

PROBATE CODE
CHAPTER V. PROBATE AND GRANT OF ADMINISTRATION
PART 1. ESTATES OF DECEDENTS

Sec. 72. PROCEEDINGS BEFORE DEATH; ADMINISTRATION IN ABSENCE OF DIRECT EVIDENCE OF DEATH; DISTRIBUTION; LIMITATION OF LIABILITY; RESTORATION OF ESTATE; VALIDATION OF PROCEEDINGS. (a) The probate of a will or administration of an estate of a living person shall be void; provided, however, that the court shall have jurisdiction to determine the fact, time and place of death, and where application is made for the grant of letters testamentary or of administration upon the estate of a person believed to be dead and there is no direct evidence that such person is dead but the death of such person shall be proved by circumstantial evidence to the satisfaction of the court, such letters shall be granted. Distribution of the estate to the persons entitled thereto shall not be made by the personal representative until after the expiration of three (3) years from the date such letters are granted. If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; and provided further, that such person shall be entitled to restoration of said estate or the residue thereof with the rents and profits therefrom, except real or personal property sold by the personal representative or any distributee, his successors or assigns, to bona fide purchasers for value, in which case the right of such person to the restoration shall be limited to the proceeds of such sale or the residue thereof with the increase thereof. In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which were done in compliance with or approved by an order of the court. Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated insofar as the court's finding of death of such person is concerned.

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

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

Sec. 73. PERIOD FOR PROBATE. (a) No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

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

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

Sec. 74. TIME TO FILE APPLICATION FOR LETTERS TESTAMENTARY OR ADMINISTRATION. All applications for the grant of letters testamentary or of administration upon an estate must be filed

within four years after the death of the testator or intestate; provided, that this section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due to the estate of the decedent.

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

Sec. 75. DUTY AND LIABILITY OF CUSTODIAN OF WILL. Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate. On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. Any person refusing to deliver such will or papers shall also be liable to any person aggrieved for all damages sustained as a result of such refusal, which damages may be recovered in any court of competent jurisdiction.

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

Sec. 76. PERSONS WHO MAY MAKE APPLICATION. An executor named in a will or any interested person may make application to the court of a proper county:

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

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

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will. An application for probate may be combined with an application for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

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

Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

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

(b) To the surviving husband or wife.

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

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

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

(f) To a creditor of the deceased.

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

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

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

Sec. 78. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR ADMINISTRATOR. No person is qualified to serve as an executor or administrator who is:

(a) An incapacitated person;

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

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

(d) A corporation not authorized to act as a fiduciary in

this State; or

(e) A person whom the court finds unsuitable.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by
Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 2a, eff. Aug. 22, 1957;
Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 7, eff. June 12, 1969;
Acts 1995, 74th Leg., ch. 1039, Sec. 7, eff. Sept. 1, 1995.

Sec. 79. WAIVER OF RIGHT TO SERVE. The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.

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

Sec. 80. PREVENTION OF ADMINISTRATION. (a) Method of Prevention. When application is made for letters of administration upon an estate by a creditor, and other interested persons do not desire an administration thereupon, they can defeat such application:

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

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

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

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

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

Sec. 81. CONTENTS OF APPLICATION FOR LETTERS TESTAMENTARY. (a) For Probate of a Written Will. A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

(1) The name and domicile of each applicant.
(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
(3) Facts showing that the court has venue.
(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

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

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

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

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

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

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

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

- (1) The reason why such will cannot be produced.
- (2) The contents of such will, as far as known.
- (3) The date of such will and the executor appointed therein, if any, as far as known.
- (4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

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

- (1) The substance of testamentary words spoken.
 - (2) The names and residences of the witnesses thereto.
- Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, Sec. 9, eff. Jan. 1, 1972; Acts 1987, 70th Leg., ch. 463, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1035, Sec. 6, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1302, Sec. 6, eff. Sept. 1, 1997.

Sec. 82. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION. An application for letters of administration when no will, written or oral, is alleged to exist shall state:

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

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

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

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

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

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

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

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, Sec. 13, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 463, Sec. 2, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1302, Sec. 7, eff. Sept. 1, 1997.

