 162. CONSTRUCTION PAYMENTS, LOAN RECEIPTS, AND MISAPPLICATION OF TRUST FUNDS

SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

Sec.

- 162.001. Construction Payments and Loan Receipts as Trust Funds.
- 162.002. Contractors as Trustees.
- 162.003. Beneficiaries of Trust Funds.
- 162.004. Application.

[Sections 162.005 to 162.030 reserved for expansion]

SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

- 162.031. Misapplication of Trust Funds.
- 162.032. Penalties.
- 162.033. Election of Offenses.

SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

§ 162.001. Construction Payments and Loan Receipts as Trust Funds

Construction payments are trust funds under this chapter if the payments are made to a contractor or subcontractor or to an officer, director, or agent of a contractor or subcontractor, under a construction contract for the improvement of specific real property in this state.

(b) Loan receipts are trust funds under this chapter if the funds are borrowed by a contractor, subcontractor, or owner or by an officer, director, or agent of a contractor, subcontractor, or owner for the purpose of improving specific real property in this state, and the loan is secured in whole or in part by a lien on the property.

[Acts 1983, 68th Leg., p. 3720, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 162.002. Contractors as Trustees

A contractor, subcontractor, or owner or an officer, director, or agent of a contractor, subcontractor, or owner, who receives trust funds or who has control or direction of trust funds, is a trustee of the trust funds.

[Acts 1983, 68th Leg., p. 3721, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 162.003. Beneficiaries of Trust Funds

An artist, laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in this state is a beneficiary of any trust funds paid or received in connection with the improvement.

[Acts 1983, 68th Leg., p. 3721, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 162.004. Application

(a) This chapter does not apply to:

- (1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) receipts under a construction contract if the full contract amount is covered by a corporate surety payment bond.

(b) The Texas Trust Act (Chapters 111 through 115) does not apply to any trust created under this chapter, nor does this chapter affect any provision of the Texas Trust Act.

[Acts 1983, 68th Leg., p. 3721, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 162.005 to 162.030 reserved for expansion]

SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

§ 162.031. Misapplication of Trust Funds

(a) Except as provided by Subsection (b), a trustee who, with intent to defraud, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

(b) A trustee may use trust funds to pay the trustee's reasonable overhead expenses that are directly related to the construction or repair of the improvement.

[Acts 1983, 68th Leg., p. 3721, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 162.032. Penalties

(a) A trustee who misapplies trust funds amounting to less than \$250 commits an offense punishable by confinement in jail for not more than two years and by a fine of not more than \$500 or by the confinement without the fine.

(b) A trustee who misapplies trust funds amounting to \$250 or more commits an offense punishable by imprisonment in the Texas Department of Corrections for not more than 10 years.

[Acts 1983, 68th Leg., p. 3722, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 162.033. Election of Offenses

If the misapplication of trust funds by a trustee constitutes another offense punishable under the laws of this state, the state may elect the offense for which it will prosecute the trustee.

[Acts 1983, 68th Leg., p. 3722, ch. 576, § 1, eff. Jan. 1, 1984.]

[Chapters 163 to 180 reserved for expansion]

SUBTITLE C. POWERS OF APPOINTMENT

CHAPTER 181. POWERS OF APPOINTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 181.001. Definitions.
- 181.002. Application.
- 181.003. Chapter Not Exclusive.
- 181.004. Construction.

[Sections 181.005 to 181.050 reserved for expansion]

SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

- 181.051. Authority of Donee to Release Power.
- 181.052. Requisites of Release.
- 181.053. Release by Guardian.
- 181.054. Effect of Release on Multiple Donees.
- 181.055. Notice of Release.
- 181.056. Recording.
- 181.057. Effect of Failure to Deliver or File.
- 181.058. Restraints on Alienation or Anticipation.

SUBCHAPTER A. GENERAL PROVISIONS

§ 181.001. Definitions

In this chapter:

(1) "Donee" means a person, whether or not a resident of this state, who, either alone or in conjunction with others, may exercise a power.

(2) "Power" means the authority to appoint or designate the recipient of property, to invade or consume property, to alter, amend, or revoke an instrument under which an estate or trust is created or held, and to terminate a right or interest under an estate or trust, and any authority remaining after a partial release of a power.

(3) "Property" means all property and interests in property, real or personal, including parts of property, partial interests, and all or any part of the income from property.

(4) "Release" means a renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release, including a covenant not to exercise all or part of a power.

