

PROBATE CODE

CHAPTER III. DETERMINATION OF HEIRSHIP

Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP. WHEN AND WHERE INSTITUTED. (a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which any of the real property belonging to such estate is situated, or if there is no such real estate, then of the county in which any personal property belonging to such estate is found, may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and proceedings therefor shall be known as proceedings to declare heirship.

(b) If an application for determination of heirship is filed within four (4) years from the date of the death of the decedent, the applicant may request that the court determine whether a necessity for administration exists. The court shall hear evidence upon the issue and make a determination thereof in its judgment.

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

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

Sec. 49. WHO MAY INSTITUTE PROCEEDINGS TO DECLARE HEIRSHIP. (a) Such proceedings may be instituted and maintained in any of the instances enumerated above by the qualified personal representative of the estate of such decedent, by any person or persons claiming to be a secured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

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

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

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

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

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

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

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

(b) Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance

has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, Sec. 4, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 1522, ch. 616, Sec. 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1744, ch. 713, Sec. 7, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 629, ch. 139, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1985.

Sec. 50. NOTICE. (a) Citation shall be served by registered or certified mail upon all distributees 12 years of age or older whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application. Citation shall be served as provided by this subsection on the parent, managing conservator, or guardian of a distributee who is younger than 12 years of age, if the name and address of the parent, managing conservator, or guardian is known or can be reasonably ascertained.

(b) If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation shall be served on the person or entity by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of the decedent's last residence. To determine whether there are any other heirs, citation shall also be served on unknown heirs by publication in the manner provided by this subsection.

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

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

(e) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is at least 12 years of age but younger than 19 years of age may not waive citation required to be served on the distributee under this section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, Sec. 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1745, ch. 713, Sec. 8, eff. Aug. 29, 1979; Acts 1997, 75th Leg., ch. 1130, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 664, Sec. 2, eff. Sept. 1, 2001.

Sec. 51. TRANSFER OF PROCEEDING WHEN WILL PROBATED OR ADMINISTRATION GRANTED. If an administration upon the estate of any such decedent shall be granted in the State, or if the will of such decedent shall be admitted to probate in this State, after the institution of a proceeding to declare heirship, the court in which such proceeding is pending shall, by an order entered of record therein, transfer the cause to the court of the county in which such administration shall have been granted, or such will shall have been probated, and thereupon the clerk of the court in which such proceeding was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, docket entries, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court and shall docket such cause, and the same shall thereafter proceed as though originally filed in that court. The court, in its discretion, may consolidate the cause so transferred with the pending proceeding.

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

Sec. 52. RECORDED INSTRUMENTS AS PRIMA FACIE EVIDENCE. (a) A statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent shall be received in a proceeding to declare heirship, or in a suit involving title to real or personal property, as prima facie evidence of the facts therein stated, if the statement is contained in either an affidavit or any other instrument legally executed and acknowledged

or sworn to before, and certified by, an officer authorized to take acknowledgments or oaths as applicable, or any judgment of a court of record, and if the affidavit or instrument has been of record for five years or more in the deed records of any county in this state in which such real or personal property is located at the time the suit is instituted, or in the deed records of any county of this state in which the decedent had his domicile or fixed place of residence at the time of his death. If there is any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by anyone interested in the proceeding in which said affidavit or instrument is offered in evidence.

(b) An affidavit of facts concerning the identity of heirs of a decedent as to an interest in real property that is filed in a proceeding or suit described by Subsection (a) of this section may be in the form described by Section 52A of this code.

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 4, eff. June 12, 1969; Acts 1991, 72nd Leg., ch. 895, Sec. 5, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1538, Sec. 1, eff. Sept. 1, 1999.

Sec. 52A. FORM OF AFFIDAVIT OF FACTS CONCERNING IDENTITY OF HEIRS. An affidavit of facts concerning the identity of heirs of a decedent may be in substantially the following form:

AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

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

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

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

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

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

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

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

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

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

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

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

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

12. Decedent left no debts that are unpaid, except:

_____ (insert list of debts, or state "none").

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

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

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

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

Signed this ____ day of _____, ____.

(signature of affiant)

State of _____

County of _____

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

(signature of notarial officer)

(Seal, if any, of notary) _____
(printed name)

My commission expires: _____

Added by Acts 1999, 76th Leg., ch. 1538, Sec. 2, eff. Sept. 1, 1999.

Sec. 53. EVIDENCE; UNKNOWN PARTIES AND INCAPACITATED PERSONS. (a) The court in its discretion may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing, and subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court.

(b) If it appears to the court that there are or may be living heirs whose names or whereabouts are unknown, or that any defendant is an incapacitated person, the court may, in its discretion, appoint an attorney ad litem or guardian ad litem to represent the interests of any such persons. The court may not appoint an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person.

(c) The court shall appoint an attorney ad litem to represent the interests of unknown heirs.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, Sec. 4, eff. Jan. 1, 1972; Acts 1995, 74th Leg., ch. 1039, Sec. 6, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 664, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 54. JUDGMENT. The judgment of the court in a proceeding to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent. If the proof is in any respect deficient, the judgment shall so state.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, Sec. 4, eff. Jan. 1, 1972.

Sec. 55. EFFECT OF JUDGMENT. (a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

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

(c) If the court states in its judgment that there is no necessity for administration on the estate, such recital shall constitute authorization to all persons owing any money to the estate of the decedent, or having custody of any property of such estate, or acting as registrar or transfer agent of any evidence of

interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the heirs as determined in the judgment, to pay, deliver, or transfer such property or evidence of property rights to such heirs, or to purchase property from such heirs, without liability to any creditor of the estate or other person. Such heirs shall be entitled to enforce their right to payment, delivery, or transfer by suit. Nothing in this chapter shall affect the rights or remedies of the creditors of the decedent except as provided in this subsection.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, Sec. 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1746, ch. 713, Sec. 9, eff. Aug. 29, 1979.

Sec. 56. FILING OF CERTIFIED COPY OF JUDGMENT. A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.

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