Sec. 83. PROCEDURE PERTAINING TO A SECOND APPLICATION. (a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate.

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

(c) Where Letters of Administration Have Been Granted. Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall neglect or otherwise fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first

administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

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

Sec. 84. PROOF OF WRITTEN WILL PRODUCED IN COURT. (a) Self-Proved Will. If a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

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

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

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

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

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

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

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

Amended by Acts 2003, 78th Leg., ch. 1060, Sec. 11, eff. Sept. 1, 2003.

Sec. 85. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT. A written will which cannot be produced in court shall be proved in the same manner as provided in the preceding Section for an attested written will or an holographic will, as the case may be, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court; but, in addition thereto, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents

of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

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

Sec. 86. PROOF OF NUNCUPATIVE WILL. (a) Notice and Proof of Nuncupative Will. No nuncupative will shall be proved within fourteen days after the death of the testator, or until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so.

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

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

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

Sec. 87. TESTIMONY TO BE COMMITTED TO WRITING. All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk; provided, however, that in any contested case, the court may, upon agreement of the parties, and in the event of no agreement on its own motion, dismiss this requirement.

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

Sec. 88. PROOF REQUIRED FOR PROBATE AND ISSUANCE OF LETTERS TESTAMENTARY OR OF ADMINISTRATION. (a) General Proof. Whenever an applicant seeks to probate a will or to obtain issuance of letters testamentary or of administration, he must first prove to the satisfaction of the court:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 89. ACTION OF COURT ON PROBATED WILL. Upon the

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 1072, ch. 480, Sec. 1, eff. Aug. 28, 1961; Acts 1983, 68th Leg., p. 1155, ch. 260, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 846, Sec. 11, eff. Sept. 1, 1993.

Sec. 89A. CONTENTS OF APPLICATION FOR PROBATE OF WILL AS MUNIMENT OF TITLE. (a) A written will shall, if within the control of the applicant, be filed with the application for probate as a muniment of title, and shall remain in the custody of the county clerk unless removed from the custody of the clerk by order of a proper court. An application for probate of a will as a muniment of title shall state:

- (1) The name and domicile of each applicant.
- (2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
- (3) Facts showing that the court has venue.
- (4) That the decedent owned real or personal property, or both, describing the property generally, and stating its probable value.
- (5) The date of the will, the name and residence of the executor named in the will, if any, and the names and residences of the subscribing witnesses, if any.
- (6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.
- (7) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.
- (8) Whether the decedent was ever divorced, and if so, when and from whom.

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

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

(b) When a written will cannot be produced in court, in addition to the requirements of Subsection (a) of this section, the application shall state:

- (1) The reason why such will cannot be produced.
- (2) The contents of such will, to the extent known.
- (3) The date of such will and the executor appointed in the will, if any, to the extent known.
- (4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

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

- (1) The substance of testamentary words spoken.
 - (2) The names and residences of the witnesses thereto.
- Added by Acts 1997, 75th Leg., ch. 540, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 10, Sec. 1, eff. Sept. 1, 2001.

Sec. 89B. PROOF REQUIRED FOR PROBATE OF A WILL AS A MUNIMENT OF TITLE. (a) General Proof. Whenever an applicant seeks to probate a will as a muniment of title, the applicant must first prove to the satisfaction of the court:

- (1) That the person is dead, and that four years have not elapsed since the person's death and prior to the application; and
 - (2) That the court has jurisdiction and venue over the estate; and
 - (3) That citation has been served and returned in the manner and for the length of time required by this Code; and
 - (4) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.
- (b) To obtain probate of a will as a muniment of title, the

applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least 18 years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries of the armed forces of the United States, or of the Maritime Service of the United States, and was of sound mind; and

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

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

Added by Acts 1997, 75th Leg., ch. 540, Sec. 1 eff. Sept. 1, 1997.

Sec. 89C. PROBATE OF WILLS AS MUNIMENTS OF TITLE. (a) In each instance where the court is satisfied that a will should be admitted to probate, and where the court is further satisfied that there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate, or for other reason finds that there is no necessity for administration upon such estate, the court may admit such will to probate as a muniment of title.

