

PROBATE CODE
CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION
PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 248. APPOINTMENT OF APPRAISERS.

Text of Sec. 248 as amended by Acts 2005, 79th Leg., ch. 701.

At any time after the grant of letters testamentary or of administration, the court for good cause on its own motion or on the motion of an interested party shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, Sec. 2, eff. Aug. 28, 1967; Acts 1993, 73rd Leg., ch. 957, Sec. 44, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 765, Sec. 2, eff. June 17, 2005.

For text of Sec. 248 as amended by Acts 2005, 79th Leg., ch. 765, see Sec. 248, post.

Sec. 248. APPOINTMENT OF APPRAISERS.

Text of Sec. 248 as amended by Acts 2005, 79th Leg., ch. 765.

At any time after the grant of letters testamentary or of administration and on its own motion or on the motion of an interested person, the court for good cause shown shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, Sec. 2, eff. Aug. 28, 1967; Acts 1993, 73rd Leg., ch. 957, Sec. 44, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 701, Sec. 1, eff. Sept. 1, 2005.

For text of Sec. 248 as amended by Acts 2005, 79th Leg., ch. 701, see Sec. 248, ante.

Sec. 249. FAILURE OF APPRAISERS TO SERVE. If any appraiser so appointed shall fail or refuse to act, the court shall by a like order or orders remove such appraiser and appoint another appraiser or appraisers, as the case shall require.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, Sec. 3, eff. Aug. 28, 1967.

Sec. 250. INVENTORY AND APPRAISEMENT. Within ninety days after his qualification, unless a longer time shall be granted by the court, the representative shall file with the clerk of court a verified, full and detailed inventory, in one written instrument, of all the property of such estate which has come to his possession or knowledge, which inventory shall include:

(a) all real property of the estate situated in the State of Texas;

(b) all personal property of the estate wherever situated. The representative shall set out in the inventory his appraisal of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration, as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisal. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners. Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes the inventory and appraisal of the estate referred to in this Code. The court for good cause shown may require the filing of the inventory and appraisal at a time prior to ninety days after the qualification

of the representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, Sec. 4, eff. Aug. 28, 1967; Acts 1993, 73rd Leg., ch. 957, Sec. 45, eff. Sept. 1, 1993.

Sec. 251. LIST OF CLAIMS. There shall also be made out and attached to said inventory a full and complete list of all claims due or owing to the estate, which shall state:

(a) The name of each person indebted to the estate and his address when known.

(b) The nature of such debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract.

(c) The date of such indebtedness, and the date when the same was or will be due.

(d) The amount of each claim, the rate of interest thereon, and time for which the same bears interest.

(e) In the case of decedent's estate, which of such claims are separate property and which are of the community.

(f) What portion of the claims, if any, is held in common with others, giving the names and the relationships, if any, of other part owners, and the interest of the estate therein.

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

Sec. 252. AFFIDAVIT TO BE ATTACHED. The representative of the estate shall also attach to such inventory and list of claims his affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the said inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to his knowledge.

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

Sec. 253. FEES OF APPRAISERS. Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars (\$5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 9.

Sec. 255. ACTION BY THE COURT. Upon return of the inventory, appraisement, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) Order of Approval. Should the judge approve the inventory, appraisement, and list of claims, he shall issue an order to that effect.

(b) Order of Disapproval. Should the judge not approve the inventory, appraisement, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisement, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

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

Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY. If, after the filing of the inventory and appraisement, property or claims not included in the inventory shall come to the possession or knowledge of the representative, he shall forthwith file with the clerk of court a verified, full and detailed supplemental inventory and appraisement.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, Sec. 5, eff. Aug. 28, 1967.

Sec. 257. ADDITIONAL INVENTORY OR LIST OF CLAIMS REQUIRED BY COURT. Any representative of an estate, on the written complaint of any interested person that property or claims of the estate have not been included in the inventory and list of claims filed, shall be cited to appear before the court in which the cause is pending and show cause why he should not be required to make and return an additional inventory or list of claims, or both. After hearing such complaint, and being satisfied of the truth thereof, the court shall enter its order requiring such additional inventory or list of claims, or both, to be made and returned in like manner as original inventories, and within such time, not to exceed twenty days, from the date of said order, as may be fixed by the court, but to include only property or claims theretofore not inventoried or listed.

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

Sec. 258. CORRECTION REQUIRED WHEN INVENTORY, APPRAISEMENT, OR LIST OF CLAIMS ERRONEOUS OR UNJUST. Any person interested in an

estate who deems an inventory, appraisalment, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the alleged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint, the court be satisfied from the evidence that the inventory, appraisalment, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisalment correcting such erroneous or unjust items and requiring the return of said new appraisalment within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

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

Sec. 259. EFFECT OF REAPPRAISEMENT. When any reappraisalment is made, returned, and approved by the court, it shall stand in place of the original appraisalment. Not more than one reappraisalment shall be made, but any person interested in the estate may object to the reappraisalment either before or after it is approved, and if the court finds that the reappraisalment is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

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

Sec. 260. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisalment and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning shall have the whole administration, unless, within sixty days after the return, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

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

Sec. 261. USE OF INVENTORIES, APPRAISEMENTS, AND LISTS OF CLAIMS AS EVIDENCE. All inventories, appraisements, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims of the estate actually was in excess of that shown in the appraisalment and list of claims.

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

PART 2. WITHDRAWING ESTATES OF DECEASED PERSONS FROM ADMINISTRATION

Sec. 262. EXECUTOR OR ADMINISTRATOR REQUIRED TO REPORT ON CONDITION OF ESTATE. At any time after the return of inventory, appraisalment, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pending, cause the executor or administrator of the estate to be cited to appear and render under oath an exhibit of the condition of the estate.

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

Sec. 263. BOND REQUIRED TO WITHDRAW ESTATE FROM ADMINISTRATION. When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisalment and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the

judgment of the court on his exhibit.

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

Sec. 264. COURT'S ORDER. When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

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

Sec. 265. ORDER OF DISCHARGE. When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

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

Sec. 266. LIEN ON PROPERTY OF ESTATE WITHDRAWN FROM ADMINISTRATION. A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby.

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

Sec. 267. PARTITION OF ESTATE WITHDRAWN FROM ADMINISTRATION. Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

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

Sec. 268. CREDITORS MAY SUE ON BOND. Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

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

Sec. 269. CREDITORS MAY SUE DISTRIBUTEES. Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees shall be liable beyond his just proportion according to the amount of the estate he shall have received in the distribution.

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

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

Sec. 270. LIABILITY OF HOMESTEAD FOR DEBTS. The homestead shall not be liable for the payment of any of the debts of the estate, except for:

- (1) the purchase money thereof;
- (2) the taxes due thereon;
- (3) work and material used in constructing improvements thereon if the requirements of Section 50(a)(5), Article XVI, Texas Constitution, are met;

- (4) an owelty of partition imposed against the entirety of the property by court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

- (5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the decedent;

- (6) an extension of credit on the homestead if the requirements of Section 50(a)(6), Article XVI, Texas Constitution, are met; or

- (7) a reverse mortgage.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, Sec. 1, eff. Aug. 27, 1979; Acts 1999, 76th Leg., ch. 487, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 855, Sec. 9, eff. Sept. 1, 1999.

Sec. 271. EXEMPT PROPERTY TO BE SET APART. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved, the court shall, by order, set apart:

- (1) the homestead for the use and benefit of the surviving spouse and minor children; and

- (2) all other property of the estate that is exempt from

execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased.

(b) Before the approval of the inventory, appraisement, and list of claims:

(1) a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

(2) any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

(c) An applicant under Subsection (b) of this section bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall set aside property of the decedent's estate that the court finds is exempt.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, Sec. 2, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 846, Sec. 18, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 551, Sec. 4, eff. Sept. 1, 2005.

Sec. 272. TO WHOM DELIVERED. The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) if there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) if there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) in all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, Sec. 3, eff. Aug. 27, 1979. Amended by Acts 2005, 79th Leg., ch. 551, Sec. 5, eff. Sept. 1, 2005.

Sec. 273. ALLOWANCE IN LIEU OF EXEMPT PROPERTY. In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed \$15,000 and the allowance for other exempted property shall in no case exceed \$5,000, exclusive of the allowance for the support of the surviving spouse and minor children which is hereinafter provided for.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 351, ch. 172, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 35, ch. 24, Sec. 4, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 846, Sec. 19, eff. Sept. 1, 1993.

Sec. 274. HOW ALLOWANCE PAID. The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, Sec. 5, eff. Aug. 27, 1979.

Sec. 275. TO WHOM ALLOWANCE PAID. The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows: (a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole

shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the children of whom the survivor is not the parent, or, if they are minors, to their guardian.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, Sec. 6, eff. Aug. 27, 1979.

