The Connecticut Bar Foundation
James W. Cooper Fellows
and
The Quinnipiac Probate Law Journal

present

“Exploring Unsupervised Probate”

Friday, April 20, 2018
Quinnipiac School of Law

PROGRAM

8:30 a.m. - 9:00 a.m. Registration and Continental Breakfast

9:00 a.m. - 9:15 a.m. Welcome and Opening Remarks
Dean Jennifer G. Brown, Quinnipiac School of Law
President-Elect Andrea Barton Reeves, Connecticut Bar Foundation; HARC
Professor Jeffrey A. Cooper, Quinnipiac School of Law

9:15 a.m. - 10:15 a.m. Introduction to the Uniform Probate Code and the Probate Process in Georgia
Professor Jeffrey A. Cooper, Quinnipiac School of Law
Professor Mary F. Radford, Georgia State University College of Law

10:15 a.m. - 10:30 a.m. Break

10:30 a.m. - 11:30 a.m. Estate Administration and Probate – Texas Style
Professor Gerry W. Beyer, Texas Tech University School of Law

11:30 a.m. - 12:15 p.m. Before and After Unsupervised Probate – The Massachusetts Experience
Attorney Michele J. Feinstein, Shatz, Schwartz & Fentin, P.C., Springfield, MA

12:15 p.m. - 1:00 p.m. Lunch
1:00 p.m. - 2:30 p.m. **Panel Discussion – Should Connecticut Consider an Unsupervised Probate Option?**

**Moderator**
Hon. Paul J. Knierim, Probate Court Administrator

**Panelists**
Attorney Christopher J. Hug, Robinson & Cole, LLP
Hon. Robert K. Killian, Jr., Killian & Donohue LLC
Attorney Peter T. Mott, Brody Wilkinson PC
Attorney Paul M. Smith, Borner Fraser Aleman
Hon. Beverly K. Streit-Kefalas, Milford-Orange Probate Court
Attorney Suzanne Brown Walsh, Murtha Cullina LLP
Hon. Philip A. Wright, Jr., Wallingford Probate Court

Attorneys admitted in Connecticut may claim up to 4.5 CT CLE hours for attending (4.0 Professional Practice, 0.5 Ethics).

**Symposium Planning Committee**
Professor Jeffrey A. Cooper
Attorney Paul A. Hudon
Hon. Robert K. Killian, Jr.
Hon. Paul J. Knierim
Professor William DeVane Logue
Attorney Richard A. Marone
Attorney Peter T. Mott
Attorney Amy E. Todisco
Hon. Philip A. Wright, Jr.

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Anne Goico, Finance Director
Katilyn Carling, Administrative Assistant
Gina Casella, Assistant
Jeffrey A. Cooper is a Carmen Tortora Professor of Law and Associate Dean for Research and Faculty Development at Quinnipiac University School of Law, where he teaches coursework related to estate planning, wills and trusts, and related areas of taxation. He also has taught related courses at the University of Connecticut and Yale Law School.

Professor Cooper received his A.B. in Government, magna cum laude, from Harvard College, his J.D. from Yale Law School and an LL.M. in Taxation from New York University School of Law. He is completing work toward his PhD in law at Leiden University.

A frequent lecturer, Professor Cooper has authored numerous articles on various topics relating to estate planning, probate and taxation. His articles have been published in Law Journals across the country, excerpted in prominent casebooks and treatises, and reprinted both in the U.S. and abroad. He is an Academic Fellow of the American College of Trust and Estate Counsel (ACTEC) and has been named as one of Quinnipiac University’s Faculty Scholars.

In addition to his scholarly achievements, Professor Cooper has extensive practical experience, including over a decade practicing law as a partner of a major law firm and serving as a senior officer of the United States Trust Company. Professor Cooper has been a member of the Connecticut, New York, and Massachusetts bars, and is admitted to practice before the United States Tax Court and the Internal Revenue Service. He also serves as a Special Counsel to the law firm of Shipman & Goodwin LLP. He is a Connecticut Bar Foundation James W. Cooper Fellow.

Professor Cooper is a resident of Greenwich, CT, where he has served as an elected member of the Representative Town Meeting, a Justice of the Peace and a Director of several non-profits. He is married with three children.
Professor Mary F. Radford is the Marjorie Fine Knowles Professor of Law at the Georgia State University College of Law in Atlanta, Georgia. Her teaching areas include Wills, Trusts & Estates, Estate Planning, and Elder Law. Professor Radford is an Academic Fellow of the American College of Trust & Estate Counsel (ACTEC) and, in 2011-12, she served as that organization’s President. Professor Radford served as the Reporter and principal drafter for the State Bar of Georgia committees that drafted the 1998 Revised Georgia Probate Code, the 2005 Revised Georgia Guardianship and Conservatorship Code, and the 2010 Revised Georgia Trust Code. Professor Radford is the author of *Redfearn: Wills & Administration in Georgia* (Thomson Reuters, 2017-18); *Trusts & Trustees in Georgia* (Thomson Reuters, 2017-18 ed.); and *Georgia Guardianship and Conservatorship* (Thomson Reuters, 2017-18 ed.), as well as numerous law review articles and other scholarly publications.
Gerry W. Beyer joined the faculty of the Texas Tech University School of Law in June 2005 as the first holder of the Governor Preston E. Smith Regents Professorship. Previously, Professor Beyer taught at St. Mary’s University and has served as a visiting professor at several other law schools including Boston College, Ohio State University, Southern Methodist University, the University of New Mexico, Santa Clara University, and La Trobe University (Australia). He is the recipient of dozens of outstanding and distinguished faculty awards including the Chancellor’s Distinguished Teaching Award, the most prestigious university-wide teaching award at Texas Tech.

As a state and nationally recognized expert in estate planning, Professor Beyer is a highly sought after lecturer. He presents dozens of continuing legal education presentations each year for many state and local bar associations, universities, and civic groups.

Professor Beyer is the editor of the most popular estate planning blawg in the nation and has authored and co-authored numerous books and articles focusing on various aspects of estate planning, including a two volume treatise on Texas wills law, an estate planning casebook, and the Wills, Trusts, and Estates volume of the Examples & Explanations series. He has twice won awards from the American Bar Association’s Probate & Property magazine for his writing and is one of the most often downloaded law authors on the Social Science Research Network.

Professor Beyer serves as a mentor to many students and various law school organizations as well participating regularly in pro bono activities. He is the advisor for the Estate Planning and Community Property Law Journal and its annual seminar.

Professor Beyer received his J.D. from the Ohio State University summa cum laude and his LL.M. and J.S.D. degrees from the University of Illinois. He is a member of the Order of the Coif, an Academic Fellow of the American College of Trust and Estate Counsel, and a member of the American Law Institute.
Michele J. Feinstein is a shareholder in Shatz, Schwartz and Fentin, P.C. where she practices in the areas of estate planning, including probate and the administration of estates, estate litigation and elder law as well as corporate and business planning, including all aspects of planning for the succession of business interests, and representation of physicians in their individual and group practices.

Previously a principal at Cohen, Rosenthal P.C., Attorney Feinstein received her Bachelors of Science degree *summa cum laude* from Boston University, her Juris Doctor degree *cum laude* from Western New England College School of Law, where she was a member of the Law Review, and received her Master of Law degree (LLM) in Taxation from Boston University.

Attorney Feinstein is a Senior Adjunct Professor of Law at Western New England University in the LLM Program for Elder Law and Estate Planning where she teaches Fiduciary Administration. She has been repeatedly named a Best Lawyer in America, Massachusetts Superlawyer, New England Superlawyer, and Top Women Attorneys in Massachusetts and was awarded the distinction of Top Women of the Law 2014, 2015 by Massachusetts Lawyer's Weekly.
Paul J. Knierim was appointed Probate Court Administrator in 2008, after 10 years of service as judge of the Simsbury Probate Court. He previously served three terms in the General Assembly and practiced law in the estate planning field. He was a partner in the office of Drew, Mersereau & Knierim and later at Cummings & Lockwood. Before entering private practice, he was law clerk to Chief Justice Ellen A. Peters. Paul is a graduate of Williams College and Yale Law School. Also, Judge Knierim is a Connecticut Bar Foundation James W. Cooper Fellow.
Chris Hug is a partner with the law firm of Robinson & Cole LLP, Hartford, Connecticut. His practice focuses exclusively on dispute resolution, including through arbitration, mediation, and when necessary, through litigation. He handles a range of disputes, with a focus on those relating to trust and probate, construction, commercial lending, commercial contract, municipal contracting, and insurance contexts. Mr. Hug has nearly three decades of experience as a trial lawyer, and he practices in both Connecticut federal and state courts as well as in the Southern District of New York.

In particular, Mr. Hug has an active probate litigation caseload. He represents institutions and individuals in a fiduciary capacity, healthcare providers, charities, and various beneficiaries in a variety of litigation in the probate courts and other courts in the state of Connecticut. This includes, for example, cases involving will contests, instrument interpretation disputes, breach of fiduciary duties, accounting disputes, conservatorship appointments, and commitment hearings.

Mr. Hug participated as a member of the Connecticut Probate Practice Book Advisory Committee and assisted in drafting the Rules of Practice for Connecticut Probate Courts, effective July 1, 2013. He frequently appears as a faculty member describing and explaining various aspects of probate law to the Connecticut Probate Judges and the Connecticut Bar industry groups. Mr. Hug has taught fiduciary administration as a Senior Adjunct Professor of Law at Western New England University School of Law since 2007.

Mr. Hug earned his law degree from Western New England College School of Law in 1989 and his undergraduate degree from Brown University in 1981.
ATTORNEY ROBERT K. KILLIAN, JR.
Killian & Donohue LLC
363 Main Street
Hartford, CT 06106
860-560-1977
bob@kdjlaw.com

CURRENT EMPLOYMENT

Killian & Donohue, LLC
Managing Member
Attorney, Mediator, Retired Judge

WORK HISTORY


EXPERIENCE

As a lawyer, represented Connecticut Natural Gas, Aetna Life and Casualty, Northeast Utilities, E.F. Hutton, the Connecticut State Dental Association and many of its members, the Connecticut Waste Hauler’s association and several of its component members, Pequot Spring Beverages, G.E. Power Systems, the Hartford Steam Company, Capitol District Energy Systems, the Treasurer of the State of Connecticut (adv. The FDIC), the Simsbury Water Company, Rose Hill Funeral Home, Rose Hill Memorial Park and Connecticut Direct Cremation. Primary areas of representation include Land Use, Zoning, Licensing, and Administrative Proceedings including environmental matters, Eminent Domain, Tax Appeals, Real Estate Development and Construction disputes. As a Probate Judge for 31 years, adjudicated Estates, Trusts, Termination of Parental Rights, Removal of Parents as Guardians, Mental Health, and Conservatorships. From 1991 until 2004 was a principal mediator with Mediation Consultants, LLC and together with its founder, the late U.S. District Court Judge Robert Zampano, (Retired) engaged in a number of high profile mediations and investigations of municipal problems and other disputes. Since Judge Zampano’s death in 2004, continued a mediation practice which has included approximately ten full arbitrations and over a hundred mediations, over 70% of which globally resolved the submitted matter. In 2005, was elected a James W. Cooper Life Fellow of the Connecticut Bar Foundation and serves on its Program and Education Committee. For over 33 years rated A-V by Martindale/Hubbell.

PUBLIC SERVICE

Appointed by former Chief Justice Ellen Peters to the Judicial Council on Attorney Ethics; was a member of the Connecticut Investment Advisory Council (1995-1999); 25 years a member of the executive committee of the Connecticut Probate Assembly and chaired committees which drafted and successfully presented new legislation to the Connecticut General Assembly revising laws relating to developmentally disabled, Conservators, the Right to Die, Insolvent Estates, Streamlining Probate Practice and landmark proposals to reduce the number of probate districts from 138 to 54. Killian’s service as a member of the Probate Rules Committee continues. Following the Newtown tragedy, the Connecticut General Assembly appointed Killian to serve on its Behavioral Health Task Force. Served 26 years as a Regent of the University of Hartford; is a life trustee of the Hartt School of Music; is a trustee of Children in Placement (CASA); and has served as a director of the Yeats Drama Foundation; Farmington Valley Academy Montessori; the Intensive Education Academy; and Connecticut March of Dimes Birth Defect Foundation (Chair).
ADR TRAINING

AAA Arbitration Fundamentals and Best Practices for New AAA Arbitrators (1980’s); ADR/ Mediation for Judges (CT Judicial Branch) and presented on Alternative Dispute Resolution to seminars presented by the CT Judicial Department, CT Probate Assembly, CT Bar Association, the Hartford County Bar Association, the Simsbury Bar Association and the Quinnipiac School of Law.

PROFESSIONAL ASSOCIATIONS

National Academy of Probate Judges, the National College of Juvenile and Family Court Judges, the Hartford County, Connecticut and American Bar Associations and the Connecticut and American Trial Lawyers Associations. Former Chair of the ABA National Conference of Specialized Court Judges Probate Court Committee.

EDUCATION

Peter T. Mott

PRINCIPAL

Phone: 203-319-7136
Fax: 203-254-1772
Email: pmott@brodywilk.com

PETER T. MOTT is a principal of Brody Wilkinson and a member of the firm’s Trusts & Estates Group. Mr. Mott practices in the areas of estate planning and trusts and estate administration. He assists individuals with tax and charitable gift planning, business owners with succession planning, and families planning for aging or incapacitated family members. Mr. Mott is a Martindale-Hubbell AV-rated attorney.

He is admitted to practice in Connecticut and has practiced in the Greater Bridgeport area since 1983. Mr. Mott is a member of the American and Connecticut Bar Associations and is past-chair of the Connecticut Bar Association’s Estates and Probate Section. He is an active member of the American College of Trust and Estate Counsel, where he serves as state chair of Connecticut and is a member of the Board of Regents. He is past-chair of the Professional Responsibility Committee. Mr. Mott was named Best Lawyers® Trusts and Estates “Lawyer of the Year” for the Stamford metropolitan region in 2017 and 2013, and has been selected for inclusion in The Best Lawyers in America© in the field of trusts and estates since 2005. He has also been recognized as a “Connecticut Super Lawyer” in the areas of estate planning and probate; and tax since 2006. In addition, Mr. Mott was named to the 2017 Chambers High Net Worth Guide and received a “Band 1” ranking in the category of Private Wealth Law. He regularly publishes articles on estate planning and speaks at numerous seminars on the subject.

Mr. Mott received his B.A. from Trinity College (Hartford) in 1978 and his J.D., with high honors, from the University of Connecticut School of Law in 1983, where he was an editor of the Connecticut Law Review.

He currently serves on the Boards of the Fairfield County Community Foundation and the Council of Churches of Greater Bridgeport. Mr. Mott has been involved in numerous civic activities over the years, including the Central Connecticut Coast YMCA, Fairfield Public Library, and is Moderator at First Church Congregational.

Mr. Mott is a lifelong resident of Fairfield, Connecticut, where he currently resides with his wife, Janet.

Practice Groups
Trusts & Estates

Education
Trinity College, B.A. 1978
University of Connecticut School of Law, J.D. 1983

Bar & Court Admissions
Connecticut

Bar Associations
American Bar Association
Connecticut Bar Association

Accreditations

Mr. Mott received his B.A. from Trinity College (Hartford) in 1978 and his J.D., with high honors, from the University of Connecticut School of Law in 1983, where he was an editor of the Connecticut Law Review.

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Practice Groups
Trusts & Estates

Education
Trinity College, B.A. 1978
University of Connecticut School of Law, J.D. 1983

Bar & Court Admissions
Connecticut

Bar Associations
American Bar Association
Connecticut Bar Association

Accreditations
State Representative Rosa C. Rebimbas
The Law Offices of Rosa C. Rebimbas, L.L.C.
175 Church Street, 3rd Floor
Naugatuck, Connecticut 06770
Phone: 203-729-7600 Facsimile: 203-729-7601
Website: www.Rebimbaslaw.com

State Representative Rosa C. Rebimbas was first elected to the Connecticut State
House of Representatives representing the 70th district of Naugatuck in a special
election in March of 2009. She is a life-long resident of Naugatuck, business owner and
community leader.

As State Representative, Rep. Rebimbas currently serves as a Republican Whip and as
Ranking Member of the legislature’s powerful Judiciary Committee. She is also a
member of the Government Administration and Elections Committee (GAE) and
the Legislative Management Committee. Additionally, she serves as co-chair to the
bipartisan Women’s Caucus.

She is a former ranking member of the General Law Committee and former member of
the Finance, Revenue and Bonding Committee; Public Safety and Security Committee;
Children’s Committee; Appropriations; and Energy and Technology Committee.

Representative Rebimbas was educated through the Naugatuck public school system
and went on to receive a Bachelor of Arts, majoring in Political Science and Secondary
Education, with a minor in Faith, Peace, and Justice, from Fairfield University in
Fairfield, Connecticut. Rep. Rebimbas then earned a Juris Doctor degree from the S.J.
Quinney College of Law, at the University of Utah, in Salt Lake City, Utah. After law
school, she returned to Naugatuck where she wanted to practice law and give back to
the local community.
Shortly after her return to Naugatuck, Rep. Rebimbas passed the Connecticut Bar Exam and began practicing law at a local law firm until she started The Law Offices of Rosa C. Rebimbas, L.L.C. in 2007. She currently provides legal services throughout the State of Connecticut.