(b) If a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will or if a question of construction of the will exists, on proper application and notice as provided by Chapter 37, Civil Practice and Remedies Code, the court may hear evidence and include in the order probating the will as a muniment of title a declaratory judgment construing the will or determining those persons who are entitled to receive property under the will and the persons' shares or interests in the estate. The judgment is conclusive in any suit between any person omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted person to an interest in the estate. Any person who has delivered property of the decedent to a person declared to be entitled to the property under the judgment or has 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.

(c) The order admitting a will to probate as a muniment of title shall constitute sufficient legal authority to all persons owing any money to the estate of the decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer, without liability, to the persons described in such will as entitled to receive the particular asset without administration. The person or persons entitled to property under the provisions of such wills shall be entitled to deal with and treat the properties to which they are so entitled in the same manner as if the record of title thereof were vested in their names.

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

Added by Acts 1993, 73rd Leg., ch. 846, Sec. 12, eff. Sept. 1, 1993. Renumbered from V.A.T.S. Probate Code, Sec. 89A by Acts 1997, 75th Leg., ch. 540, Sec. 1, eff. Sept. 1, 1997.

Sec. 90. CUSTODY OF PROBATED WILLS. All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

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

Sec. 91. WHEN WILL NOT IN CUSTODY OF COURT, OR ORAL. If for

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

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

Sec. 92. PERIOD FOR PROBATE DOES NOT AFFECT SETTLEMENT. Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

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

Sec. 93. PERIOD FOR CONTESTING PROBATE. After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that incapacitated persons shall have two years after the removal of their disabilities within which to institute such contest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2001, 77th Leg., ch. 292, Sec. 3, eff. May 23, 2001.

Sec. 94. NO WILL EFFECTUAL UNTIL PROBATED. Except as hereinafter provided with respect to foreign wills, no will shall be effectual for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until such will has been admitted to probate.

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

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Sec. 95. PROBATE OF FOREIGN WILL ACCOMPLISHED BY FILING AND RECORDING. (a) Foreign Will May Be Probated. The written will of a testator who was not domiciled in Texas at the time of his death which would affect any real or personal property in this State, may be admitted to probate upon proof that it stands probated or established in any of the United States, its territories, the District of Columbia, or any foreign nation.

(b) Application and Citation.

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

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

(c) Copy of Will and Proceedings To Be Filed. A copy of the will and of the judgment, order, or decree by which it was admitted to probate or otherwise established, attested by and with the original signature of the clerk of the court or of such other official as has custody of such will or is in charge of probate records, with the seal of the court affixed, if there is a seal, together with a certificate containing the original signature of the judge or presiding magistrate of such court that the said attestation is in due form, shall be filed with the application. Original signatures shall not be required for recordation in the deed records pursuant to Sections 96 through 99 or Section 107 of this code.

(d) Probate Accomplished by Recording.

(1) Will admitted in domiciliary jurisdiction. If the will has been probated or established in the jurisdiction in which the testator was domiciled at the time of his death, it shall be the ministerial duty of the clerk to record such will and the evidence

of its probate or establishment in the minutes of the court. No order of the court is necessary. When so filed and recorded, the will shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereinafter provided.

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

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

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, Sec. 9, eff. Jan. 1, 1972; Acts 1999, 76th Leg., ch. 755, Sec. 1, eff. Sept. 1, 1999.

Sec. 96. FILING AND RECORDING FOREIGN WILL IN DEED RECORDS. When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that the validity of such a will or testamentary instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

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

Sec. 97. PROOF REQUIRED FOR RECORDING IN DEED RECORDS. A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the deed records in the proper county or counties in this State.

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

Sec. 98. EFFECT OF RECORDING COPY OF WILL IN DEED RECORDS. Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the county clerk of the proper county in this State to be recorded in the deed records, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of

land from the time when such instrument is delivered to the clerk to be recorded, and from that time only.