Sec. 276. SALE TO RAISE ALLOWANCE. If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, Sec. 7, eff. Aug. 27, 1979.

Sec. 277. PREFERENCE OF LIENS. If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, Sec. 8, eff. Aug. 27, 1979.

Sec. 278. WHEN ESTATE IS SOLVENT. If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempted property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

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

Sec. 279. WHEN ESTATE IS INSOLVENT. Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 9, eff. Aug. 27, 1979.

Sec. 280. EXEMPT PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY. In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 10, eff. Aug. 27, 1979.

Sec. 281. EXEMPT PROPERTY LIABLE FOR CERTAIN DEBTS. The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of Class 1 claims, but such property shall not be liable for any other debts of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1997, 75th Leg., ch. 1302, Sec. 10, eff. Sept. 1, 1997.

Sec. 282. NATURE OF HOMESTEAD PROPERTY IMMATERIAL. The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 11, eff. Aug. 27, 1979.

Sec. 283. HOMESTEAD RIGHTS OF SURVIVING SPOUSE. On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real

property of the deceased and shall be governed by the same laws of descent and distribution.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 12, eff. Aug. 27, 1979.

Sec. 284. WHEN HOMESTEAD NOT PARTITIONED. The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 13, eff. Aug. 27, 1979.

Sec. 285. WHEN HOMESTEAD CAN BE PARTITIONED. When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, Sec. 14, eff. Aug. 27, 1979.

Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES AND MINORS. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisement, and list of claims have been approved, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

(b) Before the approval of the inventory, appraisement, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and minor children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, Sec. 15, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 846, Sec. 20, eff. Sept. 1, 1993.

Sec. 287. AMOUNT OF FAMILY ALLOWANCE. Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, Sec. 16, eff. Aug. 27, 1979.

Sec. 288. WHEN FAMILY ALLOWANCE NOT MADE. No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, Sec. 17, eff. Aug. 27, 1979.

Sec. 289. ORDER FIXING FAMILY ALLOWANCE. When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

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

Sec. 290. FAMILY ALLOWANCE PREFERRED. The family allowance made for the support of the surviving spouse and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except Class 1 claims.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, Sec. 18, eff. Aug. 27, 1979; Acts 1997, 75th Leg., ch. 1302, Sec. 11, eff. Sept. 1, 1997.

Sec. 291. TO WHOM FAMILY ALLOWANCE PAID. The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children, if such children be the

survivor's.

(b) If the surviving spouse is not the parent of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a surviving spouse and no minor child or children, the entire allowance shall be paid to the surviving spouse.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, Sec. 19, eff. Aug. 27, 1979.

Sec. 292. MAY TAKE PROPERTY FOR FAMILY ALLOWANCE. The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, Sec. 20, eff. Aug. 27, 1979.

Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, Sec. 21, eff. Aug. 27, 1979.

PART 4. PRESENTMENT AND PAYMENT OF CLAIMS

Sec. 294. NOTICE BY REPRESENTATIVE OF APPOINTMENT. (a) Giving of Notice Required. Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall include the date of issuance of letters held by the representative, the address to which claims may be presented, and an instruction of the representative's choice that claims be addressed in care of the representative, in care of the representative's attorney, or in care of "Representative, Estate of _____" (naming the estate).

(b) Proof of Publication. A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this Code for the service of citation or notice by publication, shall be filed in the court where the cause is pending.

(c) When No Newspaper Printed in the County. When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this Code.

(d) Permissive Notice to Unsecured Creditors. At any time before an estate administration is closed, the personal representative may give notice by certified or registered mail, with 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 four months after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. The notice must include:

(1) the dates of issuance of letters held by the representative;

(2) the address to which claims may be presented; and

(3) an instruction of the representative's choice that the

claim be addressed in care of:

- (A) the representative;
- (B) the representative's attorney; or
- (C) "Representative, Estate of " (naming the estate).

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1981, 67th Leg., p. 243, ch. 102, Sec. 9, eff. Aug. 31, 1981; Acts 1991, 72nd Leg., ch. 464, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 1054, Sec. 2, eff. Jan. 1, 1996.

Sec. 295. NOTICE TO HOLDERS OF SECURED CLAIMS. (a) When notice required for secured claimants. Within two months after receiving letters, the personal representative of an estate shall give notice of the issuance of such letters to each and every person known to the personal representative to have a claim for money against the estate of a decedent that is secured by real or personal property of the estate. Within a reasonable time after the personal representative obtains actual knowledge of the existence of a person having a secured claim for money and to whom notice was not previously given, the personal representative shall give notice to the person of the issuance of letters.

(b) How notice shall be given. The notice stating the original grant of letters shall be given by mailing same by certified or registered mail, with return receipt requested, addressed to the record holder of such indebtedness or claim at the record holder's last known post office address.

(c) Proof of service of notice. A copy of each notice required by Subsection (a) of this section and a copy of the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed with the clerk of the court from which letters were issued.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1987, 70th Leg., ch. 461, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 895, Sec. 13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 957, Sec. 46, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 3, eff. Jan. 1, 1996.

Sec. 296. ONE NOTICE SUFFICIENT. If the notices required by the two preceding Sections have been given by a former representative, or by one where several are acting, that shall be sufficient, and need not be repeated by any successor or co-representative.

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

Sec. 297. PENALTY FOR FAILURE TO GIVE NOTICE. If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, the representative and the sureties on the representative's bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 4, eff. Jan. 1, 1996.

Sec. 298. CLAIMS AGAINST ESTATES OF DECEDENTS. (a) Time for Presentation of Claims. A claim may be presented to the personal representative at any time before the estate is closed if suit on the claim has not been barred by the general statutes of limitation. If a claim of an unsecured creditor for money is not presented within four months after the date of receipt of the notice permitted by Section 294(d), the claim is barred.

(b) Claims Barred by Limitation Not to Be Allowed or Approved. No claims for money against a decedent, or against the estate of the decedent, on which a suit is barred under Subsection (a) of this section, Section 313, or Section 317(a) or by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that the claim is barred or that limitation has run, the claim shall be disapproved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, Sec. 1, eff. June 15, 1971; Acts 1993, 73rd Leg., ch. 957, Sec. 47, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 5, eff. Jan. 1, 1996.

Sec. 299. TOLLING OF GENERAL STATUTES OF LIMITATION. The general statutes of limitation are tolled on the date:

- (1) a claim for money is filed or deposited with the clerk; or
- (2) suit is brought against the personal representative of an estate with respect to a claim of the estate that is not required

to be presented to the personal representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1997, 75th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1997.

Sec. 301. CLAIMS FOR MONEY MUST BE AUTHENTICATED. No personal representative of a decedent's estate shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 48, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 6, eff. Jan. 1, 1996.

Sec. 302. WHEN DEFECTS OF FORM ARE WAIVED. Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written objection thereto has been made within thirty days after presentment of the claim, and filed with the county clerk.

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

Sec. 303. EVIDENCE CONCERNING LOST OR DESTROYED CLAIMS. If evidence of a claim is lost or destroyed, the claimant or an authorized representative or agent of the claimant, may make affidavit to the fact of such loss or destruction, stating the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 7, eff. Jan. 1, 1996.

Sec. 304. AUTHENTICATION OF CLAIM BY OTHERS THAN INDIVIDUAL OWNERS. An authorized officer or representative of a corporation or other entity shall make the affidavit required to authenticate a claim of such corporation or entity. When an affidavit is made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 49, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 8, eff. Jan. 1, 1996.

Sec. 306. METHOD OF HANDLING SECURED CLAIMS FOR MONEY. (a) Specifications of Claim. When a secured claim for money against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

(b) Time for Specification of Secured Claim. Within six months after the date letters are granted, or within four months after the date notice is received under Section 295 of this code, whichever is later, the secured creditor may present the creditor's claim and shall specify whether the claim is to be allowed and approved under Paragraph (1) or (2) of Subsection (a) of this section. If a secured claim is not presented within the time prescribed by this subsection or if the claim is presented without specifying how the claim is to be paid, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

(c) Matured Secured Claims. If a claim has been allowed and approved as a matured secured claim under Paragraph (1) of Subsection (a) of this section, the claim shall be paid in due course of administration and the secured creditor is not entitled to exercise any other remedies in a manner that prevents the preferential payment of claims and allowances described by Paragraphs (1) through (3) of Section 320(a) of this code.