Rep. Rebimbas has been heavily involved with community service and has served on the Water Pollution Board and Naugatuck Finance Board. Rep. Rebimbas was the past President of Habitat for Humanity of Greater Waterbury, Inc., served on the Board of Directors of Guardian Ad Litem Services, and served as a Board Member of the United Way of Naugatuck and Beacon Falls.

Currently, Rep. Rebimbas is a Board Member of the Naugatuck Economic Development Committee, Co-Vice President of the Portugal United States Chamber of Commerce, Interim President of the CT Portuguese Bar Association, Member of the Board of Trustees for the Portuguese Cultural Center in Danbury, CT and member of the Portuguese American Leadership Council of the United States (PALCUS). Rep. Rebimbas is an active member of several other professional legal organizations and community groups, including the Naugatuck Republican Town Committee.

In the legislature, Rep. Rebimbas has successfully worked with her colleagues on both sides of the aisle in order to negotiate and pass important legislation. As a result of her legislative and legal work, Rep. Rebimbas has received numerous awards and honors and has participated in a variety of forums.
Paul M. Smith  
155 Providence Street  
Putnam, Connecticut 06260  
860-928-2429  
psmith@nectlaw.com

Education
Juris Doctorate Degree, George Mason University School of Law, 1982
Bachelor of Arts Degree in Economics, University of Connecticut, 1979
Admitted to practice law in all Federal and State Courts in Connecticut

Law Office of Borner, Smith, Aleman, Herzog and Cerrone, LLC  
Putnam CT
Principal in the practice. Legal experience includes commercial and residential real estate and corporate law. Also practices in the areas of civil law, estate planning and probate matters.

Law Office of Paul M. Smith  
Danielson CT
Focused practice in commercial and residential real estate. Also experienced in corporate law, civil law, estate planning and probate matters.

Professional Experience
Paul Smith is a lifelong resident of Windham County with extensive involvement in local government and civic organizations and currently is a member of the Plainfield Rotary Club.

Professional Affiliations
Windham County Bar Association
Honorable Beverly K. Streit-Kefalas  
Milford-Orange Probate Court  
Parsons Government Center  
70 West River Street, P.O. Box 414  
Milford, CT 06460-0414  
203-783-3205  
bstreitkefalas@ctprobate.gov

Hon. Beverly K. Streit-Kefalas is the judge of probate for the Milford-Orange Probate Court located in the Parsons Complex, 70 West River Street, Milford, Connecticut, serving the Milford and Orange communities.

Judge Streit-Kefalas, known locally as Judge Beverly, was first elected as judge for the Milford Probate Court in November 1998 and took office in January 1999. She was re-elected to that position in 2002 and again in 2006. With the consolidation of probate courts across the state, she was successfully elected judge of probate for the newly merged Milford-Orange Probate Court in 2010 and has been re-elected each successive four-year term thereafter.

She is a 1985 graduate of Smith College with a bachelor’s degree in Economics and earned her J.D. from the University of Connecticut School of Law in 1990. Having practiced for a number of years with the New Haven law firm of Fasano & Ippolito, she returned to her Milford roots and opened her solo practice in 1996. With the increased demands of the consolidated court and community work, she is no longer in private practice and dedicates her full attention to the court, family and her communities.

Judge Streit-Kefalas is active in the Connecticut Probate Assembly and currently serves on its Executive, Legislative, Planning, Court Security, and Conservator Guidelines Committees. She is past President of the Probate Assembly and prior to her two terms as President, had previously served in other officer positions.

She was recently appointed as the Administrative Judge of the New Haven Regional Children’s Probate Court. She is also a founding judge of the New Haven Regional Children’s Probate Court which first opened as a pilot court in 2004, was recognized nationally as a model court system, and the model has since expanded to five additional regional children’s courts across the state. She served as the Temporary Administrative Judge to establish the New London and the Central Connecticut (formerly the Meriden/Wallingford) Regional Children’s Probate Courts.

She is the Chair of a subcommittee of the Probate Rules Revision Committee and has served on the full committee since its inception.

As a young attorney, she served as co-chair of the Connecticut Bar Association Young Lawyer’s Public Service Committee and was regularly recognized by the U.S. Bankruptcy Court, District of Connecticut for her service as a pro bono attorney. In her local community, she is a past member of the United Way of Milford, Milford Lions Club, and Milford Kids Court. She is an active member of the Devon Rotary and she presently serves on the board of Bridges Healthcare, Inc. and the Milford Senior Center’s Council on Aging.
As member in the Firm’s Trusts and Estates Department, Suzanne Brown Walsh represents clients in the areas of estate and tax planning, particularly for families of children with special needs, elder law, estate and trust administration, trust modifications and trustee changes. Suzy is nationally known for her speaking and writing, including the Heckerling Institute on Estate Planning and numerous regional organizations throughout the country. She has been interviewed for On the Media, PBS NewsHour Weekend and Marketplace Money. She has been quoted in the New York Times, Time Magazine, Bloomberg BNA’s Electronic Commerce Law Report, The Chattanooga Times Free Press, The Kansas City Star and by NBC News, CBS News and Agence France-Presse.

Suzy is a member of the Connecticut Bar and holds a B.S. degree from Boston University and a J.D. from Suffolk University Law School.

Since 2005, Suzy has served as one of Connecticut’s Commissioners on Uniform Laws. As such, she represents the state as a member of the Uniform Law Commission, a national organization which promotes statutory uniformity. She chairs the ULC’s drafting Committee on Electronic Wills and chaired the ULC’s Revised Uniform Fiduciary Access to Digital Assets Act. Suzy is currently a member of the Regulation of Virtual Currency Businesses and Directed Trust Drafting Committees. She has served on the ULC’s Scope and Program Committee and drafting committees for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction, Uniform Insurable Interests in Trusts, Uniform Premarital and Marital Agreements, Uniform Powers of Appointment and Trust Decanting Acts. In addition, Suzy chaired the drafting committee on Amendments to the Uniform Principal and Income Act (2008), as well as a study committee on Mental Health Advance Directives. She taught Estate Planning and Taxation at the University of Connecticut Law School.

Suzy is a past Chair of both the Connecticut Bar Association’s Estates and Probate and Elder Law Sections. She serves as a James W. Cooper Fellow of the Connecticut Bar Foundation. She is a Fellow of the American College of Trusts and Estates Counsel (ACTEC), and chairs its Digital Property Task Force. She has also served on the Board of Directors of several community organizations, including PLAN of Connecticut, Inc., a nonprofit corporation providing low cost trust services to the families of the disabled. Before it was disbanded, Suzy served for years on the Connecticut Law Revision Commission’s Probate Advisory Committee.

Recognition

- Listed in The Best Lawyers in America® in the area of Trusts and Estates Law, 2017 (Copyright 2015 by Woodward/White, Inc., Aiken, SC)
- Holds an AV® Preeminent™ Peer Rating from Martindale-Hubbell
- Listed in Connecticut Super Lawyers® in the area of Trusts and Estates since 2006 (Super Lawyers is a registered trademark of Key Professional Media, Inc.)
Listed in New England Super Lawyers® in the area of Trusts and Estates since 2006 (Super Lawyers is a registered trademark of Key Professional Media, Inc.)

- Connecticut Magazine, Connecticut’s Top 25 Women SuperLawyers
- James W. Cooper Life Fellow of the Connecticut Bar Foundation

Articles

- Interviewed in article entitled “Don’t Let Your Digital Assets Die With You” TheStreet.com, September 28, 2016
- Quoted in article entitled “New Law Targets Social Media Accounts of Dead” Connecticut Law Tribune, May 18, 2016
- Referenced in article entitled “Prince’s apparent lack of planning may cost his estate” KCENTV, April 26, 2016
- Interviewed in article entitled “Outlook on Decedents’ Digital Assets Law” Bloomberg BNA, February 3, 2016

Multimedia

- Interviewed for video entitled Special Needs Trusts In Estate Planning Murtha Cullina LLP, April 2016
- Interviewed for video entitled Should next of kin get access to a deceased loved one’s digital estate? PBS NewsHour, December 6, 2014.
- Interviewed for video entitled Dead and online: What happens to your digital estate when you die? PBS NewsHour, July 12, 2014.
- Interviewed for podcast entitled Data After Death, On The Media, WNYC.org, June 6, 2014
Judge Wright was born in Wallingford, CT and has been a life-long resident of the town. A 1980 graduate of Southern Connecticut State College, he received his law degree from the Syracuse University College of Law in 1982.

Judge Wright was admitted to the Connecticut Bar in 1983, and was admitted to practice before the Federal District Court for the District of Connecticut in 1984. He practiced in Wallingford, both in association with other attorneys and as a solo practitioner, until he closed his law office in 2010 to devote himself full-time to the probate court system.

Judge Wright was sworn in as Wallingford’s probate judge in 1993, and has remained in that position for twenty five years. He has also been appointed and has continued to serve as the Administrative Judge of the Central Connecticut Regional Children’s Probate Court for several years.

He has been active in civic organizations by serving on boards of directors of, among others, Big Brothers Big Sisters of Meriden/Wallingford, Midstate Medical Center, Wallingford Hawks Youth Hockey Association, Spanish Community of Wallingford, and the Wallingford 350th Jubilee Committee. Judge Wright is currently the 1st Vice President Judge of the Connecticut Probate Assembly and also serves on several of the Assembly’s committees, including the Executive, Ethics, Legislative, Planning and Procedures Review Committees.
INTRODUCTION TO THE UNIFORM PROBATE CODE AND THE PROBATE PROCESS IN GEORGIA

Mary F. Radford
Marjorie Fine Knowles Professor of Fiduciary Law
Georgia State University College of Law
Atlanta, GA
mradford@gsu.edu
I. INTRODUCTION TO THE UNIFORM PROBATE CODE

1) MODEL PROBATE CODE

Promulgated in 1946 by the ABA Section of Real Property, Probate & Trust Law at the suggestion of Professor Thomas E. Atkinson

2) UNIFORM PROBATE CODE

Combined effort of ABA Section and National Conference of Commissioners on Uniform State Laws (NCCUSL, now the Uniform Law Commission)

Study begun in 1962, with Professor Richard V. Wellman as Chief Reporter


Joint Editorial Board for the Uniform Probate Code established in 1970

As of 2017, enacted in Alaska, Arizona, Colorado, Hawaii, Idaho (first state to adopt in 1971), Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

PART 1. GENERAL PROVISIONS

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3-107. Scope of Proceedings; Proceedings Independent; Exception.


3-109. Statutes of Limitation on Decedent’s Cause of Action.

PART 2. VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

Section
3-201. Venue for First and Subsequent Estate Proceedings; Location of Property.
3-202. Appointment or Testacy Proceedings; Conflicting Claim of Domicile in Another State.
3-203. Priority Among Persons Seeking Appointment as Personal Representative.
3-204. Demand for Notice of Order or Filing Concerning Decedent’s Estate.

PART 3. INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS; SUCCESSION WITHOUT ADMINISTRATION

Subpart 1. Informal Probate and Appointment Proceedings

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3-301. Informal Probate or Appointment Proceedings; Application; Contents.
3-302. Informal Probate; Duty of Registrar; Effect of Informal Probate.
3-303. Informal Probate; Proof and Findings Required.
3-304. Informal Probate; Unavailable in Certain Cases.
3-305. Informal Probate; Registrar Not Satisfied.
3-306. Informal Probate; Notice Requirements.
3-307. Informal Appointment Proceedings; Delay in Order; Duty of Registrar; Effect of Appointment.
3-308. Informal Appointment Proceedings; Proof and Findings Required.
3-309. Informal Appointment Proceedings; Registrar Not Satisfied.
3-310. Informal Appointment Proceedings; Notice Requirements.
3-311. Informal Appointment Unavailable in Certain Cases.

Subpart 2. Succession Without Administration

3-312. Universal Succession; In General.
3-313. Universal Succession; Application; Contents.
3-314. Universal Succession; Proof and Findings Required.
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II. PROBATE AND ESTATE ADMINISTRATION IN GEORGIA

REVISED PROBATE CODE OF 1998
Official Code of GA Annotated (OCGA) Title 53, Chapters 1-11

1) Structure of Georgia probate courts

Each of Georgia’s 159 counties has one probate judge
- Elected for 4-year terms (unlimited number of terms)
- Must be age 25 or older, registered voter, high-school diploma
- Each probate judge may appoint one “associate probate judge”

Subject Matter Jurisdiction:

According to O.C.G.A. §15-9-30, probate courts have original, exclusive, and general jurisdiction over the following matters:
1. The probate of wills;
2. The granting of letters testamentary and of administration and the repeal or revocation of the same;
3. All controversies in relation to the right of executorship or administration;
4. The sale and disposition of the property belonging to, and the distribution of, deceased persons' estates;
5. The auditing and passing of returns of all executors, administrators, guardians of property, conservators, and guardians;
6. “The discharge of former sureties and the requiring of new sureties from administrators, guardians of property, conservators, and guardians.”
7. All other matters and things as appertain or relate to estates of deceased persons and to persons who are incompetent because of mental illness or mental retardation;

Some probate courts handle other matters, such as marriage licenses, gun licenses, traffic cases

Two “tiers” of probate courts (as of 1986)

a. “Article 6” Judges (Judges with “enhanced” or “expanded” jurisdiction
   - County with a population of over 90,000 (about 18-20 counties)
   - Must be age 30 or over + licensed to practice law for 7 years
b. Under OCGA §15-9-127, these judges have concurrent jurisdiction with the superior courts over:
   1. declaratory judgments involving fiduciaries;
   2. estate planning dispositions by individuals for whom a conservator has been appointed;
   3. the approval of will contest settlements;
   4. the appointment of new trustees;
   5. acceptance of a written resignation of a trustee upon the consent of the beneficiaries;
   6. acceptance of the resignation of a trustee upon the request of the
trustee;
(7) motions seeking determinations as to DNA testing and disinterment of a decedent's remains;
(8) conversion to a unitrust; and
(9) adjudication of petitions for direction and construction of wills pursuant to O.C.G.A. §23-2-92.

Probate judges who have “expanded” jurisdiction are authorized to hold jury trials

Probate Court Standard Forms (over 50)
Probate Court Rules (1987)

2) Disposition of a decedent’s remains:

OCGA 31-21-7 sets out the priority of those who can determine the disposition of a decedent's remains

If there is a disagreement among 2 or more persons who have equal priority,” the probate court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The following provisions shall apply to the court's determination under this subsection:

(1) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral home with custody of the remains may file a petition asking the probate court to make a determination in the matter;
(2) In making a determination under this subsection, the probate court shall consider the following:
(A) The reasonableness and practicality of the proposed funeral arrangements and disposition;
(B) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
(C) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
(D) The convenience and needs of other families and friends wishing to pay respects;
(E) The desires of the decedent; and
(F) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;”

3) County of DOMICILE determines which probate court has jurisdiction

Nursing home statute
4) Accessing the Will

Safe deposit box statute (O.C.G.A §7-1-356): with probate court order

Lost Will: presumed revoked, can be overcome by preponderance of evidence

5) Probate in Common Form vs. Probate in Solemn Form

No notice required for common form; not appealable; not effective for 4 years

6) Petition to probate in solemn form

No death certificate required

Executor or any “interested person” may offer will for probate

Time Limit: no later than 5 years from the later of date on which a petition for the appointment of a PR is filed or an order issued that “no administration is necessary”

Notice

Heirs, beneficiaries & propounders of any other purported will for which probate proceedings are pending in Georgia

Service: Personally or by mail (including a copy of the will)

Appointment of GAL for minors or incapacitated persons (but see: “guardian” definition)

Notice to Debtors & Creditors: published once a week for 4 weeks

Witnesses may “appear” by written interrogatory

If no caveat, only one witness needed

Self-proved will = no witnesses needed

Acknowledgment of Service & Consent to Probate Instanter

Filing a “caveat”:

Any interested person (person who would be injured by the probate of the will) may caveat

Written allegations; may be amended

Time for filing caveat:

Court issues a citation that sets date for objections to be filed:

Personal service: no sooner than 10 days from service
US residents: not less than 13 days from date of mailing
Non-US: not less than 30 days from mailing
Publication: No sooner than 1st day of week following last publication (4wks.)
Proceeding to set aside probate: different will should have been probate or order was obtained by fraud or other irregularity (must be filed w/in 3 years)

Oath of Office and Issuance of Letters Testamentary

Original probate v. ancillary probate

Requirement of filing of will even if not probated (CN also)

No one is REQUIRED to apply for probate of a will (CN law re: executors)

But executor may lose priority if not qualified w/in 90 days

Settlement Agreement

An Article 6 probate court or a superior court may approve a settlement under which probate is granted or denied, providing for a disposition of the property contrary to the terms of the will.

Approval of any settlement agreement that provides for the sustaining of the caveat or the disposition of the property contrary to the terms of the will shall be after a hearing, notice of which shall be given as the court may direct, at which evidence is introduced and at which the court finds as a matter of fact that there is a bona fide contest or controversy.