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

Sec. 99. RECORDING IN DEED RECORDS SERVES AS NOTICE OF TITLE. The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and filed for recording in the deed records of the proper county, shall be notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

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

Sec. 100. CONTEST OF FOREIGN WILLS. (a) Will Admitted in Domiciliary Jurisdiction. A foreign will that has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, and either admitted to probate in this State or filed in the deed records of any county of this State, may be contested by any interested person but only upon the following grounds:

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

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

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

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

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

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

Sec. 101. NOTICE OF CONTEST OF FOREIGN WILL. Within the time permitted for the contest of a foreign will in this State, verified notice may be filed and recorded in the minutes of the court in this State in which the will was probated, or the deed records of any county in this State in which such will was recorded, that proceedings have been instituted to contest the will in the foreign jurisdiction where it was probated or established. Upon such filing and recording, the force and effect of the probate or recording of the will shall cease until verified proof is filed and recorded that the foreign proceedings have been terminated in favor of the will, or that such proceedings were never actually instituted.

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

Sec. 102. EFFECT OF REJECTION OF WILL IN DOMICILIARY PROCEEDINGS. Final rejection of a will or other testamentary instrument from probate or establishment in the jurisdiction in which the testator was domiciled shall be conclusive in this State, except where the will or other testamentary instrument has been rejected solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State, in which case the will or testamentary instrument may nevertheless be admitted to probate or continue to be effective in this State.

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

Sec. 103. ORIGINAL PROBATE OF FOREIGN WILL IN THIS

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

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

Sec. 104. PROOF OF FOREIGN WILL IN ORIGINAL PROBATE PROCEEDING. If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in an original proceeding in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.

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

Sec. 105. EXECUTOR OF WILL PROBATED IN ANOTHER JURISDICTION. When a foreign will is admitted to ancillary probate in accordance with Section 95 of this Code, the executor named in such will shall be entitled to receive, upon application, letters testamentary upon proof that he has qualified as such in the jurisdiction in which the will was admitted to probate, and that he is not disqualified to serve as executor in this State. After such proof is made, the court shall enter an order directing that ancillary letters testamentary be issued to him. If letters of administration have previously been granted by such court in this State to any other person, such letters shall be revoked upon the application of the executor after personal service of citation upon the person to whom such letters were granted.

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

Sec. 105A. APPOINTMENT AND SERVICE OF FOREIGN BANKS AND TRUST COMPANIES IN FIDUCIARY CAPACITY. (a) A corporate fiduciary that does not have its main office or a branch office in this state, hereinafter called "foreign corporate fiduciaries", having the corporate power to so act, may be appointed and may serve in the State of Texas as trustee (whether of a personal or corporate trust), executor, administrator, guardian of the estate, or in any other fiduciary capacity, whether the appointment be by will, deed, agreement, declaration, indenture, court order or decree, or otherwise, when and to the extent that the home state of the corporate fiduciary grants authority to serve in like fiduciary capacity to a corporate fiduciary whose home state is this state.

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

same by registered or certified mail to the officer, agent or other person so designated. Service of notice or process upon the Secretary of State as agent for such a foreign corporate fiduciary shall in all ways and for all purposes have the same effect as if personal service had been had within this state upon such foreign corporate fiduciary.

(c) Any foreign corporate fiduciary acting in a fiduciary capacity in this state in strict accordance with the provisions of this Section shall not be deemed to be doing business in the State of Texas within the meaning of Article 8.01 of the Texas Business Corporation Act; and shall be deemed qualified to serve in such capacity under the provisions of Section 105 of this Code.

(d) The provisions hereof are in addition to, and not a limitation on, the provisions of Subtitle F or G, Title 3, Finance Code.

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

Added by Acts 1961, 57th Leg., p. 46, ch. 31, Sec. 1, eff. Aug. 28, 1961. Amended by Acts 1995, 74th Leg., ch. 914, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 769, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 6.002, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 6.029, eff. Sept. 1, 2001.

Sec. 106. WHEN FOREIGN EXECUTOR TO GIVE BOND. A foreign executor shall not be required to give bond if the will appointing him so provides. If the will does not exempt him from giving bond, the provisions of this Code with respect to the bonds of domestic representatives shall be applicable.