(c-1) If a claimant presents a secured claim against an estate for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 71A(a) of this code and the claim is allowed and approved as a matured secured claim under Subsection (a)(1) of this section, the personal representative shall collect from the devisees the amount of the debt and pay that amount to the claimant in satisfaction of the claim. Each devisee's share of the debt is an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the debt. If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt, the personal representative shall sell the property securing the debt, subject to Part 5 of this chapter. The personal representative shall use the sale proceeds to pay the debt and any expenses associated with the sale and shall distribute the remaining sale proceeds to each devisee in an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the remaining sale proceeds. If the sale proceeds are insufficient to pay the debt and any expenses associated with the sale, the difference between the sum of the amount of the debt and the expenses associated with the sale and the sale proceeds shall be paid under Subsection (c) of this section.

(d) Approved Claim as Preferred Lien Against Property. When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

(e) Payment of Maturities on Preferred Debt and Lien Claims. If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within six months from the date letters are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on application of the claimholder, the court shall:

(1) require the sale of said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities;

(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(3) authorize foreclosure by the claimholder as provided by Subsections (f) through (k) of this section.

(f) Foreclosure of Preferred Liens. An application by a claimholder under Subsection (e) of this section to foreclose the claimholder's lien or security interest on property securing a claim that has been allowed, approved, and fixed under Paragraph (2) of Subsection (a) of this section shall be supported by affidavit of the claimholder that:

(1) describes the property or part of the property to be sold by foreclosure;

(2) describes the amounts of the claimholder's outstanding debt;

(3) describes the maturities that have accrued on the debt according to the terms of the debt;

(4) describes any other debts secured by a mortgage, lien, or security interest against the property that are known by the claimholder;

(5) contains a statement that the claimholder has no knowledge of the existence of any debts secured by the property other than those described by the application; and

(6) requests permission for the claimholder to foreclose the claimholder's mortgage, lien, or security interest.

(g) Citation. On the filing of an application, the clerk

shall issue citation by personal service to the personal representative and to any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property and by posting to any other person interested in the estate. The citation must require the person to appear and show cause why foreclosure should or should not be permitted.

(h) Setting of Hearing on Application. When an application is filed, the clerk shall immediately notify the judge. The judge shall schedule in writing a date for a hearing on the application. The judge may, by entry on the docket or otherwise, continue the hearing for a reasonable time to allow an interested person to obtain an appraisal or other evidence concerning the fair market value of the property that is the subject of the application. If the interested person requests an unreasonable time for a continuance, the person must show good cause for the continuance.

(i) Hearing. (1) At the hearing, if the court finds that there is a default in payment or performance under the contract that secures the payment of the claim, the court shall:

(A) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;

(B) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(C) authorize foreclosure by the claimholder as provided by Subsection (f) of this section.

(2) When the court grants a claimholder the right of foreclosure, the court shall authorize the claimholder to foreclose the claimholder's mortgage, lien, or security interest in accordance with the provisions of the document creating the mortgage, lien, or security interest or in any other manner allowed by law. In the discretion of the court and based on the evidence presented at the hearing, the court may fix a minimum price for the property to be sold by foreclosure that does not exceed the fair market value of the property. If the court fixes a minimum price, the property may not be sold at the foreclosure sale for a lower price.

(j) Appeal. Any person interested in the estate may appeal an order issued under Subsection (i)(1)(C) of this section.

(k) Unsuccessful Foreclosure. If a foreclosure sale authorized under this section is conducted and the property is not sold because no bid at the sale met the minimum price set by the court, the claimholder may file another application under Subsection (f) of this section. The court may, in the court's discretion, eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 50, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 9, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1302, Sec. 13, eff. Sept. 1, 1997. Subsec. (c-1) added by Acts 2005, 79th Leg., ch. 551, Sec. 6, eff. Sept. 1, 2005.

Sec. 307. CLAIMS PROVIDING FOR ATTORNEY'S FEES. If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 308. DEPOSITING CLAIMS WITH CLERK. Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or the representative's attorney, by letter mailed to the representative's last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is deposited, then it shall be presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or the presumption of rejection because not acted upon within said thirty day period. The clerk shall enter a deposited claim on the claim docket.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 10, eff. Jan. 1, 1996.

Sec. 309. MEMORANDUM OF ALLOWANCE OR REJECTION OF CLAIM. When a duly authenticated claim against an estate is presented to the representative, or deposited with the clerk as

heretofore provided, the representative shall, within thirty days after the claim is presented or deposited, endorse thereon, annex thereto, or file with the clerk a memorandum signed by the representative, stating the date of presentation or depositing of the claim, and that the representative allows or rejects it, or what portion thereof the representative allows or rejects.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 11, eff. Jan. 1, 1996.

Sec. 310. FAILURE TO ENDORSE OR ANNEX MEMORANDUM. The failure of a representative of an estate to timely allow or reject a claim under Section 309 of this code shall constitute a rejection of the claim. If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or the representative may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 12, eff. Jan. 1, 1996.

Sec. 311. WHEN CLAIMS ENTERED IN DOCKET. After a claim against an estate has been presented to and allowed or rejected by the personal representative, in whole or in part, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, Sec. 2, eff. June 15, 1971; Acts 1993, 73rd Leg., ch. 957, Sec. 51, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 13, eff. Jan. 1, 1996.

Sec. 312. CONTEST OF CLAIMS, ACTION BY COURT, AND APPEALS. (a) Contest of Claims. Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) Court's Action Upon Claims. All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

(c) Hearing on Claims. Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, the court shall disapprove it.

(d) Order of the Court. When the court has acted upon a claim, the court shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

(e) Appeal. When a claimant or any person interested in an estate shall be dissatisfied with the action of the court upon a claim, the claimant or person may appeal therefrom to the courts of appeals, as from other judgments of the county court in probate matters.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, Sec. 4, eff. June 21, 1975; Acts 1993, 73rd Leg., ch. 957, Sec. 52, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 14, eff. Jan. 1, 1996.

Sec. 313. SUIT ON REJECTED CLAIM. When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto, or any memorandum of rejection filed with respect to the claim, shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

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

Acts 1975, 64th Leg., p. 2196, ch. 701, Sec. 5, eff. June 21, 1975; Acts 1995, 74th Leg., ch. 1054, Sec. 15, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 10, Sec. 3, eff. Sept. 1, 2001.

Sec. 314. PRESENTMENT OF CLAIMS A PREREQUISITE FOR JUDGMENT. No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate, and rejected by the representative or by the court, in whole or in part.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 53, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 16, eff. Jan. 1, 1996.

Sec. 315. COSTS OF SUIT WITH RESPECT TO CLAIMS. All costs incurred in the probate court with respect to claims shall be taxed as follows:

(a) If allowed and approved, the estate shall pay the costs.

(b) If allowed, but disapproved, the claimant shall pay the costs.

(c) If rejected, but established by suit, the estate shall pay the costs.

(d) If rejected, but not established by suit, the claimant shall pay the costs, except as provided by Section 310 of this code.

(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, the claimant shall pay all costs.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 17, eff. Jan. 1, 1996.

Sec. 316. CLAIMS AGAINST PERSONAL REPRESENTATIVES. The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against the person named as executor; and, in all cases where a personal representative is indebted to the testator or intestate, the representative shall account for the debt in the same manner as if it were cash in the representative's hands; provided, however, that if said debt was not due at the time of receiving letters, the representative shall be required to account for it only from the date when it becomes due.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 18, eff. Jan. 1, 1996.

Sec. 317. CLAIMS BY PERSONAL REPRESENTATIVES. (a) By Executors or Administrators. The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of a personal representative against the testator or intestate; but a personal representative holding such claim shall file the same in the court granting the letters, verified by affidavit as required in other cases, within six months after the representative has qualified, or such claim shall be barred.

(b) Action on Such Claims. When a claim by a personal representative has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(c) Provisions Not Applicable to Certain Claims. The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to a claim:

(1) of any heir, devisee, or legatee who claims in such capacity;

(2) that accrues against the estate after the granting of letters for which the representative of the estate has contracted; or

(3) for delinquent ad valorem taxes against a decedent's estate that is being administered in probate in:

(A) a county other than the county in which the taxes were imposed; or

(B) the same county in which the taxes were imposed, if the probate proceedings have been pending for more than four years.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 54, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 19, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 1481, Sec. 37, eff. Sept. 1, 1999.

Sec. 318. CLAIMS NOT ALLOWED AFTER ORDER FOR PARTITION AND DISTRIBUTION. No claim for money against the estate of a decedent shall be allowed by a personal representative and no suit shall be instituted against the representative on any such claim, after an

order for final partition and distribution has been made; but, after such an order has been made, the owner of any claim not barred by the laws of limitation shall have an action thereon against the heirs, devisees, legatees, or creditors of the estate, limited to the value of the property received by them in distributions from the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 20, eff. Jan. 1, 1996.