7) Intestate Estates: Appointment of Administrator

Notice given to heirs

Heirs may choose Administrator by unanimous consent

Priority order: Preference, not required: Spouse; Heirs selected by the majority; “Any other eligible person”, Creditor, County Administrator

8) Temporary administration (See CN rules on Temp Admins)

Whether or not here is a will

No notice

Court chooses person who is “in the best interests of the estate”

Collect & preserve estate assets (including bringin an action to collect debts or personal property); expend funds for this purpose but only after such notice as the judge deems appropriate
Required to give bond

May petition for leave to sell property with good cause shown

May apply for “reasonable compensation” + notice to “interested parties”

9) “No administration necessary” (Intestate estates only)

Size of estate is irrelevant

Estate owes no debts (or, creditors have consented)

If any creditor objects, court cannot grant the order

Heirs have agreed to a distribution of the property (signed & notarized copy)

Probate court must file copy in the deed records where real property is located

10) Notice to Creditors (no statutory time bar)

Creditors who fail to give notice of claims within 3 months from the date of the latest publication lose all rights to equal participation with the other creditors and cannot hold the PR liable for a misappropriation of funds. Even if they don’t give notice, if there are funds left over after all creditors who gave notice are paid, these creditors will be paid

PR does not have to pay debts or make distributions for 6 months (Statute of Limitations on claims is suspended)

Payments of Claims

If a debt is not due by its terms, it should be satisfied in such manner as suits the best interest of the estate. It may be prepaid (if there is a right to prepay); w/ creditor’s agreement, paid before it is due in a mutually satisfactory amount; w/ creditor’s agreement, assumed by the heirs or beneficiaries; w/ creditor agreement or by court order, arrangements can be made to pay the debt in the future

Priority of Claims

1) Year’s Support; 2) Funeral Expenses; 3) Other Necessary Expenses of Administration (court costs, employment of agents, legal counsel); 4) Reasonable Expenses of Decedent’s Last Illness; 5) Unpaid Taxes or Debts due the State or US; 6) Judgments, Secured Interests, Other Liens; 7) All Other Claims

11) Powers of PRs:

a) Some are automatically granted by statute (OCGA Sec. 53-7-6)

Fulfill the executory contracts of the decedent and comply with all executed contracts; provide legal counsel for estate (either attorney or PR may petition
court to fix the fees); continue the decedent’s business for up to 12 months; sell listed stocks and bonds at published bid price

Compromise, adjust, arbitrate, assign, sue or defend, abandon, or otherwise deal with or settle debts or claims in favor of or against the estate.

A personal representative who declines to litigate any claim may assign the claim to a creditor or an heir of an intestate estate or a beneficiary of a testate estate for the purpose of prosecuting the claim at that person's own expense and, after reimbursement of the expenses to the creditor, heir, or beneficiary, any remaining proceeds shall be paid over to the personal representative for administration. (OCGA 53-7-45)

Power to sell, rent, lease, exchange or otherwise dispose of estate property:

Property that is perishable, liable to deteriorate or expensive to keep shall be sold as early as possible, in manner and with notice and hearing as the probate court determines serves the best interest of the estate

For all other property, PR must petition the probate court, stating the terms and purchase of the transaction. Notice given to heirs or beneficiaries. If no objection, court summarily orders the sale. If objection is filed, court must hold a hearing before granting or denying petition. PR must make a return to the probate court of the sale (including purchasers, terms, etc.)

If real property is sold per the probate court’s order, liens on the property may be divested and transferred to the proceeds of the sale

PR cannot bind the estate, including by giving warranties

Investment powers: 2 possible approaches:

i) SAFE HARBOR: Invest in investments that are on the “legal list”: real property (with court permission and heirs’/beneficiaries’ consent), government bonds, FDIC-insured interest-bearing deposits

ii) Invest “off the list”: Held to the standard that “persons of 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”

PR may retain any property that was received upon the original creation of the estate, even if it is not “on the list”

b) Granted by the testator in the will

Describe the OCGA 53-12-261 powers (attached)

c) Granted by the probate judge (in bulk or case-by-case)
“In bulk”: At time of appointment or any time thereafter, heirs or will beneficiaries may petition court to grant the PR any or all of the powers set forth in OCGA 53-12-261

“Case-by-case”: borrow money to pay taxes; make contracts for labor or service to benefit the estate; “perform such other acts as may be in the best interest of the estate”

12) Inventory

   Required to be made within 6 months of appointment

   Failure to make inventory = grounds for removal

   PR may be relieved of this duty in the will

   Any beneficiary or heir may waive the right to receive

   By unanimous consent, heirs or beneficiaries may authorize the court to relieve the PR from duty to make inventory

13) Bond

   Double the value of the personal property

   If secured by a licensed commercial surety, only the amount of the personal property

   Not required of executors (administrators and temporary administrators only)

   But court may require bond on its own motion

   Not required of financial institutions with combined capital, surplus & profit of $400,000

   Heirs by unanimous consent may waive bond for administrators in intestate proceedings

   Can’t waive bond for temporary administrators

14) Vesting of title

   Testate estates: Title vests in the executor who must then assent to vesting of title in the beneficiaries (Deed of Assent)

   One year after appointment, beneficiary may cite executor to show cause why such assent should not be given

   Intestate estates: Title vests in the heirs at decedent’s death “subject to divestment by the appointment of an administrator”

15) Annual Returns

   Yearly filings with probate court on anniversary date of PR qualification
Accounting of receipts & expenditures of the estate during the year + updated inventory

Original vouchers need not be filed

Annual return must be mailed to heirs or beneficiaries (Anyone may waive receipt)

Heirs or beneficiaries may relieve PR from filing returns by unanimous consent or testator may do so in the will

Court examines return. If no objection filed w/in 30 days, return will be recorded

A recorded return is “prima facie evidence of its correctness”

Court must cite those PRs who do not file required returns

PR forfeits commissions for year in which return is not filed

Continued failure to file returns = grounds for removal

16) Intermediate Reports

PR may file an intermediate report after 6 months from appointment and once every 12 months thereafter

Report must show principal on hand at beginning of the period; investments received from the decedent and still held; additions to principal during the period; investments made; amount and purpose of deductions; principal on hand at end and estimated FMV of each investment; report of the income received and paid out; statement of unpaid claims and why they are not paid

Citation and notice issued to heirs or beneficiaries with time set for a hearing

Probate court may surcharge the PR if PR is liable to estate or any beneficiary

All parties are bound by the court’s order and cannot further question anything covered by the report

17) Keeping accounts

PRs are required by law “to keep their accounts in a regular manner and to be always ready with them supported by proper vouchers; neglect of this duty shall be ground for charging them with interest on balances on hand and with costs.” OCGA 10-6-30

18) Distribution of estate property

An administrator may distribute property in kind in a distribution that is pro rata as to each asset

An heir or administrator may petition the court for an order allowing an in-kind distribution that is not pro rata as to each asset. Notice given and a hearing is held if there is an objection
Personal property: PR gets a receipt from the beneficiary/heir. If notarized, the receipt may be admitted to record

19) Requirement to notify dept re: state assistance (See CN Ch 3, p. 6-7)

Must notify DHS if decedent was on Medicaid

20) PR fees and compensation
   a) Specified in the Will
   b) Written agreement either:
      i. entered into between testator and PR prior to death
      ii. signed by all the heirs/beneficiaries
   c) Default statutory fee:
      2 ½% of all sums of money received and 2 ½% of all sums of money paid out
      Reasonable comp. (as determined by judge) up to 3% for distributions in kind
      10% on interest if PR loaned money
      Comp. for working land up to 10% of the annual income (judge’s discretion)
      Extra comp. (by petition):
         Heirs/beneficiaries have right to object
         Judge’s discretion, after considering (Comment) “whether the estate administration involved unusually greater time or effort, whether the personal representative had responsibilities with respect to assets that were not subject to the jurisdiction of the probate court, whether the estate involved significant tax issues, whether the personal representative also performed legal services for the estate, and whether the personal representative continued or liquidated a business enterprise of the estate.”
   d) Reasonable expenses of administration

21) Actions against PRs

OCGA §53-7-16: “The personal representative and sureties shall be held and deemed joint and several obligors and may be subjected jointly and severally to liability in the same action. When a personal representative removes beyond the limits of this state, dies and leaves an unrepresented estate, or is in such a position that an attachment may be issued as against a debtor, any party in interest or any person having demands against that personal representative in the personal representative's representative capacity may institute an action against the sureties or any one or more of them upon the bond of the personal representative in the first instance, without first obtaining a judgment against the
personal representative in that person's representative capacity. No prior judgment establishing the liability of the personal representative or a devastavit by the personal representative shall be necessary before an action is brought against the sureties on the bond.”

22) Revocation of Letters and Other Sanctions

OCGA §53-7-54: (a) If a personal representative or temporary administrator commits a breach of fiduciary duty or threatens to commit a breach of fiduciary duty, a beneficiary of a testate estate or heir of an intestate estate shall have a cause of action:

(1) To recover damages;
(2) To compel the performance of the personal representative's or temporary administrator's duties;
(3) To enjoin the commission of a breach of fiduciary duty;
(4) To compel the redress of a breach of fiduciary duty by payment of money or otherwise;
(5) To appoint another personal representative or temporary administrator to take possession of the estate property and administer the estate;
(6) To remove the personal representative or temporary administrator; and
(7) To reduce or deny compensation to the personal representative or temporary administrator.

(b) When estate assets are misapplied and can be traced in the hands of persons affected with notice of misapplication, a trust shall attach to the assets.

(c) The provision of remedies for breach of fiduciary duty by this Code section does not prevent resort to any other appropriate remedy provided by statute or common law.

OCGA §53-7-55: Upon the petition of any person having an interest in the estate or whenever it appears to the probate court that good cause may exist to revoke the letters of a personal representative or impose other sanctions, the court shall cite the personal representative to answer to the charge. Upon investigation, the court may, in the court's discretion:

(1) Revoke the personal representative's letters;
(2) Require additional security;
(3) Require the personal representative to appear and submit to a settlement of accounts following the procedure set forth in Article 6 of this chapter, whether or not the personal representative has first resigned or been removed and whether or not a successor fiduciary has been appointed; or
(4) Issue such other order as in the court's judgment is appropriate under the circumstances of the case.

23) Resignation of PR

OCGA §53-7-56: (a) A personal representative may resign:

(1) In the manner and under the circumstances described in the will;
(2) Upon petition to the probate court, showing that the resignation has been requested in writing by all heirs of an intestate estate or all beneficiaries of a testate estate; or
(3) Upon petition to the probate court, showing to the satisfaction of the court that:
   (A) The personal representative is unable to continue serving due to age, illness, infirmity, or other good cause;
   (B) Greater burdens have developed upon the office of personal representative than those which were originally contemplated or should have been contemplated when the personal representative was qualified and the additional burdens would work a hardship upon the personal representative;
   (C) Disagreement exists between one or more of the beneficiaries or heirs and the personal representative in respect to the personal representative's management of the estate, which disagreement and conflict appear deleterious to the estate;
   (D) The resignation of the personal representative will result in or permit substantial financial benefit to the estate;
   (E) The resigning personal representative is one of two or more acting personal representatives and the other personal representatives will continue in office with no adversity to the estate contemplated; or
   (F) The resignation would not be disadvantageous to the estate.

(b) A personal representative's petition to resign shall be made to the probate court and service shall be made upon all the heirs of an intestate estate or the beneficiaries of a testate estate.

24) Settlement of Accounts
   a) Removal, Resignation or Death of the PR: the heirs/beneficiaries, sureties of the PR, or the successor PR may petition for an accounting and settlement
   b) Expiration of 6 months from the issuance of letters to the PR:
      i) any heir/beneficiary may cite the PR to appear before the probate court for a settlement of accounts
      ii) PR may cite all heirs/beneficiaries and all those who claim to be creditors whose claims the PR disputes or cannot pay in full
   c) Actions against a PR for an accounting must be brought within 10 years (+ 6 months) after the right of action accrues
      Statute of limitations may be tolled for fraud or minority of an heir/beneficiary

25) Discharge of the PR
   a) PR who has resigned or otherwise performed all duties may petition for discharge from office or discharge from office and liability
   b) Discharge from Office:
Notice: One-time publication + first-class mailing to creditors whose claims have not been paid

c) Discharge from Office and Liability

Notice to Heirs/Beneficiaries

However, notice not required if heir/beneficiary has:

i) relieved PR of all liability or

ii) been a party to proceeding such as a settlement of accounts or intermediate accounting in which PR has been relieved of liability

If heir/beneficiary is a minor, must be represented by a guardian; otherwise the discharge is not binding on that heir/beneficiary & heir/beneficiary may bring an action against the PR within 2 years of reaching majority

Notice to any creditor whose claim is disputed

Petition must state that all claims have been paid or enumerate those that are unpaid and the reason why

Hearing must be held if an objection is filed
(b) A trustee of an express trust, without court authorization, shall be authorized:

(1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, at public or private sale or otherwise, with or without warranties or representations, upon such terms and conditions, including credit, and for such consideration as the fiduciary deems advisable and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received;

(2) To invest and reinvest in any property which the fiduciary deems advisable, including, but not limited to, common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; any real or personal property; investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations in common trust funds;

(3) To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including, but not limited to, the power:

(A) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(B) To dispose of any interest therein or acquire the interest of others therein;

(C) To contribute or invest additional capital thereto or to lend money thereto in any such case upon such terms and conditions as the fiduciary shall approve from time to time; and

(D) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the trust set aside for use in the business or to the trust as a whole.

In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;

(4) To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the trust property in exchange for the stock, securities, or obligations of or other interests in any such corporation or entity and to continue to hold the stock, securities, obligations, and interests;

(5) To continue any farming operation and to do any and all things deemed advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard, and forest products, including, but not limited to, the power:

(A) To operate the farm with hired labor, tenants, or sharecroppers;

(B) To lease or rent the farm for cash or for a share of the crops;

(C) To purchase or otherwise acquire farm machinery, equipment, and livestock;
(D) To construct, repair, and improve farm buildings of all kinds needed, in the fiduciary's judgment, for the operation of the farm;

(E) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes, such as for production, harvesting, or marketing; or for the construction, repair, or improvement of farm buildings; or for the purchase of farm machinery, equipment, or livestock;

(F) To employ approved soil conservation practices, in order to conserve, improve, and maintain the fertility and productivity of the soil;

(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the trust;

(H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where needed;

(I) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant pastures and crops as may be necessary to carry on such operations;

(J) To market the products of the farm; and

(K) In general, to employ good husbandry in the farming operation;

(6) To manage real property:

(A) To improve, manage, protect, and subdivide any real property;

(B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;

(C) To terminate any subdivision or part thereof;

(D) To borrow money for the purposes authorized by this paragraph for the periods of time and upon the terms and conditions as to rates, maturities, and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber the property or part thereof, whether in possession or reversion;

(E) To lease the property or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses, conveyances, or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(G) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(H) To modify, renew, or extend leases;

(I) To employ agents to rent and collect rents;

(J) To create easements and to release, convey, or assign any right, title, or interest with respect to any easement on the property or part thereof;

(K) To erect, repair, or renovate any building or other improvement on the property and to remove or demolish any building or other improvement in whole or in part; and

(L) To deal with the property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this paragraph;

(7) To lease personal property of the trust or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the
period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust; and

(B) To pay from the trust all charges that the fiduciary deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which the fiduciary determines adversely affect the trust or otherwise are liabilities of the trust and to apportion all such charges among the several bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances;

(9) To receive additional property from any source and to administer the additional property as a portion of the appropriate trust under the management of the fiduciary, provided that the fiduciary shall not be required to receive the property without the fiduciary's consent;

(10) In dealing with one or more fiduciaries of the estate or any trust created by the decedent or the settlor or any spouse or child of the decedent or settlor and irrespective of whether the fiduciary is a personal representative or trustee of such other estate or trust:

(A) To sell real or personal property of the estate or trust to such fiduciary or to exchange such property with such fiduciary upon such terms and conditions as to sale price, terms of payment, and security as shall seem advisable to the fiduciary; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and

(B) To borrow money from the estate or trust for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and securities as the fiduciary shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes, the costs of the administration of the estate or trust, and like charges against the estate or trust or any part thereof or of discharging any other liabilities of the estate or trust and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as may be required to secure the loan and to renew existing loans;

(11) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the trust or any part thereof and to mortgage, pledge, or otherwise encumber such portion of the trust as may be required to secure the loan and to renew existing loans either as maker or endorser;

(12) To make loans or advances for the benefit or the protection of the trust;

(13) To vote shares of stock or other ownership interests owned by the trust, in person or by proxy, with or without power of substitution;

(14) To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship, so that title to the security may pass by delivery; but the fiduciary shall be liable for any act of the nominee in connection with the security so held;

(15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold the stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the trust so long as the fiduciary shall deem advisable;

(16) To unite with other owners of property similar to any which may be held at any time in the trust, in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property or the incorporation or reincorporation, reorganization,
or readjustment of the capital or financial structure of any corporation, company, or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a shareholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the beneficiaries of any trust with reference to any such plan; and to receive as investments of the trust any securities issued as a result of the execution of such plan;

(17) To adjust the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of the trust;

(18) To continue any obligation, whether secured or unsecured, upon and after maturity, with or without renewal or extension, upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of the continuance;

(19) To foreclose, as an incident to the collection of any bond, note, or other obligation, any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond, note, or other obligation and to bid in the property at the foreclosure sale or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure;

(20) To carry such insurance coverage as the fiduciary shall deem advisable;

(21) To collect, receive, and issue receipts for rents, issues, profits, and income of the trust;

(22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle claims involving the trust or the trustee;

(B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or otherwise deal with and settle claims in favor of or against the trust as the fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the trust and the person against or for whom the claim is asserted, in the absence of fraud by such persons and, in the absence of fraud, bad faith, or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the trust; and

(C) To compromise all debts, the collection of which are doubtful, belonging to the trust when such settlements will advance the interests of those represented;

(23) To employ and compensate, out of income or principal or both and in such proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or assist in the administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of the agent or representative, provided such person was selected and retained with due care on the part of the fiduciary;