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

Sec. 107. POWER OF SALE OF FOREIGN EXECUTOR OR TRUSTEE. When by any foreign will recorded in the deed records of any county in this state in the manner provided herein, power is given an executor or trustee to sell any real or personal property situated in this state, no order of a court of this state shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction.

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

Sec. 107A. SUIT FOR THE RECOVERY OF DEBTS BY A FOREIGN EXECUTOR OR ADMINISTRATOR. (a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.

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

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

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

Added by Acts 1977, 65th Leg., p. 1190, ch. 457, Sec. 1, eff. Aug. 29, 1977.

PART 3. EMERGENCY INTERVENTION PROCEEDINGS; FUNERAL AND BURIAL EXPENSES

Sec. 108. TIME TO FILE EMERGENCY APPLICATION. An applicant may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for the payment of

funeral and burial expenses or the protection and storage of personal property owned by the decedent that was located in rented accommodations on the date of the decedent's death with the clerk of the court in the county of domicile of the decedent or the county in which the rental accommodations that contain the decedent's personal property are located. The application must be filed not earlier than the third day after the date of the decedent's death and not later than the 90th day after the date of the decedent's death.

Added by Acts 1993, 73rd Leg., ch. 712, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 6, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, Sec. 520 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 109. ELIGIBLE APPLICANTS FOR EMERGENCY INTERVENTION. A person qualified to serve as an administrator under Section 77 of this code may file an emergency intervention application.

Added by Acts 1993, 73rd Leg., ch. 712, Sec. 7, eff. Sept. 1, 1993. Renumbered from V.A.T.S., Probate Code Sec. 521 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 110. REQUIREMENTS FOR EMERGENCY INTERVENTION. An applicant may file an emergency application with the court under Section 108 of this code only if an application has not been filed and is not pending under Section 81, 82, 137, or 145 of this code and the applicant:

(1) needs to obtain funds for the funeral and burial of the decedent; or

(2) needs to gain access to rental accommodations in which the decedent's personal property is located and the applicant has been denied access to those accommodations.

Added by Acts 1995, 74th Leg., ch. 642, Sec. 7, eff. Sept. 1, 1995. Renumbered from V.A.T.S., Probate Code Sec. 521A and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 111. CONTENTS OF EMERGENCY INTERVENTION APPLICATION FOR FUNERAL AND BURIAL EXPENSES. (a) An application for emergency intervention to obtain funds needed for a decedent's funeral and burial expenses must be sworn and must contain:

(1) the name, address, social security number, and interest of the applicant;

(2) the facts showing an immediate necessity for the issuance of an emergency intervention order under this section by the court;

(3) the date of the decedent's death, place of death, decedent's residential address, and the name and address of the funeral home holding the decedent's remains;

(4) any known or ascertainable heirs and devisees of the decedent and the reason:

(A) the heirs and devisees cannot be contacted; or

(B) the heirs and devisees have refused to assist in the decedent's burial;

(5) a description of funeral and burial procedures necessary and a statement from the funeral home that contains a detailed and itemized description of the cost of the funeral and burial procedures; and

(6) the name and address of an individual, entity, or financial institution, including an employer, that is in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant.

(b) The application shall also state whether there are any written instructions from the decedent relating to the type and manner of funeral or burial the decedent would like to have. The applicant shall attach the instructions, if available, to the application and shall fully comply with the instructions. If written instructions do not exist, the applicant may not permit the decedent's remains to be cremated unless the applicant obtains the court's permission to cremate the decedent's remains.

Added by Acts 1993, 73rd Leg., ch. 712, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 8, eff. Sept. 1, 1995. Renumbered from V.A.T.S., Probate Code Sec. 522 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 112. CONTENTS FOR EMERGENCY INTERVENTION APPLICATION FOR ACCESS TO PERSONAL PROPERTY. An application for emergency intervention to gain access to rental accommodations of a decedent at the time of the decedent's death that contain the decedent's personal property must be sworn and must contain:

(1) the name, address, social security number, and interest

of the applicant;

(2) the facts showing an immediate necessity for the issuance of an emergency intervention order by the court;

(3) the date and place of the decedent's death, the decedent's residential address, and the name and address of the funeral home holding the decedent's remains;

(4) any known or ascertainable heirs and devisees of the decedent and the reason:

(A) the heirs and devisees cannot be contacted; or

(B) the heirs and devisees have refused to assist in the protection of the decedent's personal property;

(5) the type and location of the decedent's personal property and the name of the person in possession of the property; and

(6) the name and address of the owner or manager of the decedent's rental accommodations and whether access to the accommodations is necessary.