Sec. 319. CLAIMS NOT TO BE PAID UNLESS APPROVED. No claim for money against the estate of a decedent, or any part thereof, shall be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 55, eff. Sept. 1, 1993.

Sec. 320. ORDER OF PAYMENT OF CLAIMS AND ALLOWANCES. (a) Priority of Payments. Personal representatives, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Fifteen Thousand Dollars.

(2) Allowances made to the surviving spouse and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safekeeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) Sale of Mortgaged Property. If a personal representative has the proceeds of a sale that has been made for the satisfaction of a mortgage, lien, or security interest, and the proceeds, or any part of the proceeds, are not required for the payment of any debts against the estate that have a preference over the mortgage, lien, or security interest, the personal representative shall pay the proceeds to any holder of a mortgage, lien, or security interest. If there is more than one mortgage, lien, or security interest against the property, the personal representative shall pay the holders in the order of the holders' priority. If the personal representative fails to pay proceeds under this subsection, a holder, on proof of the failure to pay, may obtain an order from the court directing the payment to be made.

(c) Claimant's Petition. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

(d) Permissive Order of Payment. After the sixth month after the date letters are granted and on application by the personal representative stating that the personal representative has no actual knowledge of any outstanding enforceable claims against the estate other than the claims already approved and classified by the court, the court may order the personal representative to pay any claim that is allowed and approved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, Sec. 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1876, ch. 758, Sec. 1, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 461, Sec. 2, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 957, Sec. 56, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 21, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 540, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1361, Sec. 1, eff. Sept. 1, 1997.

Sec. 320A. FUNERAL EXPENSES. When personal representatives pay claims for funeral expenses and for items incident thereto, such as tombstones, grave markers, crypts or burial plots, they shall charge the whole of such claims to the decedent's estate and shall charge no part thereof to the community share of a surviving spouse.

Added by Acts 1967, 60th Leg., p. 768, ch. 321, Sec. 1, eff. May 27, 1967. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 22, eff. Jan. 1, 1996.

Sec. 321. DEFICIENCY OF ASSETS. When there is a deficiency of assets to pay all claims of the same class, other than secured claims for money, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No personal representative shall be allowed to pay the claims, whether the estate is solvent or insolvent, except with the pro rata amount of

the funds of the estate that have come to hand.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 57, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 23, eff. Jan. 1, 1996.

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATES OF DECEDENT. Claims against an estate of a decedent shall be classified and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed a total of Fifteen Thousand Dollars, with any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate, including fees and expenses awarded under Section 243 of this code, and unpaid expenses of administration awarded in a guardianship of the decedent.

Class 3. Secured claims for money under Section 306(a)(1), including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage, lien, or security interest shall exist upon the same property, they shall be paid in order of their priority.

Class 4. Claims for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been confirmed and reduced to money judgment, as determined under Subchapter F, Chapter 157, Family Code.

Class 5. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes; Section 81.111, Natural Resources Code; the Municipal Sales and Use Tax Act (Chapter 321, Tax Code); Section 451.404, Transportation Code; or Subchapter I, Chapter 452, Transportation Code.

Class 6. Claims for the cost of confinement established by the institutional division of the Texas Department of Criminal Justice under Section 501.017, Government Code.

Class 7. Claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

Class 8. All other claims.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, Sec. 3, eff. June 15, 1971; Acts 1979, 66th Leg., p. 869, ch. 394, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 242, ch. 102, Sec. 8, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1785, ch. 389, Sec. 38A, 39(1), eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 1049, Sec. 51, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1052, Sec. 2.07, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, Sec. 14.27(a)(6), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1035, Sec. 13, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 1054, Sec. 24, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 165, Sec. 30.243, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1361, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 69, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 1060, Sec. 14, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 551, Sec. 7, eff. Sept. 1, 2005.

Sec. 322A. APPORTIONMENT OF TAXES. (a) In this section:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(2) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate, because of the death of a person, imposed by federal, state, local, or foreign law, including the federal estate tax and the additional inheritance tax imposed by Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. Estate tax does not include a tax imposed under Section 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

(3) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(4) "Person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive, or who has received, from a decedent or because of the death of the decedent, property included in the decedent's estate for purposes of the estate tax, but does not include a creditor of the decedent or of the decedent's estate.

(5) "Representative" means the representative, executor, or

administrator of an estate, or any other person who is required to pay estate taxes assessed against the estate.

(b)(1) The representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion of each estate tax that is charged to each person interested in the estate must represent the same ratio as the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. In apportioning an estate tax under this subdivision, the representative shall disregard a portion of the tax that is apportioned under the law imposing the tax, otherwise apportioned by federal law, or apportioned as otherwise provided by this section.

(2) Subdivision (1) of this subsection does not apply to the extent the decedent in a written inter vivos or testamentary instrument disposing of or creating an interest in property specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(3) If under Subdivision (2) of this subsection directions for the apportionment of an estate tax in two or more instruments executed by the same person conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax in two or more instruments executed by different persons conflict, the direction of the person in whose estate the property is included controls.

(4) Subdivisions (2) and (3) of this subsection do not grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property. Subdivisions (2) and (3) of this subsection do not apply to the extent federal law directs a different manner of apportionment.

(c) Any deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by Subsections (d)-(f) of this section.

(d) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(e) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or his estate inures proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(f) A credit for inheritance, succession, or estate taxes, or taxes of a similar nature applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit reduces proportionately those taxes.

(g) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property, the property is not included in the computation provided for by Subsection (b) of this section, and to that extent no apportionment is made against the property. The exclusion provided by this subsection does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, relating to deductions for state death taxes on transfers for public, charitable, or religious uses.

(h) Except as provided by Subsection (i)(3) of this section, an interest in income, an estate for years or for life, or another temporary interest in any property or fund is not subject to apportionment. The estate tax apportionable to the temporary interest and the remainder, if any, is chargeable against the

corpus of the property or the funds that are subject to the temporary interest and remainder.

(i)(1) In this subsection, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).

(2) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The amount of the reduction of the estate tax resulting from the election shall be applied to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount applied to reduce the taxes allocated based on the value of the qualified real property is greater than the amount of those taxes, the excess shall be applied to the portion of the taxes allocated for all other property. This amount is to be apportioned under Subsection (b)(1) of this section.

(3) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section 2032A) because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. The additional tax is a charge against such qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

(j) Repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16.

(k) If the date for the payment of any portion of an estate tax is extended, the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension. Those persons are entitled to the benefits and shall bear the burdens of the extension.

(l) If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

(m) Interest on an extension of estate tax and interest and penalties on a deficiency shall be apportioned equitably to reflect the benefits and burdens of the extension or deficiency and of any tax deduction associated with the interest and penalties, but if the assessment or penalty and interest is due to delay caused by the negligence of the representative, the representative shall be charged with the amount of assessed penalty and interest.

(n) If property includable in an estate does not come into possession of the representative obligated to pay the estate tax, the representative shall recover from each person interested in the estate the amount of the estate tax apportioned to the person under this section or assign to persons affected by the tax obligation the representative's right of recovery. The obligation to recover a tax under this subsection does not apply if:

(1) the duty is waived by the parties affected by the tax obligation or by the instrument under which the representative derives powers; or

(2) in the reasonable judgment of the representative, proceeding to recover the tax is not cost-effective.

(o) If a representative cannot collect from a person interested in the estate an unpaid amount of estate tax apportioned to the person, the amount not collected shall be apportioned among the other persons interested in the estate who are subject to apportionment in the same manner as provided by Subsection (b)(1) of this section. A person who is charged with or who pays an apportioned amount under this subsection because another person failed to pay an amount of estate tax apportioned to the person has a right of reimbursement for that amount from the person who failed to pay the tax. The representative may enforce the right of reimbursement, or the person who is charged with or who pays an apportioned amount under this subsection may enforce the right of reimbursement directly by an assignment from the representative. A person assigned the right under this subsection is subrogated to the rights of the representative. A representative who has a right

of reimbursement may petition a court to determine the right of reimbursement.

(p) This section shall be applied after giving effect to any disclaimers made in accordance with Section 37A of this code.

(q) Interest and penalties assessed against the estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Subsection (b) of this section, unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable or that the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative. If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner. If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to his conduct.

(r) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Subsection (b) of this section unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable. If the court determines that the assessment is not equitable, the court may apportion the expenses in an equitable manner.

(s) For the purposes of this section, "court" means a court in which proceedings for administration of the estate are pending or have been completed or, if no proceedings are pending or have been completed, a court in which venue lies for the administration of the estate of the decedent.

(t) A representative who has possession of any property of an estate that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

(u) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this section, unless the representative determines in good faith that an attempt to recover this amount would be economically impractical.