(24) To acquire, receive, hold, and retain undivided the principal of several trusts created by a single trust instrument until division shall become necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, that this paragraph shall not defer the vesting in possession of any share or part of share of the trust;

(25) To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs,
improvements, and general maintenance of buildings or other property out of rents, profits, or other income received;

(26) To value assets of the trust and to distribute them in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, as the fiduciary finds to be most practical and in the best interest of the distributees, the fiduciary being able to distribute types of assets differently among the distributees;

(27) To transfer money or other property distributable to a beneficiary who is under age 21, an adult for whom a guardian or conservator has been appointed, or an adult who the fiduciary reasonably believes is incapacitated by distributing such money or property directly to the beneficiary or applying it for the beneficiary's benefit, or by:
   
   (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
   
   (B) Distributing it to the beneficiary's custodian under “The Georgia Transfers to Minors Act” or similar state law and, for that purpose, creating a custodianship and designating a custodian;
   
   (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or
   
   (D) Distributing it to any other person, whether or not appointed guardian or conservator by any court, who shall, in fact, have the care and custody of the person of the beneficiary. The fiduciary shall not be under any duty to see to the application of the distributions so made if the fiduciary exercised due care in the selection of the person, including the beneficiary, to whom the payments were made; and the receipt of the person shall be full acquittance to the fiduciary;

(28) To make, modify, and execute contracts and other instruments, under seal or otherwise, as the fiduciary deems advisable; and

(29) To serve without making and filing inventory and appraisement, without filing any annual or other returns or reports to any court, and without giving bond; but, a personal representative shall furnish to the income beneficiaries, at least annually, a statement of receipts and disbursements.
EXPLORING UNSUPERVISED PROBATE

Connecticut Bar Association and Quinnipiac School of Law
Hartford, Connecticut

April 20, 2018
EDUCATION
B.A., Summa Cum Laude, Eastern Michigan University (1976)
J.D., Summa Cum Laude, Ohio State University (1979)
LL.M., University of Illinois (1983)
J.S.D., University of Illinois (1990)

SELECTED PROFESSIONAL ACTIVITIES
Bar memberships: United States Supreme Court, Texas, Ohio (inactive status), Illinois (inactive status)
Member: American Law Institute; American College of Trust and Estate Counsel (Academic Fellow); American Bar Foundation; Texas Bar Foundation; American Bar Association; Texas State Bar Association
Editor-in-Chief, REPTL Reporter, State Bar of Texas (2013-present)
Keeping Current Probate Editor, Probate and Property magazine (1992-present)

CAREER HISTORY
Private Practice, Columbus, Ohio (1980)
Instructor of Law, University of Illinois (1980-81)
Professor, St. Mary’s University School of Law (1981-2005)
Governor Preston E. Smith Regent’s Professor of Law, Texas Tech University School of Law (2005 – present)
Visiting Professor, Boston College Law School (1992-93)
Visiting Professor, University of New Mexico School of Law (1995)
Visiting Professor, Southern Methodist University School of Law (1997)
Visiting Professor, Santa Clara University School of Law (1999-2000)
Visiting Professor, La Trobe University School of Law (Melbourne, Australia) (2008 & 2010)
Visiting Professor, The Ohio State University Moritz College of Law (2012)
Visiting Professor (virtual), Boston University School of Law (2014 & 2016)
Visiting Professor (virtual), University of Illinois College of Law (2017)

SELECTED HONORS
Order of the Coif
ABA Journal Blawg 100 Hall of Fame (2015)
President’s Academic Achievement Award, Texas Tech University (2015)
Outstanding Researcher from the School of Law, Texas Tech University (2017 & 2013)
Chancellor’s Council Distinguished Teaching Award (Texas Tech University) (2010)
President’s Excellence in Teaching Award (Texas Tech University) (2007)
Professor of the Year – Phi Delta Phi (St. Mary’s University chapter) (1988) (2005)
Student Bar Association Professor of the Year Award – St. Mary’s University (2001-2002) (2002-2003)
Russell W. Galloway Professor of the Year Award – Santa Clara University (2000)
Distinguished Faculty Award – St. Mary’s University Alumni Association (1988)
Most Outstanding Third Year Class Professor – St. Mary’s University (1982)
State Bar College – Member since 1986

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§ 256.204. Period for Contest

(a) After a will is admitted to probate, an interested person may commence a suit to contest the validity thereof not later than the second anniversary of the date the will was admitted to probate, except that an interested person may commence a suit to cancel a will for forgery or other fraud not later than the second anniversary of the date the forgery or fraud was discovered.

(b) Notwithstanding Subsection (a), an incapacitated person may commence the contest under that subsection on or before the second anniversary of the date the person’s disabilities are removed.

Derived from Probate Code § 93.


Chapter 257. Probate of Will as Muniment of Title

Subchapter A. Authorization

§ 257.001. Probate of Will as Muniment of Title Authorized

A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and the court:

(1) is satisfied that the testator’s estate does not owe an unpaid debt, other than any debt secured by a lien on real estate; or

(2) finds for another reason that there is no necessity for administration of the estate.

Derived from Probate Code § 89C(a).


Subchapter B. Application and Proof Requirements

§ 257.051. Contents of Application Generally

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

(1) each applicant’s name and domicile;

(1-a) the last three numbers of each applicant’s driver’s license number and social security number, if applicable;

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

(2-a) the last three numbers of the testator’s driver’s license number and social security number;

(3) the fact, date, and place of the testator’s death;

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

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

(6) the date of the will;

(7) the name, state of residence, and physical address where service can be had of the executor named in the will;

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

(9) the date of the will;

(10) the name, state of residence, and physical address where service can be had of the executor named in the will;

(11) the fact, date, and place of the testator’s death;

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

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

(14) the date of the will;

(15) the name, state of residence, and physical address where service can be had of the executor named in the will.

Statutes in Context

Chapter 257

Chapter 257 details how to probate a will as a muniment of title. This procedure is extremely efficient and cost-effective because there is no administration of the estate (no executor is appointed; no letters testamentary are issued). Instead, the testator’s will is proved to be valid and the court order admitting the will to probate documents title transfer to the beneficiaries and gives authority to all those who hold the testator’s property to deliver it to the beneficiaries. To use the procedure, however, the testator’s estate must have no unpaid debts (except those secured by real property) or the court must determine for another reason that there is no necessity for administration. Sometimes the beneficiaries will pay the testator’s debts out of their own pockets so that this procedure may be used.

The muniment of title procedure is also used for “late” probates which are permitted under § 256.003. See also § 258.051 (heirs must receive notice of late probate).

Subchapter A. Authorization

§ 257.001. Probate of Will as Muniment of Title Authorized

A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and that:

(1) is satisfied that the testator’s estate does not owe an unpaid debt; or

(2) finds for another reason that there is no necessity for administration of the estate.

Derived from Probate Code § 89C(a).


Subchapter B. Application and Proof Requirements

§ 257.051. Contents of Application Generally

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

(1) each applicant’s name and domicile;

(2) the last three numbers of each applicant’s driver’s license number and social security number, if applicable;

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

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

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

(6) the date of the will;

(7) the name, state of residence, and physical address where service can be had of the executor named in the will;
(8) the name of each subscribing witness to the will, if any;

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

(10) that the testator’s estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;

(11) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and

(12) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

Derived from Probate Code § 89A(a).


§ 257.052. Filing of Will With Application Generally Required

(a) An applicant for the probate of a will as a muniment of title shall file the will with the application if the will is in the applicant’s control.

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

Derived from Probate Code § 89A(a).


§ 257.053. Additional Application Requirements When No Will Is Produced.

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

(1) the reason the will cannot be produced;

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

(3) the name and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A) each devisee;

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

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

Derived from Probate Code § 89A(b).


§ 257.054. Proof Required

An applicant for the probate of a will as a muniment of title must prove to the court’s satisfaction that:

(1) the testator is dead;

(2) four years have not elapsed since the date of the testator’s death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title;

(5) the testator’s estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;

(6) the testator did not revoke the will; and

(7) if the will is not self-proved in the manner provided by this title, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will was of sound mind and:

(i) was 18 years of age or older;

(ii) was or had been married; or

(iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

Derived from Probate Code § 89B.


Subchapter C. Order Admitting Will; Report

§ 257.101. Declaratory Judgment Construing Will

(a) On application and notice as provided by Chapter 37, Civil Practice and Remedies Code, the court may hear evidence and include in an order probating a will as a muniment of title a declaratory judgment:

(1) construing the will, if a question of construction of the will exists; or

(2) determining those persons who are entitled to receive property under the will and the persons’ shares or interests in the estate, if a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will.
(b) A declaratory judgment under this section is conclusive in any suit between a person omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted person to an interest in the estate.

(c) A person who delivered the testator’s property to a person declared to be entitled to the property under the declaratory judgment under this section or engaged in any other transaction with the person in good faith after entry of the judgment is not liable to any person for actions taken in reliance on the judgment.

Derived from Probate Code § 89C(b).


§ 257.102. Authority of Certain Persons Acting in Accordance with Order

(a) An order admitting a will to probate as a muniment of title constitutes sufficient legal authority for each person who owes money to the testator’s estate, has custody of property, acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with the estate, to pay or transfer without administration the applicable asset without liability to a person described in the will as entitled to receive the asset.

(b) A person who is entitled to property under the provisions of a will admitted to probate as a muniment of title is entitled to deal with and treat the property in the same manner as if the record of title to the property was vested in the person’s name.

Derived from Probate Code § 89C(c).


§ 257.103. Report by Applicant After Probate

(a) Except as provided by Subsection (b), not later than the 180th day after the date a will is admitted to probate as a muniment of title, the applicant for the probate of the will shall file with the court clerk a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled.

(b) The court may:

(1) waive the requirement under Subsection (a); or

(2) extend the time for filing the affidavit under Subsection (a).

(c) The failure of an applicant for probate of a will to file the affidavit required by Subsection (a) does not affect title to property passing under the terms of the will.

Derived from Probate Code § 89C(d).


Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

§ 258.001. Citation on Application for Probate of Will Produced in Court

§ 258.002. Citation on Application for Probate of Will Not Produced in Court

§ 258.003. Court Action Prohibited Before Service of Citation

Subchapter B. Notices with Respect to Application to Probate Will After the Period for Probate

§ 258.051. Notice to Heirs

§ 258.052. Appointment of Attorney Ad Litem

§ 258.053. Previously Probated Will

Subchapter C. Service by Publication or Other Substituted Service

§ 258.101. Service by Publication or Other Substituted Service

Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

Statutes in Context

Chapter 258, Subchapter A

Notice of an application for the probate of a written will produced in court and for letters of administration is served by posting under § 258.001. The notice of the action is merely placed on the courthouse door or a nearby location under § 51.053. Unlike in many states, will beneficiaries and heirs do not receive personal service or service by mail. The posting procedure has been deemed to satisfy the due process requirements of the U.S. Constitution. See Estate of Ross, 672 S.W.2d 315 (Tex. App. -- Eastland 1984, writ ref'd n.r.e.), cert. denied, Holmes v. Ross, 470 U.S. 1084 (1985). Methods of service more likely to give actual (as contrasted to constructive) notice are required if the proponent is attempting to probate a written will not produced in court or a will more than 4 years after the testator’s death (see § 258.051).
§ 202.005. Application for Proceeding to Declare Heirship
§ 202.006. Request for Determination of Necessity for Administration
§ 202.007. Affidavit Supporting Application Required
§ 202.008. Required Parties to Proceeding to Declare Heirship
§ 202.009. Attorney Ad Litem

Subchapter A. Authorization and Procedures for Commencement of Proceeding to Declare Heirship

§ 202.001. General Authorization for and Nature of Proceeding to Declare Heirship

In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

1. the persons who are a decedent’s heirs and only heirs; and

2. the heirs’ respective shares and interests under the laws of this state in the decedent’s estate or, if applicable, in the trust.

Derived from Probate Code § 48(a).


§ 202.002. Circumstances Under Which Proceeding to Declare Heirship Is Authorized

A court may conduct a proceeding to declare heirship when:

1. a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person’s estate;

2. there has been a will probated in this state or elsewhere or an administration in this state of a decedent’s estate, but:

   A. property in this state was omitted from the will or administration; or

   B. no final disposition of property in this state has been made in the administration; or

3. it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

Derived from Probate Code § 48(a).

§ 202.0025. Action Brought After Decedent’s Death  

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

New.  

§ 202.004. Persons Who May Commence Proceeding to Declare Heirship  

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

(1) the personal representative of the decedent’s estate;
(2) a person claiming to be a creditor or the owner of all or part of the decedent’s estate;
(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent’s death;
(4) a party seeking the appointment of an independent administrator under Section 401.003; or
(5) the trustee of a trust holding assets for the benefit of a decedent.

Derived from Probate Code § 49(a).


§ 202.005. Application for Proceeding to Declare Heirship  

A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

(1) the decedent’s name and date and place of death;
(2) the names and physical addresses where service can be had of the decedent’s heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent’s estate or in the trust, as applicable;
(3) if the date or place of the decedent’s death or the name or physical address where service can be had of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date or place of the decedent’s death or the name or physical address where service can be had of the heir;
(4) that all children born to or adopted by the decedent have been listed;
(5) that each of the decedent’s marriages has been listed with:
(A) the date of the marriage;
(B) the name of the spouse;
(C) the date and place of termination if the marriage was terminated; and
(D) other facts to show whether a spouse has had an interest in the decedent’s property;
(6) whether the decedent died testate and, if so, what disposition has been made of the will;
(7) a general description of all property belonging to the decedent’s estate or held in trust for the benefit of the decedent, as applicable; and
(8) an explanation for the omission from the application of any of the information required by this section.

Derived from Probate Code § 49(a).


§ 202.006. Request for Determination of Necessity for Administration  

A person who files an application under Section 202.005 not later than the fourth anniversary of the date of the death of the decedent who is the subject of the application may request that the court determine whether there is a need for administration of the decedent’s estate. The court shall hear evidence on the issue and, in the court’s judgment, make a determination of the issue.

Derived from Probate Code § 48(b).

§ 202.007. Affidavit Supporting Application Required

(a) An application filed under Section 202.005 must be supported by the affidavit of each applicant.

(b) An affidavit of an applicant under Subsection (a) must state that, to the applicant’s knowledge:

1. all the allegations in the application are true; and

2. no material fact or circumstance has been omitted from the application.

Derived from Probate Code § 49(b).

§ 202.008. Required Parties to Proceeding to Declare Heirship

Each of the following persons must be made a party to a proceeding to declare heirship:

1. each unknown heir of the decedent who is the subject of the proceeding;

2. each person who is named as an heir of the decedent in the application filed under Section 202.005; and

3. each person who, on the filing date of the application, is shown as owning a share or interest in any real property described in the application by the deed records of the county in which the property is located.

Derived from Probate Code § 49(b).

§ 202.009. Attorney Ad Litem

(a) The court shall appoint an attorney ad litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown.

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

Derived from Probate Code § 53(b), (c).

Subchapter B. Notice of Proceeding to Declare Heirship

§ 202.051. Service of Citation by Mail When Recipient’s Name and Address Are Known or Ascertainable

Except as provided by Section 202.054, citation in a proceeding to declare heirship must be served by registered or certified mail on:

1. each distributee who is 12 years of age or older and whose name and address are known or can be ascertained through the exercise of reasonable diligence; and

2. the parent, managing conservator, or guardian of each distributee who is younger than 12 years of age if the name and address of the parent, managing conservator, or guardian are known or can be reasonably ascertained.

Derived from Probate Code § 50(a).

§ 202.052. Service of Citation by Publication [When Recipient’s Name or Address Is Not Ascertainable].

If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation must be served on the person or entity by publication in the county in which the proceeding to declare heirship is commenced and in the county of the last residence of the decedent who is the subject of the proceeding, if that residence was in a county other than the county in which the proceeding is commenced. To determine whether a decedent has any other heirs, citation must be served on unknown heirs by publication in the manner provided by this section.

Derived from Probate Code § 50(b).

§ 202.053. Required Posting of Citation

Except in a proceeding in which citation is served by publication as provided by Section 202.052, citation in a proceeding to declare heirship must be posted in:

1. the county in which the proceeding is commenced; and

2. the county of the last residence of the decedent who is the subject of the proceeding.

Derived from Probate Code § 50(c).

§ 202.054. Personal Service of Citation May Be Required

The court may require that service of citation in a proceeding to declare heirship be made by personal service on some or all of those named as distributees in the application filed under Section 202.005.

Derived from Probate Code § 50(a).

§ 202.055. Service of Citation on Certain Persons Not Required

A party to a proceeding to declare heirship who executed the application filed under Section 202.005, entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.
§ 202.056. Waiver of Service of Citation
(a) Except as provided by Subsection (b)(2), a distributee may waive citation required by this subchapter to be served on the distributee.

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

(1) is younger than 12 years of age may waive citation required by this subchapter to be served on the distributee; and

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

§ 202.057. Affidavit of Service of Citation
(a) A person who files an application under Section 202.005 shall file with the court:

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

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating that notice was given, the name of each person who received the notice if not shown on the proof, and the name of each person who waived citation.

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

New.

§ 202.058. Statutes in Context
§ 202.057
A court cannot enter an order determining heirs unless the applicant files (1) a copy of the notice and proof of delivery sent to interested parties and (2) an affidavit of the applicant or a certificate signed by the applicant's attorney stating that notice was given, the name of each person who received the notice if not shown on the proof, and the name of each person who waived citation.