[Acts 1983, 68th Leg., p. 3723, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.002. Application

(a) Except as provided by Subsection (b), this chapter applies:

(1) to a power or a release of a power, regardless of the date the power is created;

(2) to a vested, contingent, or conditional power; and

(3) to a power classified as a power in gross, a power appurtenant, a power appendant, a collateral power, a general, limited, or special power, an exclusive or nonexclusive power, or any other power.

(b) This chapter applies regardless of the time or manner a power is created or reserved or the release is made and regardless of the time, manner, or in whose favor a power may be exercised.

(c) This chapter does not apply to a power in trust that is imperative.

[Acts 1983, 68th Leg., p. 3723, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.003. Chapter Not Exclusive

The provisions of this chapter concerning the release of a power are not exclusive.

[Acts 1983, 68th Leg., p. 3724, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.004. Construction

This chapter is intended to be declarative of the common law of this state, and it shall be liberally construed to make all powers, except imperative powers in trust, releasable unless the instrument creating the trust expressly provides otherwise.

[Acts 1983, 68th Leg., p. 3724, ch. 576, § 1, eff. Jan. 1, 1984.]

[Sections 181.005 to 181.050 reserved for expansion]

SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

§ 181.051. Authority of Donee to Release Power

Unless the instrument creating the power specifically provides to the contrary, a donee may at any time:

(1) completely release the power;

(2) release the power as to any property subject to the power;

(3) release the power as to a person in whose favor a power may be exercised; or

(4) limit in any respect the extent to which the power may be exercised.

[Acts 1983, 68th Leg., p. 3724, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.052. Requisites of Release

(a) A partial or complete release of a power, with or without consideration, is valid if the donee executes and acknowledges, in the manner required by law for the execution and recordation of deeds, an instrument evidencing an intent to make the release, and the instrument is delivered:

- (1) to the person or in the manner specified in the instrument creating the power;
- (2) to an adult, other than the donee releasing the power, who may take any of the property subject to the power if the power is not exercised or in whose favor it may be exercised after the partial release;
- (3) to a trustee or cotrustee of the property subject to the power; or
- (4) to an appropriate county clerk for recording.

(b) An instrument releasing a power may be recorded in a county in this state in which:

- (1) property subject to the power is located;
- (2) a donee in control of the property resides;
- (3) a trustee in control of the property resides;
- (4) a corporate trustee in control of the property has its principal office; or
- (5) the instrument creating the power is probated or recorded.

[Acts 1983, 68th Leg., p. 3724, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.053. Release by Guardian

If a person under a disability holds a power, the guardian of the person's estate may release the power in the manner provided in this chapter on the order of the court in this state in which the guardian was appointed or in which the guardianship proceeding is pending.

[Acts 1983, 68th Leg., p. 3725, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.054. Effect of Release on Multiple Donees

Unless the instrument creating a power provides otherwise, the complete or partial release by one or more donees of a power that may be exercised by two or more donees, either as an individual or a fiduciary, together or successively, does not prevent or limit the exercise or participation in the exercise of the power by the other donee or donees.

[Acts 1983, 68th Leg., p. 3725, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.055. Notice of Release

(a) A fiduciary or other person in possession or control of property subject to a power, other than the donee, does not have notice of a release of the power until the original release or a copy is delivered to the fiduciary or other person.

(b) A purchaser, lessee, or mortgagee of real property subject to a power who has paid a valuable consideration and who is without actual notice does not have notice of a release of the power until the instrument releasing the power is filed for record with the county clerk of the county in which the real property is located.

[Acts 1983, 68th Leg., p. 3725, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.056. Recording

(a) A county clerk shall record a release of a power in the county deed records, and the clerk shall index the release, with the name of the donee entered in the grantor index.

(b) The county clerk shall charge the same fee for recording the release of a power as the clerk is authorized to charge for recording a deed.

[Acts 1983, 68th Leg., p. 3726, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.057. Effect of Failure to Deliver or File

Failure to deliver or file an instrument releasing a power under Sections 181.052 and 181.055 does not affect the validity of the release as to the donee, the person in whose favor the power may be exercised, or any other person except those expressly protected by Sections 181.052 and 181.055.

[Acts 1983, 68th Leg., p. 3726, ch. 576, § 1, eff. Jan. 1, 1984.]

§ 181.058. Restraints on Alienation or Anticipation

The release of a power that otherwise may be released is not prevented merely by provisions of the instrument creating the power that restrain alienation or anticipation.

[Acts 1983, 68th Leg., p. 3726, ch. 576, § 1, eff. Jan. 1, 1984.]

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