(v) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this section may not be required to initiate the necessary actions until the expiration of 90 days after the date of the final determination of the amount of the estate tax by the Internal Revenue Service. A representative who initiates an action under this section within a reasonable time after the 90-day period is not subject to any liability or surcharge because any portion of the estate tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible.

(w) A representative acting in another state may initiate an action in a court of this state to recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution. In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. This section applies only if the state in which the determination of apportionment was made affords a substantially similar remedy.

(x) A reference in this section to a section of the Internal Revenue Code of 1986 refers to the section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and the referenced section as renumbered if it is renumbered.

(y) The prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Subsection (b) of this section shall be awarded necessary expenses, including reasonable attorney's fees.

Added by Acts 1987, 70th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 410, Sec. 1, eff. Sept. 1, 1991.

Subsec. (j) repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16, eff. Sept. 1, 2003.

Sec. 322B. ABATEMENT OF BEQUESTS. (a) Except as provided by Subsections (b)-(d) of this section, a decedent's property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:

(1) property not disposed of by will, but passing by intestacy;

(2) personal property of the residuary estate;

(3) real property of the residuary estate;

(4) general bequests of personal property;

(5) general devises of real property;

(6) specific bequests of personal property; and

(7) specific devises of real property.

(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Section 306 of this code.

(c) This section does not apply to the payment of estate taxes under Section 322A of this code.

(d) A decedent's intent, as expressed in a will, controls over the abatement of bequests provided by this section.

Added by Acts 1987, 70th Leg., ch. 742, Sec. 2, eff. Sept. 1, 1987.

Sec. 323. JOINT OBLIGATION. When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, the decedent's estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 25, eff. Jan. 1, 1996.

Sec. 324. REPRESENTATIVES NOT TO PURCHASE CLAIMS. It shall be unlawful, and cause for removal, for a personal representative whether acting under appointment by will or under orders of the court, to purchase for the personal representative's own use or for any purposes whatsoever, any claim against the estate the personal representative represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the court may, in the court's discretion, remove such representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 58, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 26, eff. Jan. 1, 1996.

Sec. 326. OWNER MAY OBTAIN ORDER FOR PAYMENT. Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

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

Sec. 328. LIABILITY FOR NONPAYMENT OF CLAIMS. (a) Procedure to Force Payment. If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or

(b) Penalty Against Representative. Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on the representative's bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs,

and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1054, Sec. 27, eff. Jan. 1, 1996.

Sec. 329. BORROWING MONEY. (a) Circumstances Under Which Money May Be Borrowed. Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

(1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent or the estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or

(2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or

(3) For payment of claims allowed and approved, or established by suit, against the estate; or

(4) To renew and extend a valid, existing lien.

(b) Procedure for Borrowing Money. When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien upon property of the estate as security, a sworn application for such authority shall be filed with the court, stating fully and in detail the circumstances which the representative of the estate believes make necessary the granting of such authority. Thereupon, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring such persons, if they choose so to do, to appear and show cause, if any, why such application should not be granted.

(c) Order Authorizing Such Borrowing, or Extension of Lien. The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however, the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an extension of such lien for not more than one additional year without further citation or notice. If a new lien is created on property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and the creditors, as for the sale of real property belonging to the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, Sec. 3, eff. May 25, 1973; Acts 1987, 70th Leg., ch. 766, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 957, Sec. 59, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, Sec. 28, eff. Jan. 1, 1996.

PART 5. SALES

Sec. 331. COURT MUST ORDER SALES. Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

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

Sec. 332. SALES AUTHORIZED BY WILL. Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

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

Sec. 333. CERTAIN PERSONAL PROPERTY TO BE SOLD. (a) The representative of an estate, after approval of inventory and

appraisement, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept. Property exempt from forced sale, specific legacies, and personal property necessary to carry on a farm, ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the representative's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 or Subchapter F, Chapter 113, Property Code.

Added by Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 846, Sec. 21, eff. Sept. 1, 1993.

Subsec. (b)(2) amended by Acts 2003, 78th Leg., ch. 1103, Sec. 14, eff. Jan. 1, 2004.

Sec. 334. SALES OF OTHER PERSONAL PROPERTY. Upon application by the personal representative of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by the preceding Section, including growing or harvested crops or livestock, but not including exempt property or specific legacies, if the court finds that so to do would be in the best interest of the estate in order to pay expenses of administration, funeral expenses, expenses of last illness, allowances, or claims against the estate, from the proceeds of the sale of such property. In so far as possible, applications and orders for the sale of personal property shall conform to the requirements hereinafter set forth for applications and orders for the sale of real estate.

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

Sec. 335. SPECIAL PROVISIONS PERTAINING TO LIVESTOCK. When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed five per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2001, 77th Leg., ch. 443, Sec. 1, eff. Sept. 1, 2001.

Sec. 336. SALES OF PERSONAL PROPERTY AT PUBLIC AUCTION. All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

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

Sec. 337. SALES OF PERSONAL PROPERTY ON CREDIT. No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of such property can be

made to him, but security may be waived if delivery is not to be made until the note, with interest, has been paid.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 338. SALE OF MORTGAGED PROPERTY. Any creditor holding a claim secured by a valid mortgage or other lien, which has been allowed and approved or established by suit, may obtain from the court in which the estate is pending an order that said property, or so much thereof as necessary to satisfy his claim, shall be sold, by filing his written application therefor. Upon the filing of such application, the clerk shall issue citation requiring the representative of the estate to appear and show cause why such application should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 339. SALES OF PERSONAL PROPERTY TO BE REPORTED; DECREE VESTS TITLE. All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 60, eff. Sept. 1, 1993.

Sec. 340. SELECTION OF REAL PROPERTY TO BE SOLD FOR PAYMENT OF DEBTS. Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

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

Sec. 341. APPLICATION FOR SALE OF REAL ESTATE. Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents.

(2) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 2030, ch. 695, Sec. 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 408, ch. 182, Sec. 4, eff. May 25, 1973; Acts 1975, 64th Leg., p. 975, ch. 372, Sec. 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, Sec. 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1755, ch. 713, Sec. 27, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 957, Sec. 61, eff. Sept. 1, 1993.

Sec. 342. CONTENTS OF APPLICATION FOR SALE OF REAL ESTATE. An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established, the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale.

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

Sec. 343. SETTING OF HEARING ON APPLICATION. Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate in writing a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, Sec. 28, eff. Aug. 27, 1979.

Sec. 344. CITATION AND RETURN ON APPLICATION. Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land or interest or part thereof sought to be sold, requiring them to appear at the time set by the court as shown in the citation and show cause why the sale should not be made, if they so elect. Service of such citation shall be by posting.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 345. OPPOSITION TO APPLICATION. When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 346. ORDER OF SALE. If satisfied upon hearing that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and

(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and

(c) The necessity or advisability of the sale and its purpose; and

(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and

(e) That the sale shall be made and the report returned in accordance with law; and

(f) The terms of the sale.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 347. PROCEDURE WHEN REPRESENTATIVE NEGLECTS TO APPLY FOR SALE. When the representative of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 348. PERMISSIBLE TERMS OF SALE OF REAL ESTATE. (a) For Cash or Credit. The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

(b) Reconveyance Upon Redemption. When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property

foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 636, ch. 290, Sec. 1, eff. May 30, 1959.

Sec. 349. PUBLIC SALES OF REAL ESTATE. (a) Notice of Sale. Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

(b) Method of Sale. All public sales of real estate shall be made at public auction to the highest bidder.

(c) Time and Place of Sale. All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by the court, he may order such sale to be made in the county in which the land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending.

(d) Continuance of Sales. If sales are not completed on the day advertised, they may be continued from day to day by making public announcement verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) Failure of Bidder to Comply. When any person shall bid off property of an estate offered for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten per cent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

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

Sec. 350. PRIVATE SALES OF REAL ESTATE. All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no further advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, Sec. 29, eff. Aug. 27, 1979.

Sec. 351. SALES OF EASEMENTS AND RIGHT OF WAYS. It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property

of estates of decedents at private sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 62, eff. Sept. 1, 1993.

Sec. 352. REPRESENTATIVE PURCHASING PROPERTY OF THE ESTATE. (a) Except as provided by Subsection (b), (c), or (d) of this section, the personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting.

(b) A personal representative of an estate may purchase property from the estate if the will, duly admitted to probate, appointing the personal representative expressly authorizes the sale.

(c) A personal representative of a decedent may purchase property from the estate of the decedent in compliance with the terms of a written executory contract signed by the decedent, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

(d) After issuing the notice required by this subsection, a personal representative of an estate, including an independent administrator, may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. The personal representative shall give notice by certified mail, return receipt requested, unless the court requires another form of notice, to each distributee of a deceased person's estate and to each creditor whose claim remains unsettled after presenting a claim within six months of the original grant of letters. The court may require additional notice or it may allow for the waiver of the notice required for a sale made under this subsection.