§ 202.059. Procedures Applicable to Transferred Proceeding to Declare Heirship; Consolidation with Other Proceeding
A proceeding to declare heirship that is transferred under Section 202.101 shall proceed as though the proceeding was originally filed in the court to which the proceeding is transferred. The court may consolidate the proceeding with the other proceeding pending in that court.

Derived from Probate Code § 51.


Amended by Acts 2011, 82nd Leg., ch. 90, § 8.007, eff. Jan. 1, 2014.

Subchapter D. Evidence Relating to Determination of Heirship

§ 202.151. Evidence in Proceeding to Declare Heirship

(a) The court may require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively.

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

Derived from Probate Code § 53(a).


Subchapter E. Judgment in Proceeding to Declare Heirship

§ 202.201. Required Statements in Judgment

(a) The judgment in a proceeding to declare heirship must state:

(1) the names of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs’ respective shares and interests in the decedent’s property.

(b) If the proof in a proceeding to declare heirship is in any respect deficient, the judgment in the proceeding must state that.

Derived from Probate Code § 54.


(a) The judgment in a proceeding to declare heirship is a final judgment.

(b) At the request of an interested person, the judgment in a proceeding to declare heirship may be appealed or reviewed within the same time limits and in the same manner as other judgments in probate matters.

Derived from Probate Code § 55(a).


§ 202.203. Correction of Judgment at Request of Heir Not Properly Served

If an heir of a decedent who is the subject of a proceeding to declare heirship is not served with citation by registered or certified mail or personal service in the proceeding, the heir may:

(1) have the judgment in the proceeding corrected by bill of review:

(A) at any time, but not later than the fourth anniversary of the date of the judgment; or

(B) after the passage of any length of time, on proof of actual fraud; and

(2) recover the heir’s just share of the property or the value of that share from:

(A) the heirs named in the judgment; and

(B) those who claim under the heirs named in the judgment and who are not bona fide purchasers for value.

Derived from Probate Code § 55(A).


§ 202.204. Limitation of Liability of Certain Persons Acting in Accordance with Judgment

(a) The judgment in a proceeding to declare heirship is conclusive in a suit between an heir omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted heir, regardless of whether the judgment is subsequently modified, set aside, or nullified.

(b) A person is not liable to another person for the following actions performed in good faith after a judgment is entered in a proceeding to declare heirship:

(1) delivering the property of the decedent who was the subject of the proceeding to the persons named as heirs in the judgment; or

(2) engaging in any other transaction with the persons named as heirs in the judgment.

Derived from Probate Code § 55(b).


§ 202.205. Effect of Certain Judgments on Liability to Creditors

(a) A judgment in a proceeding to declare heirship stating that there is no necessity for administration of the estate of the decedent who is the subject of the proceeding constitutes authorization for a person who owes money to the estate, has custody of estate property, acts as registrar or transfer agent of an evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with an heir named in the judgment to take the following actions without liability to a creditor of the estate or other person:

(1) to pay, deliver, or transfer the property or the evidence of property rights to an heir named in the judgment; or

(2) to purchase property from an heir named in the judgment.

(b) An heir named in a judgment in a proceeding to declare heirship is entitled to enforce the heir’s right to payment, delivery, or transfer described by Subsection (a) by suit.
(c) Except as provided by this section, this chapter
does not affect the rights or remedies of the creditors of
a decedent who is the subject of a proceeding to declare
heirship.

Derived from Probate Code § 55(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 202.206. Filing and Recording of Judgment
(a) A certified copy of the judgment in a proceeding
to declare heirship may be:

(1) filed for record in the office of the county
clerk of the county in which any real property
described in the judgment is located;

(2) recorded in the deed records of that county;

and

(3) indexed in the name of the decedent who
was the subject of the proceeding as grantor and in
the names of the heirs named in the judgment as
grantees.

(b) On the filing of a judgment in accordance with
Subsection (a), the judgment constitutes constructive
notice of the facts stated in the judgment.

Derived from Probate Code § 56.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

Chapter 203. Nonjudicial Evidence of
Heirship

§ 203.001. Recorded Statement of Facts as Prima
Facie Evidence of Heirship

§ 203.002. Form of Affidavit Concerning Identity of
Heirs

Chapter 203. Nonjudicial Evidence of
Heirship

Statutes in Context

Chapter 203

Some title companies, oil landpersons, and
financial institutions may rely on an affidavit of
heirship, standing alone without a formal
determination of heirship, to clear defects in title to
real property.

§ 203.001. Recorded Statement of Facts as Prima
Facie Evidence of Heirship

(a) A court shall receive in a proceeding to declare
heirship or a suit involving title to property a statement
of facts concerning the family history, genealogy,
marital status, or the identity of the heirs of a decedent
as prima facie evidence of the facts contained in the
statement if:

(1) the statement is contained in:

(A) an affidavit or other instrument legally
executed and acknowledged or sworn to before,
and certified by, an officer authorized to take
acknowledgments or oaths, as applicable; or

(B) a judgment of a court of record; and

(2) the affidavit or instrument containing the
statement has been of record for five years or more
in the deed records of a county in this state in which
the property is located at the time the suit involving
title to property is commenced, or in the deed
records of a county in this state in which the
decedent was domiciled or had a fixed place of
residence at the time of the decedent’s death.

(b) If there is an error in a statement of facts in a
recorded affidavit or instrument described by
Subsection (a), anyone interested in a proceeding in
which the affidavit or instrument is offered in evidence
may prove the true facts.

(c) An affidavit of facts concerning the identity of a
decedent’s heirs as to an interest in real property that is
filed in a proceeding or suit described by Subsection (a)
may be in the form prescribed by Section 203.002.

(d) An affidavit of facts concerning the identity of a
decedent’s heirs does not affect the rights of an omitted
heir or creditor of the decedent as otherwise provided
by law. This section is cumulative of all other statutes
on the same subject and may not be construed as
abrogating any right to present evidence or rely on an
affidavit of facts conferred by any other statute or rule.

Derived from Probate Code § 52.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 203.002. Form of Affidavit Concerning Identity of
Heirs

An affidavit of facts concerning the identity of a
decedent’s heirs may be in substantially the following form:

AFFIDAVIT OF FACTS CONCERNING THE
IDENTITY OF HEIRS

Before me, the undersigned authority, on this day
personally appeared _________ ("Affiant") (insert
name of affiant) who, being first duly sworn, upon
his/her oath states:

1. My name is _________ (insert name of affiant),
and I live at _________ (insert address of affiant’s
residence). I am personally familiar with the family and
marital history of _________ ("Decedent") (insert
name of decedent), and I have personal knowledge of
the facts stated in this affidavit.

2. I knew decedent from _________ (insert date)
until _________ (insert date). Decedent died on
__________ (insert date of death). Decedent’s place of
death was _________ (insert place of death). At the
time of decedent’s death, decedent’s residence was
__________ (insert address of decedent’s residence).

3. Decedent’s marital history was as follows:
_______ (insert marital history and, if decedent’s
spouse is deceased, insert date and place of spouse’s death).

4. Decedent had the following children: __________ (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent’s home or raise any other children, except: __________ (insert name of child or names of children, or state “none”).

6. (Include if decedent was not survived by descendants.) Decedent’s mother was: __________ (insert name, birth date, and current address or date of death of mother, as applicable).

7. (Include if decedent was not survived by descendants.) Decedent’s father was: __________ (insert name, birth date, and current address or date of death of father, as applicable).

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: __________ (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state “none”).

9. (Optional.) The following persons have knowledge regarding the decedent, the identity of decedent’s children, if any, parents, or siblings, if any: __________ (insert names of persons with knowledge, or state “none”).

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no administration of decedent’s estate. (Modify statement if there has been administration of decedent’s estate.)

12. Decedent left no debts that are unpaid, except: __________ (insert list of debts, or state “none”).

13. There are no unpaid estate or inheritance taxes, except: __________ (insert list of unpaid taxes, or state “none”).

14. To the best of my knowledge, decedent owned an interest in the following real property: __________ (insert list of real property in which decedent owned an interest, or state “none”).

15. (Optional.) The following were the heirs of decedent: __________ (insert names of heirs).

16. (Insert additional information as appropriate, such as size of the decedent’s estate.)

Signed this ___ day of __________, ___.

_________________________________
(signature of affiant)

State of __________

County of __________

Sworn to and subscribed to before me on __________ (date) by __________ (insert name of affiant).

_________________________________
(signature of notarial officer)

(Seal, if any, of notary) __________

Estate Administration and Probate -- Texas Style

Chapter 204. Genetic Testing in Proceedings to Declare Heirship

Subchapter A. General Provisions
§ 204.001. Proceedings and Records Public

Subchapter B. Court Orders for Genetic Testing in Proceedings to Declare Heirship
§ 204.051. Order for Genetic Testing
§ 204.052. Advancement of Costs
§ 204.053. Order and Advancement of Costs for Subsequent Genetic Testing
§ 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances
§ 204.055. Genetic Testing of Deceased Individual
§ 204.056. Criminal Penalty

Subchapter C. Results of Genetic Testing
§ 204.101. Results of Genetic Testing; Admissibility
§ 204.102. Presumption Regarding Results of Genetic Testing; Rebuttal
§ 204.103. Contesting Results of Genetic Testing

Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship
§ 204.151. Applicability of Subchapter
§ 204.152. Presumption; Rebuttal
§ 204.153. Effect of Inconclusive Results of Genetic Testing

Subchapter E. Additional Orders Following Results of Genetic Testing
§ 204.201. Order for Change of Name

Chapter 204. Genetic Testing in Proceedings to Declare Heirship

Subchapter A. General Provisions
§ 204.001. Proceedings and Records Public

A proceeding under this chapter or Chapter 202 involving genetic testing is open to the public as in

Derived from Probate Code § 52A.
other civil cases. Papers and records in the proceeding are available for public inspection. Derived from Probate Code § 53E.


Subchapter B. Court Orders for Genetic Testing in Proceedings to Declare Heirship

§ 204.051. Order for Genetic Testing

(a) In a proceeding to declare heirship under Chapter 202, the court may, on the court’s own motion, and shall, on the request of a party to the proceeding, order one or more specified individuals to submit to genetic testing as provided by Subchapter F, Chapter 160, Family Code. If two or more individuals are ordered to be tested, the court may order that the testing of those individuals be done concurrently or sequentially.

(b) The court may enforce an order under this section by contempt.

Derived from Probate Code § 53A(a).


§ 204.052. Advancement of Costs

Subject to any assessment of costs following a proceeding to declare heirship in accordance with Rule 131, Texas Rules of Civil Procedure, the cost of genetic testing ordered under Section 204.051 must be advanced:

(1) by a party to the proceeding who requests the testing;

(2) as agreed by the parties and approved by the court; or

(3) as ordered by the court.

Derived from Probate Code § 53A(b).


§ 204.053. Order and Advancement of Costs for Subsequent Genetic Testing

(a) Subject to Subsection (b), the court shall order genetic testing subsequent to the testing conducted under Section 204.051 if:

(1) a party to the proceeding to declare heirship contests the results of the genetic testing ordered under Section 204.051; and

(2) the party contesting the results requests that additional testing be conducted.

(b) The court may order genetic testing in accordance with this section only if:

(1) a parent, sibling, or child of the individual whose genetic material is not available; or

(2) any other relative of that individual, as necessary to conduct the testing.

Derived from Probate Code § 53A(c), (d).


§ 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances

If a sample of an individual’s genetic material that could identify another individual as the decedent’s heir is not available for purposes of conducting genetic testing under this subchapter, the court, on a finding of good cause and that the need for genetic testing outweighs the legitimate interests of the individual to be tested, may order any of the following individuals to submit a sample of genetic material for the testing under circumstances the court considers just:

(1) a parent, sibling, or child of the individual whose genetic material is not available; or

(2) any other relative of that individual, as necessary to conduct the testing.

Derived from Probate Code § 53A(e).


§ 204.055. Genetic Testing of Deceased Individual

On good cause shown, the court may order:

(1) genetic testing of a deceased individual under this subchapter; and

(2) if necessary, removal of the remains of the deceased individual as provided by Section 711.004, Health and Safety Code, for that testing.

Derived from Probate Code § 53A(f).


§ 204.056. Criminal Penalty

(a) An individual commits an offense if:

(1) the individual intentionally releases an identifiable sample of the genetic material of another individual that was provided for purposes of genetic testing ordered under this subchapter; and

(2) the release:

(A) is for a purpose not related to the proceeding to declare heirship; and

(B) was not ordered by the court or done in accordance with written permission obtained from the individual who provided the sample.

(b) An offense under this section is a Class A misdemeanor.

Derived from Probate Code § 53A(g).


Subchapter C. Results of Genetic Testing

§ 204.101. Results of Genetic Testing; Admissibility

A report of the results of genetic testing ordered under Subchapter B:
(1) must comply with the requirements for a report prescribed by Section 160.504, Family Code; and
(2) is admissible in a proceeding to declare heirship under Chapter 202 as evidence of the truth of the facts asserted in the report.
Derived from Probate Code § 53B(a).

§ 204.102. Presumption Regarding Results of Genetic Testing; Rebuttal
The presumption under Section 160.505, Family Code:
(1) applies to the results of genetic testing ordered under Subchapter B; and
(2) may be rebutted as provided by Section 160.505, Family Code.
Derived from Probate Code § 53B(b).

§ 204.103. Contesting Results of Genetic Testing
(a) A party to a proceeding to declare heirship who contests the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court.
(b) Unless otherwise ordered by the court, the party offering the testimony under Subsection (a) bears the expense for the expert testifying.
Derived from Probate Code § 53B(c).

Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship

§ 204.151. Applicability of Subchapter
This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who claims to be a biological child of the decedent to inherit through a biological child of the decedent.
Derived from Probate Code § 53C(a).

§ 204.152. Presumption; Rebuttal
The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code.
Derived from Probate Code § 53C(b), (c).

§ 204.153. Effect of Inconclusive Results of Genetic Testing
If the results of genetic testing ordered under Subchapter B do not identify or exclude a tested individual as the ancestor of the individual described by Section 204.151:
(1) the court may not dismiss the proceeding to declare heirship; and
(2) the results of the genetic testing and other relevant evidence are admissible in the proceeding.
Derived from Probate Code § 53C(d).

Subchapter E. Additional Orders Following Results of Genetic Testing

§ 204.201. Order for Change of Name
On the request of an individual determined by the results of genetic testing to be the heir of a decedent and for good cause shown, the court may:
(1) order the name of the individual to be changed; and
(2) if the court orders a name change under Subdivision (1), order the bureau of vital statistics to issue an amended birth record for the individual.
Derived from Probate Code § 53D.

Chapter 205. Small Estate Affidavit

§ 205.001. Entitlement to Estate Without Appointment of Personal Representative
§ 205.002. Affidavit Requirements
§ 205.003. Examination and Approval of Affidavit
§ 205.004. Copy of Affidavit to Certain Persons
§ 205.005. Affidavit as Local Government Record
§ 205.006. Title to Homestead Transferred Under Affidavit
§ 205.007. Liability of Certain Persons
§ 205.008. Effect of Chapter
§ 205.009. Construction of Certain References

Chapter 205. Small Estate Affidavit
$401.001. Expression of Testator’s Intent in Will

(a) Any person capable of making a will may provide in the person’s will that no other action shall be had in the probate court in relation to the settlement of the person’s estate than the probating and recording of the will and the return of any required inventory, appraisement, and list of claims of the person’s estate.

(b) Any person capable of making a will may provide in the person’s will that no independent administration of his or her estate may be allowed. In such case the person’s estate, if administered, shall be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Derived from Probate Code § 145(b), (o).


$401.002. Creation in Testate Estate by Agreement

(a) Except as provided in Section 401.001(b), if a decedent’s will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent’s will, or in one or more separate documents consenting to the application for probate of the decedent’s will, the executor named in the will to serve as independent executor and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will and the return of an inventory, appraisement, and list of claims of the decedent’s estate.

In such case the probate court shall enter an order providing for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent’s will, or in one or more separate documents consenting to the application for probate of the decedent’s will, the executor named in the will to serve as independent executor and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will and the return of an inventory,

Statutes in Context

Chapter 401

Texas was a pioneer in the area of non-court-supervised administrations since the first independent administration statutes were enacted in 1843. Independent administrations are extremely common because they are faster, economical, and more convenient than court-supervised (dependent) administrations. Once the personal representative files the inventory, appraisement, and list of claims, the personal representative administers the estate without court involvement.

Chapter 401 explains when an independent administration is possible. (1) The testator’s will may expressly authorize independent administration. Although no special language is needed, most attorneys track the statutory language as follows: “I appoint [name] as independent executor. I direct that there shall be no action in the probate court in the settlement of my estate other than the probating and recording of this will, and the return of any required inventory, appraisement, and list of claims of my estate.” See § 401.001. (2) If the testator did not specify the executor to be independent, all of the beneficiaries may agree under § 401.002. However, if the will expressly prohibits independent administration, the court will not authorize independent administration. See § 401.001(b). (3) If the decedent died intestate, the heirs may agree to an independent administration under § 401.003.
appraise the estate and list of claims of the decedent’s estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Derived from Probate Code § 145(e), (d).


§ 401.003. Creation in Intestate Estate by Agreement

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent’s estate, or in one or more documents consenting to the application for administration of the decedent’s estate, a qualified person, firm, or corporation to serve as independent administrator and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the return of an inventory, appraise, and list of claims of the decedent’s estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202, to constitute all of the decedent’s heirs.