Added by Acts 1995, 74th Leg., ch. 642, Sec. 9, eff. Sept. 1, 1995. Renumbered from V.A.T.S., Probate Code Sec. 522A and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 113. ORDERS OF EMERGENCY INTERVENTION. (a) If the court determines on review of an application filed under Section 108 of this code that emergency intervention is necessary to obtain funds needed for a decedent's funeral and burial expenses, the court may order funds of the decedent held by an employer, individual, or financial institution to be paid directly to a funeral home only for reasonable and necessary attorney's fees for the attorney who obtained the order granted under this section, for court costs for obtaining the order, and for funeral and burial expenses not to exceed \$5,000 as ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

(b) If the court determines on review of an application filed under Section 108 of this code that emergency intervention is necessary to gain access to accommodations rented by the decedent at the time of the decedent's death that contain the decedent's personal property, the court may order one or more of the following:

(1) the owner or agent of the rental accommodations shall grant the applicant access to the accommodations at a reasonable time and in the presence of the owner or agent;

(2) the applicant and owner or agent of the rental accommodations shall jointly prepare and file with the court a list that generally describes the decedent's property found at the premises;

(3) the applicant or the owner or agent of the rental accommodations may remove and store the decedent's property at another location until claimed by the decedent's heirs;

(4) the applicant has only the powers that are specifically stated in the order and that are necessary to protect the decedent's property that is the subject of the application; or

(5) funds of the decedent held by an employer, individual, or financial institution to be paid to the applicant for reasonable and necessary attorney's fees and court costs for obtaining the order.

(c) The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the 90th day after the date the order was signed or the date a personal representative is qualified, whichever occurs first.

(d) A person who is furnished with a certified copy of an emergency intervention order within the period described by Subsection (c) of this section is not personally liable for the person's actions that are taken in accordance with and in reliance on the order.

Added by Acts 1993, 73rd Leg., ch. 712, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 10, eff. Sept. 1, 1995. Renumbered from V.A.T.S., Probate Code Sec. 523 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 114. TERMINATION. (a) All power and authority of an applicant under an emergency intervention order cease to be effective or enforceable on the 90th day after the date the order was issued or on the date a personal representative is qualified, whichever occurs first.

(b) If a personal representative has not been appointed when an emergency intervention order issued under Section 113(b) of this code ceases to be effective, a person who is in possession of the

decedent's personal property that is the subject of the order, without incurring civil liability, may:

- (1) release the property to the decedent's heirs; or
- (2) dispose of the property under Subchapter C, Chapter 54, Property Code, or Section 7.209 or 7.210, Business & Commerce Code. Added by Acts 1993, 73rd Leg., ch. 712, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 11, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, Sec. 524 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

Sec. 115. LIMITATION ON RIGHT OF SURVIVING SPOUSE TO CONTROL DECEASED'S BURIAL OR CREMATION. (a) An application under this section may be filed by:

- (1) the executor of the deceased's will; or
- (2) the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes the deceased's descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(b) An application under this section must be under oath and must establish:

- (1) whether the deceased died intestate or testate;
- (2) the surviving spouse is alleged to be a principal or accomplice in a wilful act which resulted in the death of the deceased; and
- (3) good cause exists to limit the right of the surviving spouse to control the burial and interment or cremation of the deceased spouse.

(c) After notice and hearing, without regard to whether the deceased died intestate or testate, a court may limit the right of a surviving spouse, whether or not the spouse has been designated by the deceased's will as the executor of a deceased spouse's estate, to control the burial and interment or cremation of the deceased spouse if the court finds that there is good cause to believe that the surviving spouse is the principal or an accomplice in a wilful act which resulted in the death of the deceased spouse.