(e) If a purchase is made in violation of this section, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1985, 69th Leg., ch. 709, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 651, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 895, Sec. 14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 957, Sec. 63, eff. Sept. 1, 1993.

Sec. 353. REPORTS OF SALE. All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

- (a) The date of the order of sale.
- (b) The property sold, describing it.
- (c) The time and place of sale.
- (d) The name of the purchaser.
- (e) The amount for which each parcel of property or interest therein was sold.

(f) The terms of the sale, and whether made at public auction or privately.

(g) Whether the purchaser is ready to comply with the order of sale.

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

Sec. 354. BOND ON SALE OF REAL ESTATE. If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. Otherwise, before any sale of real estate is confirmed, the court shall determine whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full

payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

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

Sec. 355. ACTION OF COURT ON REPORT OF SALE. After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, Sec. 6, eff. June 21, 1975.

Sec. 356. DEED CONVEYS TITLE TO REAL ESTATE. When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

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

Sec. 357. DELIVERY OF DEED, VENDOR'S AND DEED OF TRUST LIEN. After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

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

Sec. 358. PENALTY FOR NEGLECT. Should the representative of an estate neglect to comply with the preceding Section, or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall, after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

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

PART 6. HIRING AND RENTING

Sec. 359. HIRING OR RENTING WITHOUT ORDER OF COURT. The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the best interest of the estate, for a period not to exceed one year.

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

Sec. 360. LIABILITY OF PERSONAL REPRESENTATIVE. If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

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

Sec. 361. ORDER TO HIRE OR RENT. Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

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

Sec. 362. PROCEDURE IN CASE OF NEGLECT TO RENT PROPERTY. Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

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

Sec. 363. WHEN PROPERTY IS HIRED OR RENTED ON CREDIT. When property is hired or rented on credit, possession thereof shall not be delivered until the hirer or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

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

Sec. 364. PROPERTY HIRED OR RENTED TO BE RETURNED IN GOOD CONDITION. All property hired or rented, with or without an order of court, shall be returned to the possession of the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

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

Sec. 365. REPORT OF HIRING OR RENTING. (a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

- (1) The property involved and its appraised value.
- (2) The date of hiring or renting, and whether at public auction or privately.
- (3) The name of the person or persons hiring or renting such property.
- (4) The amount of such hiring or rental.
- (5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

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

Sec. 366. ACTION OF COURT ON REPORT. At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not be bound and the court may order another offering of the property for hire or rent, in the same manner and subject to the same rules heretofore provided. If the report has been approved and it later appears that, by reason of any fault of the representative of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the representative of the estate and his sureties to appear and show

cause why the reasonable value of hire or rent of such property shall not be adjudged against him.

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

PART 7. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND
OTHER MATTERS RELATING TO MINERAL PROPERTIES

Sec. 367. MINERAL LEASES AFTER PUBLIC NOTICE. (a) Certain Words and Terms Defined. As used throughout in this Part of this Chapter, the words "land" or "interest in land" include minerals or any interest in any of such minerals in place. The word "property" includes land, minerals in place, whether solid, liquid or gaseous, as well as an interest of any kind in such property, including royalty, owned by the estate. "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(b) Mineral Leases, With or Without Pooling or Unitization. Personal representatives of the estates of decedents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

(c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters. All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with the following rules:

1. Contents of Application. The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

2. Order Designating Time and Place for Hearing Application.

(a) Duties of Clerk and Judge. When an application to lease, as above prescribed, is filed, the county clerk shall immediately call the filing of such application to the attention of the court, and the judge shall promptly make and enter a brief order designating the time and place for the hearing of such application.

(b) Continuance of Hearing. If the hearing is not had at the time originally designated by the court or by timely order or orders of continuance duly entered, then, in such event, the hearing shall be automatically continued, without further notice, to the same hour or time the following day (except Sundays and holidays on which the county courthouse is officially closed to business) and from day to day until the application is finally acted upon and disposed of by order of the court. No notice of such automatic continuance shall be required.

3. Notice of Application to Lease, Service of Notice, and Proof of Service.

(a) Notice and Its Contents. The personal representative, and not the county clerk, shall give notice in writing of the time designated by the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

(b) Service of Notice. The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

4. Preceding Requirements Mandatory. In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

5. Hearing on Application to Lease and Order Thereon. At the time and place designated for the hearing, or at any time to which it shall have been continued as hereinabove provided, the judge shall hear such application, requiring proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice; and, if he is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, then an order shall be entered so finding, and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) affecting and covering the property, or portions thereof, described in the application. Said order authorizing leasing shall also set out the following mandatory contents:

(a) The name of the lessee.

(b) The actual cash consideration, if any, to be paid by the lessee.

(c) Finding that the personal representative is exempted by law from giving bond, if that be a fact and if not a fact, then a finding as to whether or not the representative's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid, if any. If the court finds the general bond insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency.

(d) A complete exhibit copy, either written or printed, of each lease thus authorized to be made, shall either be set out in the order or attached thereto and incorporated by reference in said order and made a part thereof. It shall show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized; provided, that if no date of the lease appears in such exhibit copy, or in the court's order, then the date of the court's order shall be considered for all purposes as the date of the authorized lease, and if the name and address of the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed. If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, unless the personal representative is not required to give a general bond, no such lease, for which a cash consideration is required, though ordered, executed, and delivered, shall be valid unless the order authorizing same actually makes findings with respect to the general bond, and, in case such bond has been found insufficient, then unless and until the bond has been increased, or an additional bond given, as required by the court's order, with the sureties required by law, has been approved by the judge and filed with the clerk of the court in which the proceedings are pending. In the

event two or more leases on different lands are authorized by the same order, the general bond shall be increased, or additional bonds given, to cover all. It shall not be necessary for the judge to make any order confirming such leases.

7. Term of Lease Binding. Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided the authorized primary term shall not exceed five (5) years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells, with no cessation of operations of more than sixty (60) consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

7(a). Validation of Certain Provisions of Leases Heretofore Executed by Personal Representatives. As to any valid mineral lease heretofore executed and delivered in compliance with the provisions of the Texas Probate Code and which lease is still in force, any provisions of any such lease continuing such lease in force after its five (5) year primary term by a shut-in gas well are hereby validated; provided, however, that this provision shall not be applicable to any such provision of any such lease which is involved in any lawsuit pending in this state on the effective date of this Act wherein the validity of such provision is an issue.

8. Amendment of Leases. Any oil, gas, and mineral lease heretofore or hereafter executed by a personal representative pursuant to the Texas Probate Code may be amended by an instrument which provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part thereof shall continue such lease in force after its five (5) year primary term. Such instrument shall be executed by the personal representative, with the approval of the court, and on such terms and conditions as may be prescribed therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 10(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 441, ch. 215, Sec. 1 to 3, eff. May 25, 1961; Acts 1993, 73rd Leg., ch. 957, Sec. 64, eff. Sept. 1, 1993.

Sec. 368. MINERAL LEASES AT PRIVATE SALE. (a) Authorization Allowed. Notwithstanding the preceding mandatory requirements for setting a time and place for hearing of an application to lease and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale (without public notice or advertising) if, in the opinion of the court, sufficient facts are set out in the application required above to show that it would be more advantageous to the estate that a lease be made privately and without compliance with said mandatory requirements mentioned above. Leases so authorized may include pooling provisions or unitization clauses as in other cases.

(b) Action of the Court When Public Advertising Not Required. At any time after the expiration of five (5) days and prior to the expiration of ten (10) days from the date of filing and without an order setting time and place of hearing, the court shall hear the application to lease at private sale and shall inquire into the manner in which the proposed lease has been or will be made, and shall hear evidence for or against the same; and, if satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms, and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of such lease without the necessity of advertising, notice, or citation, said order complying in all other respects with the requirements essential to the validity of mineral leases as hereinabove set out, as if advertising or notice were required. No order confirming a lease or leases made at private sale need be issued, but no such lease shall be valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 10(b).

Sec. 369. POOLING OR UNITIZATION OF ROYALTY OR MINERALS. (a) Authorization for Pooling or Unitization. When an

existing lease or leases on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among other things, provide:

(1) That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

(2) That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area, if the presence of such shut-in gas well is a ground for continuation of the lease by the terms of said lease.

(3) That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(4) That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

(5) That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

(6) That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Procedure for Authorizing Pooling or Unitization. Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

(1) Contents of Application. The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the minutes. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

(2) Notice Not Necessary. No notice of the filing of such application by advertising, citation, or otherwise, is required.

(3) Hearing of Application. A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to

be necessary.