Derived from Probate Code § 145(e), (g).


§ 401.004. Means of Establishing Distributee Consent

(a) This section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) All distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may consent to the creation of an independent administration on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to act on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor’s behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) If a trust is created in the decedent’s will or if the decedent’s will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent’s death and those first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent’s death, shall, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) If a life estate is created either in the decedent’s will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent’s death, shall, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) If a decedent’s will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent’s will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent’s will survived the decedent by the prescribed period.

(g) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently
disclaim any portion of the distributee’s interest in the decedent’s estate.

(h) If a distributee of a decedent’s estate dies and if by virtue of the distributee’s death the distributee’s share of the decedent’s estate becomes payable to the distributee’s estate, the deceased distributee’s personal representative may consent to the independent administration of the decedent’s estate under Section 401.002 or 401.003 and under Subsection (c).

§ 401.005. Bond; Waiver of Bond

(a) If an independent administration of a decedent’s estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge’s successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(b) This section does not repeal any other section of this title.

§ 401.006. Granting Power of Sale by Agreement

An independent representative may sell estate property without a court order under the same circumstances that a dependent representative could sell estate property with a court order. In intestate administrations or where a will fails expressly to grant a power of sale, the court may grant an independent administrator a power of sale over real property in the order of appointment if the beneficiaries who would receive the real property consent to the power. Protections for third parties who rely on the apparent authority of an independent representative where a power of sale is granted in the will or the representative provides an affidavit that the sale is necessary under the circumstances described in § 356.251.

§ 401.007. No Liability of Judge

Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003. Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

§ 401.008. Person Declining to Serve

A person who declines to serve or resigns as independent executor of a decedent’s estate may be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

Chapter 402. Administration

Subchapter A. General Provisions

§ 402.001. General Scope and Exercise of Powers

§ 402.002. Independent Executors May Act Without Court Approval

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§ 402.052. Power of Sale of Estate Property Generally

§ 402.053. Protection of Person Purchasing Estate Property
§ 402.054. No Limitation on Other Action

Chapter 402. Administration

Subchapter A. General Provisions

§ 402.001. General Scope and Exercise of Powers

When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

Derived from Probate Code § 145(h).

§ 402.002. Independent Executors May Act Without Court Approval

Unless this title specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

Derived from Probate Code § 145B.

Subchapter B. Power of Sale

§ 402.051. Definition of Independent Executor

In this subchapter, “independent executor” does not include an independent administrator.

Derived from Probate Code § 145C(a).

§ 402.052. Power of Sale of Estate Property Generally

Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

Derived from Probate Code § 145C(b).

§ 402.053. Protection of Person Purchasing Estate Property

(a) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will;

(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) This subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

Derived from Probate Code § 145C(c).

§ 402.054. No Limitation on Other Action

This subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

Derived from Probate Code § 145C(d).
Chapter 403. Exemptions and Allowances; Claims

Subchapter A. Exemptions and Allowances
§ 403.001. Setting Aside Exempt Property and Allowances

Subchapter B. Claims
§ 403.051. Duty of Independent Executor
(a) An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:
   (1) shall give the notices required under Sections 308.051 and 308.053;
   (2) may give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Section 403.055; and
   (3) may approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.
(b) To be effective, the notice prescribed under Subsection (a)(2) must include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

§ 403.052. Secured Claims for Money
Within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, a creditor with a claim for money secured by property of the estate must give notice to the independent executor of the creditor’s election to have the creditor’s claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor’s election under this section in the deed records of the county in which the real property is located. If no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before maturity if it is determined to be in the best interest of the estate to do so.

§ 403.053. Matured Secured Claims
(a) A claim approved as a matured secured claim under Section 403.052 remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher
classification under Section 355.102. However, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(b) Subsection (a) may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from exercising any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor’s extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(c) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G, Chapter 255, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay from the devisees the amount of the debt and pay that amount to the claimant from the sale proceeds the claim and associated amount to the claimant or shall sell the property and pay that amount to the claimant or shall sell the property and pay that amount to the claimant.

§ 403.056. Notices Required by Creditors

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that complies with Section 355.004 and is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor’s attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument that complies with Section 355.004 or a pleading filed in the court in which the administration of the estate is pending.

(b) This section does not exempt a creditor who elects matured secured status from the filing requirements of Section 403.052, to the extent those requirements are applicable.

§ 403.057. Statute of Limitations

Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent’s death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

§ 403.058. Other Claim Procedures Generally Do Not Apply

Except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Sections 355.064 and 355.066 do not apply to independent administrations, and consequently a creditor’s claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 355.156, 355.157, 355.158, 355.159, and 355.160 do not apply to independent administrations.
§ 403.0585. Liability of Independent Executor for Payment of a Claim

An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the independent executor if:

(1) the claim is not barred by limitations; and

(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

§ 403.059. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the possession of the independent executor that is subject to the debt. The independent executor shall not be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

§ 404.001. Accounting

(a) At any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of the estate, including a statement of the estate, accounts, debts, and credits. The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of any property belonging to the estate that has come into the executor’s possession as executor.

(b) The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of the estate, including a statement of the estate, accounts, debts, and credits. The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of any property belonging to the estate that has come into the executor’s possession as executor.

(c) The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of the estate, including a statement of the estate, accounts, debts, and credits. The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of any property belonging to the estate that has come into the executor’s possession as executor.

(d) The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of the estate, including a statement of the estate, accounts, debts, and credits. The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of any property belonging to the estate that has come into the executor’s possession as executor.

(e) The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of the estate, including a statement of the estate, accounts, debts, and credits. The independent executor shall also furnish to the person or persons entitled to any portion of the estate under the will, if any, a full and complete accounting of any property belonging to the estate that has come into the executor’s possession as executor.
(3) the debts that have been paid;
(4) the debts and expenses, if any, still owing by the estate;
(5) the property of the estate, if any, still remaining in the executor’s possession;
(6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and
(7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Any other interested person shall, on demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor of the estate.

§ 404.002. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor’s trust, or has in some other way become disqualified.

§ 404.003. Removal of Independent Executor Without Notice

The probate court, on the court’s own motion or on the motion of any interested person, and without notice, may remove an independent executor appointed under this subtitle when:

(1) the independent executor cannot be served with notice or other processes because:
   (A) the independent executor’s whereabouts are unknown;
   (B) the independent executor is eluding service; or
   (C) the independent executor is a nonresident of this state without a designated resident agent; or
   (2) sufficient grounds appear to support a belief that the independent executor has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the independent executor’s care.

New.


§ 404.0035. Removal of Independent Executor With Notice

(a) The probate court, on the court’s own motion, may remove an independent executor appointed under this subtitle after providing 30 days’ written notice of the court’s intention to the independent executor, requiring answering at a time and place set in the notice of the court’s intent to remove the independent executor, by certified mail, return receipt requested, to the independent executor’s last known address and to the last known address of the independent executor’s attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law; [as]
(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor’s knowledge or an affidavit in lieu of the inventory, appraisement, and list of claims, unless that deadline is extended by court order; or [ ]
(3) fails to timely file the affidavit or certificate required by Section 308.004.

(b) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place set [fixed] in the notice, may remove an independent executor when:

(1) the independent executor fails to make an accounting which is required by law to be made;
(2) the independent executor fails to timely file the affidavit or certificate required by Section 308.004.
the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor’s duties;

(3) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor’s fiduciary duties; or

(4) the independent executor becomes incapable of properly performing the independent executor’s fiduciary duties due to a material conflict of interest.

Derived from Probate Code § 149C.


§ 404.0036. Removal Order

(a) The order of removal of an independent executor shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed independent executor. The order of removal shall require that letters issued to the removed independent executor shall be surrendered and that all letters shall be canceled of record.

(b) If an independent executor is removed by the court under Section 404.003 or 404.0035, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.0037. Costs and Expenses Related to Removal of Independent Executor

(a) An independent executor who defends an action for the independent executor’s removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor’s necessary expenses and disbursements, including reasonable attorney’s fees, in the removal proceedings.

(b) Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney’s fees and expenses, may be paid out of the estate.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.004. Powers of an Administrator Who Succeeds an Independent Executor

(a) Whenever a person has died, or shall die, testate, owning property in this state, and the person’s will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and the independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator’s bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred on the administrator under other provisions of the laws of this state, authorize, direct, and empower the administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) The court, on application, citation, and hearing, may, by its order, authorize, direct, and empower the administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court’s order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against the administrator in the administrator’s official capacity.

(c) The court may order and authorize the administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of the decedent, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of the administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing the administrator orders the business of the estate to be carried on and it becomes necessary, from time to time, under orders of the court, for the administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) The court, in addition, may, on application, citation, and hearing, order, authorize, and empower the administrator to assume, exercise, and discharge, under the orders and directions of the court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by,
§ 404.005. Court-Appointed Successor Independent Executor

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the probate court finds that continued administration of the estate is necessary, the court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interest of the estate to do so. The successor independent executor shall serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Except as otherwise provided by this subsection, if a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee. If a distributee described in this section is a minor and has no guardian of the person, a natural guardian of the minor may sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Except as otherwise provided by this subsection, if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a person considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee may sign the application on behalf of the distributee and does not name a successor independent executor, the distributee may sign the application if the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee.
Estate Administration and Probate -- Texas Style

CHAPTER 405. CLOSING AND DISTRIBUTIONS

§ 405.001. Accounting and Distribution

§ 405.001. Accounting and Distribution

§ 405.002. Receipts and Releases for Distributions by Independent Executor

§ 405.003. Judicial Discharge of Independent Executor

§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate

§ 405.005. Closing Report

§ 405.006. Notice of Closing Estate

§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate

§ 405.008. Partition and Distribution or Sale of Property Incapable of Division

§ 405.009. Closing Independent Administration on Application by Distributee

§ 405.010. Issuance of Letters

§ 405.011. Rights and Remedies Cumulative

§ 405.012. Closing Procedures Not Required

Chapter 405. Closing and Distributions

Statutes in Context

Chapter 405

The independent executor does not need to render annual accountings. Instead, accountings are required only under the circumstances described in the Code, that is, (1) if an interested person demands an accounting 15 months or more after the date the independent executor received letters (§ 404.001), or (2) an interested person petitions the court for an accounting and distribution after 2 years from the date of the creation of the independent administration (see § 405.001).

§ 405.001. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the court for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court considers proper. The accounting shall include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court may:

(1) order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates; or

(2)
§ 405.0015. Distributions Generally

Unless the will, if any, or a court order provides otherwise, an independent executor may, in distributing property not specifically devised that the independent executor is authorized to sell:

(1) make distributions in divided or undivided interests;
(2) allocate particular assets in proportionate or disproportionate shares;
(3) value the estate property for the purposes of acting under Subdivision (1) or (2); and
(4) adjust the distribution, division, or termination for resulting differences in valuation.

New.

Added by Acts 2017, 85th Leg., ch. 844, § 33, eff. Sept. 1, 2017.

§ 405.002. Receipts and Releases for Distributions by Independent Executor

(a) An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

Derived from Probate Code § 151(e).


Statutes in Context
§§ 405.003–405.009

There is no requirement that an independent administration be closed. § 405.012. The Code, however, provides three methods for closing the administration. (1) Section 405.004 permits the independent executor to file a closing report affidavit or a notice of closing affidavit. The court takes no action on the affidavit unless an interested party files an objection within thirty days.

(2) Section 405.009 permits an heir or beneficiary to petition the court for an order closing the estate.

(3) Section 405.003 permits the court to discharge an independent executor so that the executor will have a court order indicating that he or she is not liable for any matters relating to the past administration of the estate which have been fully and fairly disclosed.

Case law has indicated that the statutory closing methods are not exclusive. Final distribution of the estate after creditors are paid may result in the closing of the estate by operation of law. In re Estate of Teinert, 251 S.W.3d 66 (Tex. App.—Waco 2008, pet. denied).

§ 405.003. Judicial Discharge of Independent Executor

(a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) On the filing of an action under this section, each distributee [beneficiary] of the estate shall be personally served with citation, except for a distributee [beneficiary] who has waived the issuance and service of citation.

(c) In a proceeding under this section, the court may require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor’s request for a discharge of liability. The court may audit, settle, or approve a final account filed under this subsection.

(d) On or before filing an action under this section, the independent executor must distribute to the distributees [beneficiaries] of the estate any of the remaining assets or property of the estate that remains in the independent executor’s possession after all of the estate’s debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. The independent executor shall be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Derived from Probate §§ 149D, 149E, 149F.
§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate

When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor’s possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

Derived from Probate Code § 151(a).


§ 405.005. Closing Report

An independent executor may file a closing report verified by affidavit that:

(1) shows:
   (A) the property of the estate that came into the independent executor’s possession;
   (B) the debts that have been paid;
   (C) the debts, if any, still owing by the estate;
   (D) the property of the estate, if any, remaining on hand after payment of debts; and
   (E) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Derived from Probate Code § 151(a-1).


§ 405.006. Notice of Closing Estate

(a) Instead of filing a closing report under Section 405.005, an independent executor may file a notice of closing estate verified by affidavit that states:

(1) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor’s possession;

(2) that all remaining assets of the estate, if any, have been distributed; and

(3) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

Derived from Probate Code § 151(b).


§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate

(a) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(b) The closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any miscalculation of the estate or from liability for any false statements contained in the report or notice.

(c) When a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice.

(d) If the independent executor is required to give bond, the independent executor’s filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(e) An independent executor’s closing report or notice of closing estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Derived from Probate Code § 151(c), (d).

§ 405.008. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, the independent executor may, but may not be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. The estate or portion of the estate shall either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Derived from Probate Code § 150.

§ 405.009. Closing Independent Administration on Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of the estate, any distributee may file an application to close the administration; and, after citation on the independent executor, and on hearing, the court may enter an order:

1. requiring the independent executor to file a closing report meeting the requirements of Section 405.005;
2. closing the administration;
3. terminating the power of the independent executor to act as independent executor; and
4. releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Derived from Probate Code § 152.

§ 405.010. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Derived from Probate Code § 153.

§ 405.011. Rights and Remedies Cumulative

The rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Derived from Probate Code § 149G.

§ 405.012. Closing Procedures Not Required

An independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

New.

SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES

Chapter 451. Order of No Administration

§ 451.001. Application for Family Allowance and Order of No Administration

§ 451.002. Hearing and Order

§ 451.003. Effect of Order

§ 451.004. Proceeding to Revoke Order

Chapter 451. Order of No Administration

Statutes in Context
Chapter 451

Chapter 451 provides a procedure for a court to dispense with administration if (1) the decedent is survived by a spouse, minor child, or adult incapacitated child, and (2) the value of the estate, not including homestead and exempt property, does not exceed the family allowance. Administration is not necessary because there would be no property for the decedent’s creditors or will beneficiaries to reach.

§ 451.001. Application for Family Allowance and Order of No Administration

(a) If the value of the entire assets of an estate, excluding homestead and exempt property, does not
WARNINGS
As independent executor, you have a fiduciary duty to treat all beneficiaries and creditors fairly. By law, throughout the entire process, you must be represented by an attorney who is licensed to practice law in Texas. **You should consult your attorney before taking any action as independent executor.** Your attorney MUST prepare and sign anything that is filed with the Court. This guide does not replace the advice of your attorney. Finally, please note that failure to file an inventory within 90 days of the day you qualify as executor will result in a fine of **UP TO $1,000.00.** (see p. 4)

BASICS
As independent executor, you must:

- gather or collect the assets of the estate;
- notify the beneficiaries of the estate;
- notify the creditors of the decedent;
- file an inventory with the Court;
- file an affidavit or certificate that beneficiaries have been notified;
- pay the debts of the decedent;
- pay your attorney’s fees and other administrative expenses; and
- distribute the remaining assets to the beneficiaries.
QUALIFYING TO SERVE
Within 20 days of the date the Court signs an Order Admitting the Will to Probate and Appointing Independent Executor (305.003), you must:

- file an Oath signed and sworn to in Court or before a notary;
- file a Bond unless the appointing Order waives Bond;
- file an Appointment of Resident Agent if you do not reside in TEXAS.

The Court’s approval of the last of the required documents establishes your “Qualification Date”, from which the time on your duties starts to run.

LETTERS TESTAMENTARY
On or after your Qualification Date, you are entitled to obtain Letters Testamentary (306.001) from the Probate Clerk by calling 817-884-2840 or visiting the clerk’s office between the hours of 8 a.m. and 5 p.m. in Room 233 on the west end of the 2nd Floor of the Historic County Courthouse at 100 West Weatherford in Fort Worth. Contact the clerk for the fee for these letters. Letters Testamentary establish your authority to serve as independent executor of the estate. Banks, brokers, real estate agents, etc., will often ask you for an original of your Letters Testamentary that has been certified within the past 60 days. Some third parties will also want a certified copy of the Will. Letters Testamentary and certified copies of Wills can be obtained from the clerk for a fee.

NOTIFYING CREDITORS

- General Published Notice. Within one month of your Qualification Date you must publish a notice to creditors in a newspaper in the county (Commercial Recorder at 817-926-5351).

- The notice is to include your Qualification Date, the address to which claims should be presented, and an instruction that claims either be addressed: (a) in care of the executor; (b) in care of the attorney; or (c) in care of the “representative, estate of ____.” (308.051)

- Proof of Publication. A copy of the printed notice, together with the affidavit of the publisher shall be filed with the Clerk (308.052).
• Comptroller’s Notice. If the decedent remitted or should have remitted taxes administered by the comptroller of public accounts, you should send notice as above to the comptroller by certified mail (308.051).