(d) If the court limits the surviving spouse's right of control, as provided by Subsection (c), the court shall designate and authorize a person to make burial or cremation arrangements. Added by Acts 1995, 74th Leg., ch. 642, Sec. 12, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, Sec. 525 and amended by Acts 1997, 75th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1997.

PART 4. CITATIONS AND NOTICES

Sec. 128. CITATIONS WITH RESPECT TO APPLICATIONS FOR PROBATE OR FOR ISSUANCE OF LETTERS. (a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application for the probate of a written will produced in court, or for letters of administration, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

- (1) That such application has been filed, and the nature of it.
- (2) The name of the deceased and of the applicant.
- (3) The time when such application will be acted upon.
- (4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

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

- (1) When the heirs are non-residents of this state; or
- (2) When their names or their residences are unknown; or
- (3) When they are transient persons.

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

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

Sec. 128A. NOTICE TO CERTAIN ENTITIES AFTER PROBATE. (a) If the address of the entity can be ascertained with reasonable diligence, an applicant under Section 81 of this code shall give the state, a governmental agency of the state, or a charitable organization notice that the entity is named as a devisee in a written will, a written will not produced, or a nuncupative will that has been admitted to probate.

(b) The notice required by Subsection (a) of this section must be given not later than the 30th day after the date of the probate of the will.

(c) The notice must be in writing and state the county in which the will was admitted to probate. A copy of the application and the order admitting the will to probate and, if the application is for probate of a written will, a copy of the will must be attached to the notice.

(d) An entity entitled to notice under Subsection (a) of this section must be notified by registered or certified mail, return receipt requested.

(e) The applicant must file a copy of the notice with the court in which the will was admitted to probate.

Added by Acts 1989, 71st Leg., ch. 1035, Sec. 7, eff. Sept. 1, 1989.

Sec. 128B. NOTICE WHEN WILL PROBATED AFTER FOUR YEARS. (a) Except as provided by Subsection (b) of this section, an applicant for the probate of a will under Section 73(a) of this code must give notice by service of process to each of the testator's heirs whose address can be ascertained by the applicant with reasonable diligence. The notice must be given before the probate of the testator's will.

(b) Notice under Subsection (a) of this section is not required to be provided to an heir who has delivered to the court an affidavit signed by the heir stating that the heir does not object to the offer of the testator's will for probate.

(c) The notice required by this section and an affidavit described by Subsection (b) of this section must also contain a statement that:

(1) the testator's property will pass to the testator's heirs if the will is not admitted to probate; and

(2) the person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.

(d) If the address of any of the testator's heirs cannot be ascertained by the applicant with reasonable diligence, the court shall appoint an attorney ad litem to protect the interests of the unknown heirs after an application for the probate of a will is made under Section 73(a) of this code.

(e) In the case of an application for the probate of a will of a testator who has had another will admitted to probate, this section applies to a beneficiary of the testator's probated will instead of the testator's heirs.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 2, eff. Sept. 1, 1999.

Sec. 129. VALIDATION OF PRIOR MODES OF SERVICE OF CITATION. (a) In all cases where written wills produced in court have been probated prior to June 14, 1927, after publication of citation as provided by the then Article 28 of the Revised Civil Statutes of Texas (1925), without service of citation, the action of the courts in admitting said wills to probate is hereby validated in so far as service of citation is concerned.

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

(c) In all cases where written wills have been probated or letters of administration granted, prior to June 12, 1941, upon citation or notice duly issued by the clerk in conformance with the requirements of the then Article 3333 of Title 54 of the Revised Civil Statutes of Texas (1925), as amended, but not directed to the sheriff or any constable of the county wherein the proceeding was pending, and such citation or notice having been duly posted by the

sheriff or any constable of said county and returned for or in the time, manner, and form required by law, such citation or notice and return thereof and the action of the court in admitting said wills to probate or granting letters of administration upon estates, are hereby validated in so far as said citation or notice, and the issuance, service and return thereof are concerned.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 129A. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE. Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

Added by Acts 1993, 73rd Leg., ch. 712, Sec. 2, eff. Sept. 1, 1993.