(4) Action of Court and Contents of Order. If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsection (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 441, ch. 215, Sec. 4, eff. May 25, 1961.

Sec. 370. SPECIAL ANCILLARY INSTRUMENTS WHICH MAY BE EXECUTED WITHOUT COURT ORDER. As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate prior to the effective date of this Code, or pursuant to its provisions, or by a former owner of land, minerals, or royalty affected thereby, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 10(c).

Sec. 371. PROCEDURE WHEN REPRESENTATIVE OF ESTATE NEGLECTS TO APPLY FOR AUTHORITY. When the personal representative of an estate shall neglect to apply for authority to subject property of the estate to a lease for mineral development, pooling or unitization, or to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate may, upon written application filed with the county clerk, cause such representative to be cited to show cause why it is not for the best interest of the estate for such a lease to be made, or such an agreement entered into. The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

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

Sec. 372. VALIDATION OF CERTAIN LEASES AND POOLING OR UNITIZATION AGREEMENTS BASED ON PREVIOUS STATUTES. All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents, and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest therein, with like properties of others having been authorized by the court having venue, and executed and delivered by the executors, administrators, or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of

notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 65, eff. Sept. 1, 1993.

PART 8. PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS

Sec. 373. APPLICATION FOR PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS. (a) Who May Apply. At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) Contents of Application. The application shall state:

(1) The name of the person whose estate is sought to be partitioned and distributed; and

(2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the application; and

(3) The reasons why partition and distribution should be had.

(c) Partial Distribution. At any time after the original grant of letters testamentary or of administration, and the filing and approval of the inventory, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request a distribution of any portion of the estate. All interested parties shall be personally cited, as in other distributions, including known creditors. The court may upon proper citation and hearing distribute any portion of the estate it deems advisable. In the event a distribution is to be made to one or more heirs or devisees, and not to all the heirs or devisees, the court shall require a refunding bond in an amount to be determined by the court to be filed with the court and, upon its approval, the court shall order the distribution of that portion of the estate, unless such requirement is waived in writing and the waiver is filed with the court by all interested parties. This section shall apply to corpus as well as income, notwithstanding any other provisions of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, Sec. 2, eff. May 25, 1973.

Sec. 374. CITATION OF INTERESTED PERSONS. Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall be personally served upon each person residing in the state entitled to a share of the estate whose address is known; and, if there be any such persons whose identities or addresses are not known, or who are not residents of this state, or are residents of but absent from this state, such citation shall be served by publication.

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

Sec. 375. CITATION OF EXECUTOR OR ADMINISTRATOR. When application for partition and distribution is made by any person other than the executor or administrator, such representative shall also be cited to appear and answer the application and to file in court a verified exhibit and account of the condition of the estate, as in the case of final settlements.

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

Sec. 377. FACTS TO BE ASCERTAINED UPON HEARING. At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 378. DECREE OF THE COURT. If the court is of the opinion that the estate should be partitioned and distributed, it shall enter a decree which shall state:

(a) The name and address, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the names of their guardians, or the guardians ad litem, and the name of the attorney appointed to represent those who are unknown or who are not residents of the state.

(b) The proportional part of the estate to which each is entitled.

(c) A full description of all the estate to be distributed.

(d) That the executor or administrator retain in his hands for the payment of all debts, taxes, and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

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

Sec. 378A. SATISFACTION OF PECUNIARY BEQUESTS. (a) Unless the governing instrument provides otherwise, if an executor, administrator, or trustee is authorized under the will or trust of a decedent to satisfy a pecuniary bequest, devise, or transfer in trust in kind with assets at their value for federal estate tax purposes, in satisfaction of a gift intended to qualify, or that otherwise would qualify, for a United States estate tax marital deduction, the executor, administrator, or trustee, in order to implement the bequest, devise, or transfer, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest, devise, or transfer.

(b) Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary bequest, devise, or transfer that may be satisfied by distributing assets in kind and if the executor, administrator, or trustee determines to fund the bequest, devise, or transfer by distributing assets in kind, the property shall, for the purpose of funding the bequest, devise, or transfer, be valued at its value on the date or dates of distribution.

Added by Acts 1987, 70th Leg., ch. 1110, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 15, eff. Sept. 1, 1991.

Sec. 378B. ALLOCATION OF INCOME AND EXPENSES DURING ADMINISTRATION OF DECEDENT'S ESTATE. (a) Except as provided by Subsection (b) of this section and unless the will provides otherwise, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties relating to estate taxes, and family allowances, shall be charged against the principal of the estate. Fees and expenses of an attorney, accountant, or other professional advisor, commissions and expenses of a personal representative, court costs, and all other similar fees or expenses relating to the administration of the estate and interest relating to estate taxes shall be allocated between the income and principal of the estate as the executor determines in its discretion to be just and equitable.

(b) Unless the will provides otherwise, income from the assets of a decedent's estate that accrues after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined according to the rules applicable to a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code) and distributed as provided by Chapter 116, Property Code, and Subsections (c) and (d) of this section.

(c) The income from the property bequeathed or devised to a specific devisee shall be distributed to the devisee after reduction for property taxes, ordinary repairs, insurance premiums, interest accrued after the death of the testator, other expenses of management and operation of the property, and other taxes, including the taxes imposed on the income that accrues during the period of administration and that is payable to the devisee.

(d) The balance of the net income shall be distributed to

all other devisees after reduction for the balance of property taxes, ordinary repairs, insurance premiums, interest accrued, other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income that accrues during the period of administration and that is payable or allocable to the devisees, in proportion to the devisees' respective interests in the undistributed assets of the estate.

(e), (f) Repealed by Acts 2003, 78th Leg., ch. 659, Sec. 4, eff. Jan. 1, 2004.

(g) Income received by a trustee under this section shall be treated as income of the trust as provided by Section 116.101, Property Code.

(h) In this section, "undistributed assets" includes funds used to pay debts, administration expenses, and federal and state estate, inheritance, succession, and generation-skipping transfer taxes until the date of payment of the debts, expenses, and taxes. Except as required by Sections 2055 and 2056 of the Internal Revenue Code of 1986 (26 U.S.C. Secs. 2055 and 2056), and its subsequent amendments, the frequency and method of determining the beneficiaries' respective interests in the undistributed assets of the estate shall be in the executor's sole and absolute discretion. The executor may consider all relevant factors, including administrative convenience and expense and the interests of the various beneficiaries of the estate in order to reach a fair and equitable result among beneficiaries.

(i) Chapter 116, Property Code, prevails to the extent of any conflict between this section and Chapter 116, Property Code. Added by Acts 1993, 73rd Leg., ch. 846, Sec. 24, eff. Sept. 1, 1993. Subsecs. (a), (b), (d) and (g) amended by Acts 2003, 78th Leg., ch. 659, Sec. 3, eff. Jan. 1, 2004; Subsecs. (e), (f) amended by Acts 2003, ch. 659, Sec. 4, eff. Jan. 1, 2004; Subsec. (f) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 15, eff. Sept. 1, 2003; Subsec. (i) added by Acts 2003, 78th Leg., ch. 659, Sec. 3, eff. Jan. 1, 2004.

Sec. 379. PARTITION WHEN ESTATE CONSISTS OF MONEY OR DEBTS ONLY. If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and shall order the payment and delivery thereof by the executor or administrator. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 380. PARTITION AND DISTRIBUTION WHEN PROPERTY IS CAPABLE OF DIVISION. (a) Appointment of Commissioners. If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

(b) Writ of Partition and Service Thereof. When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

(c) Partition by Commissioners. The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an

equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

(d) Report of Commissioners. The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

(e) Action of the Court. Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

(f) Delivery of Property. When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

(g) Fees of Commissioners. Commissioners thus appointed who actually serve in partitioning and distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

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

Sec. 381. PARTITION AND DISTRIBUTION WHEN PROPERTY OF AN ESTATE IS INCAPABLE OF DIVISION. (a) Finding by the Court. When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

(b) Order of Sale. When the court has found that the whole or any portion of the estate is not capable of fair and equal division, it shall order a sale of all property which it has found not to be capable of such division. Such sale shall be made by the executor or administrator in the same manner as when sales of real estate are made for the purpose of satisfying debts of the estate, and the proceeds of such sale, when collected, shall be distributed by the court among those entitled thereto.

(c) Purchase by Distributee. At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as exceeds the amount of his share of such property.

(d) Applicability of Provisions Relating to Sales of Real Estate. The provisions of this Code relative to reports of sales of real estate, the giving of an increased general or additional bond upon sales of real estate, and to the vesting of title to the property sold by decree or by deed, shall also apply to sales made under this Section.