• Notice to Secured Creditors. Within 2 months of your Qualification Date, you must give notice by certified mail, return receipt requested, to all creditors known to have a claim for money against the estate that is secured by real or personal property of the estate. The contents of this notice are the same as mentioned above and proof of the service of this notice should also be filed with the Clerk (308.053).

• Permissive Notice to Unsecured Creditors. At any time before the estate is closed, you may give notice by certified mail, return receipt requested, to an unsecured creditor having a claim for money against the estate expressly stating that the creditor must present a claim within 4 months after the date of the receipt of the notice or the claim is barred. The notice must include the items listed General Published Notice mentioned above (308.054).

• Penalty for Failure to Notify Creditors. If you fail to give the notices required above, other than the permissive notice, you and the sureties on your bond, are personally liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise (308.056).

NOTICE TO BENEFICIARIES
Within 60 days of the date of the order admitting the will to probate, you, with the assistance of your attorney, must notify by certified mail, return receipt requested, all persons and entities named as beneficiaries in the Will. The notice must state the name and address of the beneficiary; the decedent’s name; that the decedent’s will has been admitted to probate; that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; and the independent executor’s name and contact information. A copy of the Will and the Order admitting the Will to Probate must be attached to this notice (308.003).

*Numbers in parentheses are code section references to the Texas Estates Code
In the alternative, each beneficiary may sign a waiver of this notice which should be filed with the clerk.

**AFFIDAVIT OR CERTIFICATE OF NOTICE**

Within 90 days of the date of the order admitting the will to probate, the independent executor must sign and file a sworn affidavit or a certificate signed by the attorney for the independent executor that states the name and address of each beneficiary notified of the probate by certified mail; the name and address of each beneficiary who filed a waiver of the notice; the name of each beneficiary whose identity or address could not be ascertained despite the independent executor’s exercise of reasonable diligence; and any other information necessary to explain the independent executor’s inability to give the notice to or for any beneficiary. The affidavit or certificate may be included as part of the inventory, appraisement and list or claims, or included as part of an application for extension of time to file the inventory, appraisement and list of claims.

**INVENTORY***

Within 90 days of your Qualification Date, you, with the assistance of your attorney, must file with the Court a sworn inventory, appraisement and list of claims (“Inventory”) of the estate. Failure to file your Inventory timely could result in your removal as independent executor and a fine of up to $1,000.00 (309.057c). Please ask your attorney to file for an extension if you are unable to file your Inventory on time. Don’t depend on the court’s Show Cause Order as a reminder to file your Inventory. Your Inventory must be prepared by and signed by your attorney, and must:

- List all personal property of the estate wherever it is located with cash and investment account descriptions including the name and address of the bank or brokerage firm and at least the last four numbers of each account;
- List all real property that is located in Texas;
- List all property owned in common with others, including the fraction of the interest owned by the estate;
- Specify what portion of the property, if any, is separate property and what portion of the property, if any, is community property;
- List the fair market value of each item of property as of the decedent’s date of death;

*Numbers in parentheses are code section references to the Texas Estates Code*
• List all claims that the estate has against other parties including the name and address of the debtor; the nature of the claim; the initial date and the due date of the claim; the amount of the claim and its rate of interest; and whether the claim is separate or community;

• **Do not list the debts of the estate on your Inventory;**

• If your Inventory is not approved, file an amended inventory (309.054);

*Affidavit in Lieu of Inventory* – For decedents dying after September 1, 2011, if there are no unpaid debts, except for secured debts, taxes and administration expenses, at the time the Inventory is due, including extensions, an independent executor may file, in lieu of the Inventory, within 90 days of the Qualification Date, unless extended, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full and detailed inventory (309.056).

**COLLECTING ASSETS**

An independent executor shall:

• take care of the estate property as a prudent person would take of his or her own property and shall keep real property in good repair (351.101);

• collect all personal property, record books, title papers, and other business papers of the estate (351.102);

• keep estate funds in a separate designated account and not mix estate funds with the executor’s private funds;

• use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate provided there is a reasonable prospect of collecting such claims or recovering such property (351.151);

• Seek court approval prior to entering into a contingency fee contract with an attorney that exceeds 33% of the property to be recovered (351.152).

**SELLING ASSETS**

Your power to sell assets of the estate should be addressed in the Will. You should not sell any estate assets without first consulting your attorney. If the Will does not give you power to sell estate real property and such sale becomes necessary, your attorney must apply to sell real property under
Court order (356.251). This is a multi-step procedure that requires posted notice for specified periods of time thus allowing beneficiaries the right to object to such sale. Therefore, you should not enter into any contracts to sell real property without consulting your attorney and obtaining court permission if necessary.

CLAIMS
Please consult your attorney when you receive a claim or a claim is filed with the Clerk by a creditor. Here are some general rules about claims:

- **Presentment.** Claims of creditors against the estate may be presented to you at any time before the estate is closed if the claim is not barred by the permissive notice mentioned above or by the general statute of limitations. Claims may be secured or unsecured by estate assets.

- **Action on Claims.** Once you receive a claim or if a claim is filed with the Clerk, you should immediately contact your attorney because certain deadlines may apply for dealing with the claim. Under certain circumstances, if a creditor files suit on a just claim that has been rejected, the court may find you to be personally liable for the cost of the suit and you may be removed as executor for failure to have properly acted on the claim.

- **Barred Claims.** Claims that are barred by the general statute of limitations should be rejected. Claims of creditors to whom you sent the permissive notice described above are barred if they are not presented or filed within four months from the date the creditor received the notice. These late claims should also be rejected.

- **Payment of Claims.** If the estate is insolvent, claims should not be paid until the estate has been open at least six months because claims have a certain priority of payment. You should consult your attorney prior to paying any claims.

TAXES
You must consult with your attorney as to whether you must file any income tax, state inheritance tax or federal estate tax returns. You may need to file...
income tax returns for both the decedent and the estate. Upon application from your attorney, the court will normally grant an extension of the Inventory filing date until the date the Federal Estate Tax is due. All necessary tax returns must be filed prior to closing the estate. You are also responsible for paying, out of estate funds, all real property taxes due on estate property.

COMPENSATION
As independent executor, your compensation is dictated by the provisions of the decedent’s will. If the decedent’s will is silent on this issue, the law provides that you are entitled to five percent (5%) of the receipts and disbursements, with some exceptions (352.002). Please consult your attorney as to the amount of compensation to which you are entitled. The court does not approve the compensation of an independent executor unless it is contested by a beneficiary or creditor.

CLOSING THE ESTATE
The estate should generally remain open at least six months from your Qualification Date. Once you have collected the assets of the estate, notified any creditors of the estate, filed the Inventory or Affidavit in Lieu of Inventory, and paid all legitimate claims, you should consult your attorney about distributing the remaining assets to the beneficiaries as directed in the Will. Your attorney may want to prepare receipts to be signed by the beneficiaries stating that they have received their share of property from the estate. These receipts may then be filed with the Clerk and attached to a Closing Report or a Notice of Closing of the Estate (405.004). If you were required to file a Bond, the Closing Report (but not a Notice of Closing of the Estate) will operate to release the sureties on your Bond, and a certified copy should be sent to your bonding company. Once the Closing Report or Notice of Closing Estate is filed, persons having claims against the estate must deal directly with the beneficiaries. Many independent executors choose not to close the estate, however, in case more estate assets are located in the future. However, some independent executors choose to file a Closing Report or Notice of Closing Estate to begin the running of the general statute of limitations. Please consult your attorney as to what document, if any, should be filed in your case.
ATTORNEY ISSUES
As independent executor, you are free to hire the attorney of your choice. Your attorney represents you as independent executor and does not represent the “estate.” However, you have a fiduciary duty to treat all legitimate creditors and estate beneficiaries fairly, and your attorney should remind you of that duty. The court does not review or approve attorney’s fees in an independent administration. The court cannot resolve complaints that you may have against your attorney. For those purposes, you may contact the State Bar of Texas at 1-800-932-1900.
Let’s Start at the Beginning

- Purposes of Probate
  - Title transfer
    - Prove the identity of the new owners of the decedent’s probate assets.
  - Creditor Payment
    - Death is the “final bankruptcy.”

Ultimate Unsupervised Probate

- Texas has procedures for the ultimate in unsupervised probate:
  - Testate = Probate will as muniment of title
  - Intestate = Determination of Heirship

Pre-Hearing Notices

- Posting on Court House door (or nearby bulletin board).
  - No notice to beneficiaries of will.
  - No notice to beneficiaries of prior will.
  - No notice to beneficiaries of testamentary trusts.
  - No notice to heirs.
- But, additional notices needed if:
  - Will offered for probate more than four years after death.
  - Original will not filed with application.
Probate Will as Muniment of Title

- Used if will is needed only to prove title transfer (personal or real).
- The will is probated normally (determined to be valid).
- No personal representative is appointed.
- Order admitting will to probate allows title to pass to the named beneficiaries.

Probate Will as Muniment of Title

- When authorized:
  - If probate within four years of death
    - No unpaid creditors other than those secured by real property, or
    - The will proponent "convinces" the judge that no administration is needed for other reasons.
  - If probate after four years of death
    - Proponent not in default in probating late.

Probate Will as Muniment of Title

- When authorized:
  - If probate within four years of death
    - No unpaid creditors other than those secured by real property, or
    - The will proponent "convinces" the judge that no administration is needed for other reasons.
  - If probate after four years of death
    - Proponent not in default in probating late.
**Determination of Heirship**

**Purpose**
- Determine the heirs and their shares by applying Texas intestacy laws when no administration needed.

**Application**
- The applicable statutes set forth the details of a detailed application which includes the family information necessary to ascertain the decedent's heirs.
- Applicant must submit affidavit swearing to truth of facts stated in the application.

**Notice**
- Each heir at least 12 years old by registered or certified mail.
- Parent or guardian of each heir under 12.
- If heir or an heir’s address unknown, publication in:
  - County where proceedings taking place, and
  - County where intestate lived at time of death.
- Unless publication, posting in those counties.
Protection of unknown heirs
- The court must appoint an attorney ad litem to represent the interests of unknown heirs.

Evidence
- In court testimony
- Affidavits and other documents
  - Should be filed for at least five years before court relies on them.

Effect
- If court also finds no necessity for administration, heirs are now entitled to the decedent's property.
Determination of Heirship

Independent Administration

- History
  - Republic of Texas in 1843.
  - Based on Spanish civil law.
  - Continued after statehood in 1845.

- When is a full administration needed?
  - Creditor problems.
  - Unusually complicated estate.
1. Express language in the will
   - "To the extent permitted by law, no action shall be had in any court exercising probate jurisdiction in relation to the settlement of my estate other than the probating and recording of my will and return of any required inventory, appraisement, and list of claims of my estate."
   - "I appoint [name] to be independent executor."

2. By agreement of all recipients of the decedent’s property
   - Will beneficiaries
   - Intestate heirs
     - Requires determination of heirship proceeding to first determine their identity.

Prohibition of Independent Administration

- The testator provide in the will that no independent administration is permitted.
- Court cannot granted independent administration if such a provision exists.
Pre-Hearing Notices

- Posting on court house door (or nearby bulletin board) by clerk of court.
  - No notice to beneficiaries of will.
  - No notice to beneficiaries of prior will.
  - No notice to beneficiaries of testamentary trust.
  - No notice to heirs.

- Additional notices needed if:
  - Will offered for probate more than four years after death.
  - Original will not filed with application.

Hearing

- The hearing may occur anytime after the first Monday after ten days from the date the clerk posted the notice.

Bond in Independent Administration

- Court may waive bond
  - Even if will did not provide for bond waiver
  - Even if decedent died intestate
Court action in Independent Administration

- Once inventory, appraisement, and list of claims is filed and approved, no further court action is needed unless an interested person “complains.”
  - Normal time period to file = 90 days
  - Approval is normally ministerial

Privacy of Inventory

- Instead of filing the inventory, an affidavit in lieu of inventory may be filed if:
  - No unpaid unsecured debts other than taxes and administration expenses.
  - Executor provides sworn inventory to all beneficiaries.

Actions of Independent PR

- All actions of full dependent administration must still be performed but without any court involvement:
  - Notice to creditors.
  - Notice to beneficiaries, if testate.
  - Setting apart exempt property and homestead.
  - Determining the amount of the family allowance.
  - Managing estate property.
  - Selling (or renting) estate property.
  - Paying creditors.
  - Distributing to beneficiaries and/or heirs.
Breach of Duty

- Any interested person (e.g., beneficiary or heir) can bring the independent personal representative to court for breach of duty.

Accounting

- Annual accounts are not needed.
- Interested person may demand accounting from personal representative after 15 months.
  - If PR not comply within 60 days, suit is possible.
- Interested person may petition court to force PR to account and distribute after two years.

Closing Not Required

- A formal closing is not needed.
  - Most independent administrations are not closed.
**Closing Methods**

- Personal representative files closing report or notice (a mini-accounting) with affidavit.
  - If no one objects, estate is automatically closed after 30 days.
  - No hearing.
- Distributee (heir or beneficiary) requests a closing.

**Closing Methods (continued)**

- Judicial discharge
  - A personal representative who wants a formal discharge may apply to court for a judicial discharge.
  - All distributees get personal citation unless waived.
  - Court conducts a hearing.

**Conversion to Dependent Administration**

- Although rarely done, it is possible to convert an independent administration to a dependent administration.
  - Main reason = creditor hassles such as a pending personal injury suit against the decedent.
Attorney Necessary?

- Split in Texas courts
  - Executor must have attorney to file pleadings and appear in court.
  - Executor would otherwise be engaged in the unauthorized practice of law.
  - Executor may proceed pro se to file pleadings and appear in court.
  - Texas law guarantees the right of an individual to act pro se.

Instructions to Independent PR

- Many courts provide detailed written instructions to independent personal representatives to help them understand their duties, responsibilities, and obligations.

Attorney Statements About Probate

- Attorneys are subject to professional discipline if they make statements such as:
  - “The probate process is always lengthy and complicated.”
  - “The probate process should always be avoided.”
  - “The use of living trusts avoids lengthy delays experienced in the use of other estate planning devices intended to address the same basic function.”
“Don’t Fear the [Probate]”

- Probate is not a feared process as it is normally:
  - Fast
  - Inexpensive
  - Uncomplicated (relatively speaking)

Questions?
Estate Administration & Probate: Texas Style

Dr. Gerry W. Beyer
Governor Preston E. Smith Regents Professor of Law
Texas Tech University School of Law
Let’s Start at the Beginning

- Purposes of Probate
  - Title transfer
    - Prove the identity of the new owners of the decedent’s probate assets.
  - Creditor Payment
    - Death is the “final bankruptcy.”
Texas has procedures for the ultimate in unsupervised probate:

- **Testate** = Probate will as muniment of title
- **Intestate** = Determination of Heirship
Pre-Hearing Notices

- Posting on Court House door (or nearby bulletin board).
  - No notice to beneficiaries of will.
  - No notice to beneficiaries of prior will.
  - No notice to beneficiaries of testamentary trusts.
  - No notice to heirs.

- But, additional notices needed if:
  - Will offered for probate more than four years after death.
  - Original will not filed with application.
Probate Will as Muniment of Title

- Used if will is needed only to prove title transfer (personal or real).
- The will is probated normally (determined to be valid).
- No personal representative is appointed.
- Order admitting will to probate allows title to pass to the named beneficiaries.
Probate Will as Muniment of Title

- When authorized:
  - If probate within four years of death
    - No unpaid creditors other than those secured by real property, or
    - The will proponent “convinces” the judge that no administration is needed for other reasons.
  - If probate after four years of death
    - Proponent not in default in probating late.
Probate Will as Muniment of Title
Determination of Heirship

- **Purpose**
  - Determine the heirs and their shares by applying Texas intestacy laws when no administration needed.
Application

- The applicable statutes set forth the details of a detailed application which includes the family information necessary to ascertain the decedent’s heirs.

- Applicant must submit affidavit swearing to truth of facts stated in the application.
Notice

- Each heir at least 12 years old by registered or certified mail.
- Parent or guardian of each heir under 12.
- If heir or an heir’s address unknown, publication in:
  - County where proceedings taking place, and
  - County where intestate lived at time of death.
- Unless publication, posting in those counties.
Protection of unknown heirs

- The court must appoint an attorney ad litem to represent the interests of unknown heirs.
Determination of Heirship

- Evidence
  - In court testimony
  - Affidavits and other documents
    - Should be filed for at least five years before court relies on them.
Effect

- If court also finds no necessity for administration, heirs are now entitled to the decedent’s property.
Determination of Heirship
Independent Administration

- History
  - Republic of Texas in 1843.
    - Based on Spanish civil law.
  - Continued after statehood in 1845.
Independent Administration

- When is a full administration needed?
  - Creditor problems.
  - Unusually complicated estate.
1. Express language in the will
   - “To the extent permitted by law, no action shall be had in any court exercising probate jurisdiction in relation to the settlement of my estate other than the probating and recording of my will and return of any required inventory, appraisement, and list of claims of my estate.”
   - “I appoint [name] to be independent executor.”
Creation of Independent Administration

2. By agreement of all recipients of the decedent’s property
   - Will beneficiaries
   - Intestate heirs
     - Requires determination of heirship proceeding to first determine their identity.
Prohibition of Independent Administration

- The testator provide in the will that no independent administration is permitted.
  - Court cannot granted independent administration if such a provision exists.
Pre-Hearing Notices

- Posting on court house door (or nearby bulletin board) by clerk of court.
  - No notice to beneficiaries of will.
  - No notice to beneficiaries of prior will.
  - No notice to beneficiaries of testamentary trust.
  - No notice to heirs.

- Additional notices needed if:
  - Will offered for probate more than four years after death.
  - Original will not filed with application.
The hearing may occur anytime after the first Monday after ten days from the date the clerk posted the notice.
Court may waive bond
  • Even if will did not provide for bond waiver
  • Even if decedent died intestate
Once inventory, appraisement, and list of claims is filed and approved, no further court action is needed unless an interested person “complains.”

- Normal time period to file = 90 days
- Approval is normally ministerial
Privacy of Inventory

- Instead of filing the inventory, an affidavit in lieu of inventory may be filed if:
  - No unpaid unsecured debts other than taxes and administration expenses.
  - Executor provides sworn inventory to all beneficiaries.
All actions of full dependent administration must still be performed but without any court involvement:

- Notice to creditors.
- Notice to beneficiaries, if testate.
- Setting apart exempt property and homestead.
- Determining the amount of the family allowance.
- Managing estate property.
- Selling (or renting) estate property.
- Paying creditors.
- Distributing to beneficiaries and/or heirs.
Breach of Duty

Any interested person (e.g., beneficiary or heir) can bring the independent personal representative to court for breach of duty.
Accounting

- Annual accounts are not needed.

- Interested person may demand accounting from personal representative after 15 months.
  - If PR not comply within 60 days, suit is possible.

- Interested person may petition court to force PR to account and distribute after two years.
A formal closing is not needed.
- Most independent administrations are not closed.
Personal representative files closing report or notice (a mini-accounting) with affidavit.

- If no one objects, estate is automatically closed after 30 days.
- No hearing.

Distributee (heir or beneficiary) requests a closing.
Closing Methods (continued)

- Judicial discharge
  - A personal representative who wants a formal discharge may apply to court for a judicial discharge.
    - All distributees get personal citation unless waived.
    - Court conducts a hearing.
Conversion to Dependent Administration

- Although rarely done, it is possible to convert an independent administration to a dependent administration.
  - Main reason = creditor hassles such as a pending personal injury suit against the decedent.
**Attorney Necessary?**

- **Split in Texas courts**
  - Executor must have attorney to file pleadings and appear in court.
    - Executor would otherwise be engaged in the unauthorized practice of law.
  - Executor may proceed pro se to file pleadings and appear in court.
    - Texas law guarantees the right of an individual to act pro se.
Many courts provide detailed written instructions to independent personal representatives to help them understand their duties, responsibilities, and obligations.
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Questions?
Connecticut Bar Foundation
James W. Cooper Fellows and
The Quinnipiac Probate Law Journal
April 20, 2018

“Exploring Unsupervised Probate”
The Massachusetts Experience

- Massachusetts probate law and procedure pre-Massachusetts Uniform Probate Code MGL Ch. 190B ("MUPC") was largely uncodified; a product of case law and procedure

- Many procedures were burdensome or didn’t make sense anymore but inertia had kept them in place- it was just what had always been done so they continued

- In 1990 practitioners from the bar association began the discussion to introduce informal procedure and change the elective ("forced") share for a disinherited spouse
The Massachusetts Experience

- There were many discussions with working groups from the bar associations and the probate bench that had significant concerns about the guardianship and conservatorship provisions in place and the need for reform.
- A commitment was made to address both the provisions relating to the guardianship and conservatorship as well as for estate settlement. Working groups with the bar, judiciary, registrars, the attorney general’s office and other interested groups worked in earnest.
- Legislation was proposed in 1998 which did not pass, but it was thought it would surely pass in 1999. It didn’t.
- Over the years, several contentious issues (forced share for example) were left for later and are still being debated, so that the areas where there was consensus could move forward.
The Massachusetts Experience

• The task was massive - proposed was a change not only to estate settlement procedure, but substantive descent and distribution law, and substantive and procedural law regarding guardianship, conservatorship and trust law and there were implications for real estate law.

• It proved to be more than was possible for many years.

• Chapter 521 of the Acts of 2008 was signed into law by then Governor Deval Patrick on January 15, 2009 after nearly 20 years of discussion and debate and became MGL Ch. 190B.

• The provisions relating to Guardianship and Conservatorship were implemented as of July 1, 2009 and the probate provisions were to be implemented on July 1, 2011.
The Massachusetts Experience

• The estate administration implementation was delayed several times but finally went into effect on March 31, 2012.
• Changes were made to the substantive probate law (e.g. who is an heir at law, intestate distribution, changes in the effect of marriage and divorce on intestate and testate dispositions, negative wills, statute of limitations,) as well as procedural changes introducing informal probate and unsupervised administration.
• Probate practice is radically different than before

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The MUPC for Decedent’s Estates

• The purposes and policies of the MUPC are to simplify, streamline and clarify the process of settling a decedent’s affairs in a manner consistent with the decedent’s intent and to unify the law among various jurisdictions.

MGL Ch.190B §1-102
The MUPC for Decedent’s Estates

- The MUPC provides mechanisms for both informal and formal proceedings for opening, administering and closing estates.
- The MUPC gives the interested parties the responsibility for administering the estate and offers varying levels of court intervention which can be used for testate and intestate administrations.
Separate Proceedings

• Introduced new vocabulary and new concepts
  – Informal
  – Formal
  – Supervised
  – Unsupervised

Proceedings can open informally or formally and then toggle as the needs of the case require
Massachusetts Estates Pre-MUPC

- All decedent’s estates were administered as supervised administrations
- There was one procedure for intestate estates and another for testate estates
Pre-MUPC Opening Estate

• File a petition for Administration or Petition for Probate of the Will and bond with or without sureties
• Citation issued from the Court ordering notice and determining a bar date for opposition(return date)
• After the return date, either present for allowance of petition or have a hearing if contested
Post MUPC Opening Estate

- Informal MGL Ch.190B §3-306

  7 day Pre-filing notice must be given to all heirs at law and interested parties (e.g. beneficiaries in will) can be regular or certified mail

  File petition for informal Probate of Will and/or appointment of Personal Representative and bond

  Post filing notice is given by publication in a newspaper on court form and published AFTER order appointing Personal Representative
Post MUPC Notice-Informal

• Notice must
  – be given to all interested parties by regular or certified mail
  – shall include statement that estate will be administered under informal procedure without supervision from the court
  – state that the inventory and accounts are not required to be filed in court but interested parties are entitled to notice from the personal representative
Post MUPC Notice Informal

• Notice must
  – inform Interested Party that they can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration
  – inform the Interested Party that they are entitled to institute formal proceedings and to obtain orders terminating or restricting the powers of the personal representatives appointed under informal procedure
Advantages to Informal Opening

- Can be filed after 7 days from date of death (no more 30 day waiting period)
- Publication after filing
- Interested Party may not contest
- If Interested Party objects by filing a Formal Probate, informally appointed Personal Representative remains in place absent specific order removing
Disadvantages to Informal Opening

- The order appointing the Personal Representative is issued by a Magistrate and is not a judicial decree of validity of will, certification of heirs at law
- Objections may be brought until the later of 3 years from date of death of decedent or 12 months after allowance
- Can not request supervised administration for entire estate (this requires formal petition) but can obtain court intervention if needed throughout the process.
Informal Opening not always available

- No original will and attempt to probate copy
- No official death certificate
- Personal Representative requested does not have priority
- Original Will has interlineations or 8mk
Informal Opening not always available

- Identification of heirs unknown
- A creditor is petitioner
- A Special Personal Representative is needed
- Supervised Administration is required
Informal appointment

• An informally appointed Public Representative's powers relating to their office are fully established and not subject to retroactive vacation. MGL Ch. 190B §3-307 (b)

• The Personal Representative of an informally probated will has authority to administer and distribute the estate. MGL Ch. 190B§3-704
Formal Opening

• File Petition
• Obtain Citation (order of notice)
• Send notice either regular or us mail to all heirs at law and interested parties and publish
• After the return date, seek allowance or have hearing to allow will and appoint Personal Representative
Advantages to Formal Opening

• Can probate a non original or marked up will
• Can appoint a Personal Representative who doesn’t have priority
• Can request restraining order on informally appointed Personal Representative
• Obtain a judicial formal decree reversible only on appeal and vacated on limited grounds
• Creditor can petition
• Shorter statute to vacate decree (See MGL Ch. 190B §3-412(3))
## Opening Fees Pre MUPC v Post MUPC

<table>
<thead>
<tr>
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<th>Pre-MUPC</th>
<th>Post MUPC</th>
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<tbody>
<tr>
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<td>$390*</td>
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<td>Citation</td>
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<td>$0</td>
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<tr>
<td>*if lost cost to replace</td>
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</table>

*if formal
Administration

• The default rule is that the estate will be administered unsupervised unless requested specifically by the party or the will requires supervision.

• In transition, wills did not contemplate supervision and were silent. These estates are administered as unsupervised.
Administration

• Notice to interested parties outlining rights, duties of the Personal Representative and timeframes
• Whether appointed informally or formally, the Personal Representative owes the same fiduciary duty of loyalty to the persons interested in the estate.
• In MA all Personal Representatives must file a bond: it may be with or without sureties
Post MUPC Bonds

- Can be without sureties if will allows or heirs and devisees assent
- A creditor with a claim greater than $5,000 or Interested Party who has an interest in the estate greater than $5000 can demand sureties on the bond MGL Ch. 190B §3-605
- Once demand made, until sureties posted, Personal Representative can only act to preserve the estate. Failure to post bond within 30 days is cause for removal unless excused by Court.
Administration

• Powers of the Personal Representative
  – Retain Assets, open bank account, perform contracts, lease, pay decedent’s debts, vote stock, marshal assets, insure assets, pay taxes, defend and prosecute claims, satisfy and settle claims, make distributions in cash or in kind.
Administration

- Personal Representative has no power to sell or mortgage real estate unless granted in will or authorized by court;
- Make tax elections or file joint returns; or
- Invest outside of prudent investor standards
- An inventory listing the property no longer needs to be filed with the Court whether formal or informal proceedings unless you are seeking a license to sell or formally closing
Supervised Administration

• Supervised administration is a single proceeding for the supervision of the administration of the estate by the Personal Representative under the continuing authority of the Court. MGL Ch. 190B §3-501 et seq.
Supervised Administration

- Supervised Administration is used
  - If required in the Will
  - If requested by a party
  - In contested estates
  - In cases where the Personal Representative requests Court review and approval on decision made during the administration
  - If the Court finds it necessary under the circumstances See MGL Ch. 190B §3-502
Supervised Administration

- Supervision may be ordered in the formal order of appointment or
- On a petition brought afterwards seeking supervision
- Any interested person or the Personal Representative can request it
- Request can be made at any time subject to the applicable statute of limitations
Supervised Administration

• Once requested, the Court shall order supervised administration if
  – The decedent’s will requires it
  – If the decedent’s will directs unsupervised administration it will only be ordered upon a finding that it is necessary for protection of interested parties
  – In other cases if the Court finds that supervised administration is necessary under the circumstances
Supervised Administration

• In a supervised administration the Personal Representative has all the duties and powers of an unsupervised Personal Representative except the power to distribute. Additional limitations can be imposed e.g.
  • Filing an inventory
  • Filing interim accounts
  • Restrictions on other powers as determined by the Court
  • Continues until entry of order of complete settlement or administratively if all interested parties assent
  • N.B. Interested Party can also seek restraining order under MGL Ch. 190B §3-607
Closing an Estate Pre-MUPC

- Prepare an Accounting
- File with court, with assents of all parties if you have them
- Citation, notice, possible publication
- Present for Allowance or have hearing if contested
Closing post MUPC

• Can close unsupervised or supervised.
• In unsupervised, the fiduciary duty to account to beneficiary remains, but the account is not filed with Court.
• A Closing Statement signed by Personal Representative and mailed to all interested parties is then filed with the Court.
Closing post MUPC

Practice note- Consider obtaining assent, release indemnification from the beneficiaries if closing unsupervised
If you do not obtain assents and releases, you can consider a formal closing.
Can toggle to formal and file accounting and seek an Order for Complete Settlement
Closing post MUPC

- If the estate is under supervised administration, the Personal Representative must prepare and file an accounting with the Court. The Court will issue a citation (order of notice) and set a return date. Once the return date has passed, and notice given to all interested parties by regular or certified mail, the account may be presented for allowance if no objection is filed, or a hearing is held. The Court then issues a judgement in the form of an Order of Settlement.
Closing Post MUPC

Regardless of how closed, a Personal Representative retains power until death, disability, resignation or removal.
<table>
<thead>
<tr>
<th>If PR files Estate Settled</th>
<th>PR’s authority terminated</th>
<th>Challenge to Closing statement absent fraud or manifest error</th>
<th>PR discharged</th>
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<td>Yes as to all issues in the Order of Settlement</td>
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</table>
## Closing Fees Pre-MUPC

### Annually

- **$1000 or less** $0
- **$1001-9999** $75
- **$10K-100K** $100
- **$100K-500K** $150
- **$500K-1M** $200
- **$1M+** $400
- **Judgment** No Fee
Closing Post MUPC

Informal

- No Accounts Filed
- Closing Statement $75
- If the Personal Representative wants an Order of Complete Settlement, must file an account

Formal

- Accounts Annual
  - $1000 or less $0
  - $1001-9999 $75
  - $10K-100K $100
  - $100K-500K $150
  - $500K-1M $200
  - $1M-2M $400
  - $2M-5M $750
  - $5M-7.5 $1,500
  - $7.5-10M $2,500
  - $10M+ $3,500
- Order and Decree $75
Virtual Representation

- If a spouse, heir at law, or devisee is an incapacitated person or a minor their interests may be represented by
  - Guardian or conservator
  - Parent if no conflict of interest and no court fiduciary appointed
  - Virtual representation

Not available in unsupervised proceedings
Real Estate Issues

- Title can be impacted from differing statutes of limitation on opening and closing using informal procedure.
- Not clear by title of fiduciary, Personal Representative, if license to sell issued by Court is required (previously Administrators needed a license to sell, Executors you checked the will for a power to sell).

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Real Estate Issues

• A Personal Representative, whether appointed formally or informally, may only sell real estate if authorized by a will. Intestate estates will require Court supervision and must obtain a license to sell. Initially, the real estate bar required informal appointment Personal Representatives to obtain a license to sell—no longer the case but there are issues.
Real Estate Issues

• Informal appointments may be challenged up to the later of for one year from informal petition or three years from date of death. Formal proceedings can be commenced (and may supersede MGL Ch. 190B §3-302 an informal proceeding up to three years from filing) Formal appointments can only be challenged for fraud or manifest error.

• Due to the extended time frame to challenge the appointment of a Personal Representative, many practitioners use formal procedure for appointment where real estate is involved. Land Court requires it.
<table>
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<th>Year</th>
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</table>
Observations

- MUPC was not adopted wholesale but was used to codify and adapted to fit Massachusetts law
- For uncontested estates it is quicker and less expensive
- It is possible to “toggle” in to obtain Court assistance, and once the issue is resolved “toggle” out
Observations

• There is some danger that an informal appointment happening quickly can provide an opportunity for abuse, but it is also possible to stop it quickly by filing a formal petition and requesting specific relief.

• Testamentary Trusts, once very rare and bordering on the extinct, are making a comeback.
Observations

The sweeping changes made to the substantive and procedural probate practice were radical and difficult to absorb all at once.
For the most part, it works well and allows family matters to be private unless there is a need to make them public.
The Court, Registrars and Bar continue to hone and tweak the process to make it as efficient as possible.
Resources

• MGL Ch. 190B MUPC
• MUPC portal website
  https://www.mass.gov/estate-administration-resources-mupc-hub
• Massachusetts Probate Law Sourcebook and Citator, Massachusetts Continuing Legal Education (“MCLE”) publication
The Connecticut Bar Foundation
James W. Cooper Fellows
and
The Quinnipiac Probate Law Journal
“Exploring Unsupervised Probate”
Evaluation Form
Friday, April 20, 2018

1. Please rate the overall quality of the symposium:

   ______ Excellent  ______ Good  ______ Fair  ______ Poor

   Suggestions for improvement: ____________________________________________________________

   __________________________________________________________________________________

   __________________________________________________________________________________

2. Please rate the following aspects of the program by circling a number next to each statement:

<table>
<thead>
<tr>
<th>Excellent</th>
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<td>b. The format was</td>
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<tr>
<td>c. Materials</td>
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</tbody>
</table>

3. Please rank the following factors in your decision to attend this symposium on a scale of 1-7, using each number only once (1=most important; 7=least important):

   _____ Topics
   _____ Opportunity to network with colleagues
   _____ Speakers
   _____ Location
   _____ Time of year
   _____ CLE Credit
   _____ Other (please describe):

   __________________________________________________________________________________

   __________________________________________________________________________________

   __________________________________________________________________________________

   OVER ➔
4. Suggested future topics and speakers:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

5. Please list the three most useful ideas from this symposium:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

6. Additional comments on any aspect of the symposium:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(Optional) Name: ___________________________________________________________

Address: _________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Phone/Fax: ________________________________________________________________

E-mail: _________________________________________________________________

Please complete the form and return it to the Connecticut Bar Foundation.

Many thanks.

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