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

Sec. 382. PROPERTY LOCATED IN ANOTHER COUNTY. (a) Court May Order Sale. When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) Court May Appoint Additional Commissioners. If the court is not satisfied that such property cannot be fairly and

advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

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

Sec. 384. DAMAGES FOR NEGLECT TO DELIVER PROPERTY. If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month or fraction thereof that the share is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

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

Sec. 385. PARTITION OF COMMUNITY PROPERTY. (a) Application for Partition. When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement, and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such community property.

(b) Bond and Action of the Court. The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

(c) Lien Upon Property Delivered. Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such bond, and shall have judgment thereon for one-half of such debt as he shall establish, and for the other one-half he shall be entitled to be paid by the executor or administrator of the deceased.

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

Sec. 386. PARTITION OF PROPERTY JOINTLY OWNED. Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the court from which letters testamentary or of administration have been granted thereon to have a partition thereof, whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the provisions of this Code in relation to the partition and distribution of estates shall govern partition hereunder, so far as the same are applicable.

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

Sec. 387. EXPENSE OF PARTITION. Expense of partition of the estate of a decedent shall be paid by the distributees pro rata. The portion of the estate allotted each distributee shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

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

PART 10A. STOCKS, BONDS AND OTHER PERSONAL PROPERTY

Sec. 398A. HOLDING OF STOCKS, BONDS AND OTHER PERSONAL PROPERTY BY PERSONAL REPRESENTATIVES IN NAME OF NOMINEE. Unless otherwise provided by will, a personal representative may cause stocks, bonds, and other personal property of an estate to be registered and held in the name of a nominee without mention of the

fiduciary relationship in any instrument or record constituting or evidencing title thereto. The personal representative is liable for the acts of the nominee with respect to any property so registered. The records of the personal representative shall at all times show the ownership of the property. Any property so registered shall be in the possession and control of the personal representative at all times and be kept separate from his individual property.

Added by Acts 1969, 61st Leg., p. 2106, ch. 719, Sec. 1, eff. Sept. 1, 1969.

PART 11. ANNUAL ACCOUNTS AND OTHER EXHIBITS

Sec. 399. ANNUAL ACCOUNTS REQUIRED. (a) Estates of Decedents Being Administered Under Order of Court. The personal representative of the estate of a decedent being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate.

(2) Any changes in the property of the estate which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(7) A statement that, during the period covered by the account, all tax returns due have been filed and that all taxes due and owing have been paid and a complete account of the amount of the taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

(8) If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

(9) A statement that the personal representative has paid all the required bond premiums for the accounting period.

(b) Annual Reports Continue Until Estate Closed. Each personal representative of the estate of a decedent shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money, securities, and other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference thereto.

(c) Supporting Vouchers, etc., Attached to Accounts. Annexed to all annual accounts of representatives of estates shall be:

(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.

(2) An official letter from the bank or other depository in

which the money on hand of the estate is deposited, showing the amounts in general or special deposits.

(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a depository subject to orders of the court, the proof to be by one of the following means:

a. By an official letter from the bank or other depository wherein said securities or other assets are held for safekeeping; provided, that if such depository is the representative, the official letter shall be signed by a representative of such depository other than the one verifying the account; or

b. By a certificate of an authorized representative of the corporation which is surety on the representative's bonds; or

c. By a certificate of the clerk or a deputy clerk of a court of record in this State; or

d. By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such certificate or affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

(d) Verification of Account. The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 11(a); Acts 1993, 73rd Leg., ch. 712, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 957, Sec. 66, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1403, Sec. 1, eff. Sept. 1, 1997.

Sec. 400. PENALTY FOR FAILURE TO FILE ANNUAL ACCOUNT. Should any personal representative of an estate fail to return any annual account required by preceding sections of this Code, any person interested in said estate may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars (\$500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 11(b); Acts 1993, 73rd Leg., ch. 957, Sec. 67, eff. Sept. 1, 1993.

Sec. 401. ACTION UPON ANNUAL ACCOUNTS. These rules shall govern the handling of annual accounts:

(a) They shall be filed with the county clerk, and the filing thereof shall be noted forthwith upon the judge's docket.

(b) Before being considered by the judge, the account shall remain on file ten (10) days.

(c) At any time after the expiration of ten (10) days after the filing of an annual account, the judge shall consider same, and may continue the hearing thereon until fully advised as to all items of said account.

(d) No accounting shall be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of court has been proved as required by law.

(e) If the account be found incorrect, it shall be

corrected. When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:

(1) Order for Payment of Claims in Full. If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

(2) Order for Pro Rata Payment of Claims. If it shall appear from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal representative has any funds on hand, the court shall order such funds to be applied to the payment of all claims having a preference in the order of their priority if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established by final judgment, taking into consideration also the claims that were presented within twelve (12) months after the granting of administration, and those which are in suit or on which suit may yet be instituted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 11(c).

Sec. 402. ADDITIONAL EXHIBITS OF ESTATES OF DECEDENTS. At any time after the expiration of fifteen months from the original grant of letters to an executor or administrator, any interested person may, by a complaint in writing filed in the court in which the estate is pending, cause the representative to be cited to appear and make an exhibit in writing under oath, setting forth fully, in connection with previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said representative has any funds of the estate in his hands subject to distribution among the creditors of the estate, the court shall order the same to be paid out to them according to the provisions of this Code; or any representative may voluntarily present such exhibit to the court; and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

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

Sec. 403. PENALTY FOR FAILURE TO FILE EXHIBITS OR REPORTS. Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.

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

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

Sec. 404. CLOSING ADMINISTRATION OF ESTATES OF DECEDENTS. Administration of the estates of decedents shall be settled and closed when all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 104, ch. 45, Sec. 2, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 881, Sec. 2, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 712, Sec. 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 957, Sec. 68, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 826, Sec. 1, eff. June 18, 1999.

Sec. 405. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF DECEDENTS. When administration of the estate of a decedent is to be settled and closed, the personal representative of such estate shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the

estate including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

1. The property belonging to the estate which has come into the hands of the executor or administrator.

2. The disposition that has been made of such property.

3. The debts that have been paid.

4. The debts and expenses, if any, still owing by the estate.

5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.

7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

8. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

9. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

10. The personal representative has paid all required bond premiums.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 712, Sec. 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 957, Sec. 69, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1403, Sec. 2, eff. Sept. 1, 1997.

Sec. 405A. DELIVERY OF PROPERTY. The court may permit a resident executor or administrator who has any of the estate of a ward to deliver the estate to a duly qualified and acting guardian of the ward.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 14, eff. Sept. 1, 1995.

Sec. 406. PROCEDURE IN CASE OF NEGLECT OR FAILURE TO FILE FINAL ACCOUNT; PAYMENTS DUE MEANTIME. (a) If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation.

(b) If the whereabouts of the personal representative and heirs of a decedent are unknown and a complaint has not been filed by anyone interested in the decedent's estate, the court may, on or after the fourth anniversary after the last date on which letters testamentary or of administration are issued by the court clerk, close the estate without a final accounting and without appointing a successor personal representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, Sec. 3, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 898, Sec. 1, eff. June 19, 1993; Acts 1993, 73rd Leg., ch. 957, Sec. 70, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 827, Sec. 1, eff. Sept. 1, 1999.

Sec. 407. CITATION UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. The notice must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the

court may allow the waiver of notice of an account for final settlement in a proceeding concerning a decedent's estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 641, ch. 294, Sec. 1, eff. May 30, 1959; Acts 1979, 66th Leg., p. 1755, ch. 713, Sec. 30, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4558, ch. 756, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 957, Sec. 71, eff. Sept. 1, 1993.

Sec. 408. ACTION OF THE COURT. (a) Action Upon Account. Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled to receive such estate.

(c) Discharge of Representative When No Property Remains. If, upon such settlement, there be none of the estate remaining in the hands of the representative, he shall be discharged from his trust and the estate ordered closed.

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully administered the same in accordance with this Code and the orders of the court, and his final account has been approved, and he has delivered all of said estate remaining in his hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from his trust, and declaring the estate closed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1877, ch. 758, Sec. 4, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 957, Sec. 72, eff. Sept. 1, 1993.

Sec. 409. MONEY BECOMING DUE PENDING FINAL DISCHARGE. Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value falling due to the estate while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 73, eff. Sept. 1, 1993.

Sec. 410. INHERITANCE TAXES MUST BE PAID. No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1989, 71st Leg., ch. 1035, Sec. 16, eff. Sept. 1, 1989.

Sec. 412. OFFSETS, CREDITS, AND BAD DEBTS. In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

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

Sec. 414. PROCEDURE IF REPRESENTATIVE FAILS TO DELIVER ESTATE. If any personal representative of an estate, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate

or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 74, eff. Sept. 1, 1993.