

PROBATE CODE  
CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION  
PART 1. TEMPORARY ADMINISTRATION IN THE INTEREST OF ESTATES OF  
DEPENDENTS

Sec. 131A. APPOINTMENT OF TEMPORARY ADMINISTRATORS. (a) If a county judge determines that the interest of a decedent's estate requires the immediate appointment of a personal representative, he shall, by written order, appoint a temporary administrator with limited powers as the circumstances of the case require. The duration of the appointment must be specified in the court's order and may not exceed 180 days unless the appointment is made permanent as provided by Subsection (j) of this section.

(b) Any person may file with the clerk of the court a written application for the appointment of a temporary administrator of a decedent's estate under this section. The application must be verified and must include the information required by Section 81 of this code if the decedent died testate or Section 82 of this code if the decedent died intestate and an affidavit that sets out:

(1) the name, address, and interest of the applicant;  
(2) the facts showing an immediate necessity for the appointment of a temporary administrator;  
(3) the requested powers and duties of the temporary administrator;

(4) a statement that the applicant is entitled to letters of temporary administration and is not disqualified by law from serving as a temporary administrator; and

(5) a description of the real and personal property that the applicant believes to be in the decedent's estate.

(c) An order of appointment must:

(1) designate the appointee as "temporary administrator" of the decedent's estate for the specified period;

(2) define the powers conferred on the appointee; and

(3) set the amount of bond to be given by the appointee.

(d) Not later than the third business day after the date of the order, the appointee shall file with the county clerk a bond in the amount ordered by the court. In this subsection, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(e) Not later than the third day after the date on which an appointee qualifies, the county clerk shall issue to the appointee letters of appointment that set forth the powers to be exercised by the appointee as ordered by the court.

(f) On the date that the county clerk issues letters of appointment, the county clerk shall post a notice of the appointment to all interested persons on the courthouse door.

(g) On the date the county clerk issues letters of appointment, the appointee shall notify the known heirs of the decedent of his appointment by certified mail, return receipt requested.

(h) A notice required by Subsection (f) or (g) of this section must state that:

(1) an interested person or an heir may request a hearing to contest the appointment not later than the 15th day after the date that the letters of appointment are issued;

(2) if no contest is made within the period specified by the notice, the appointment will continue for the time specified in the order of appointment; and

(3) the court may make the appointment permanent.

(i) If an interested person or an heir requests a hearing to contest the appointment of a temporary administrator, a hearing shall be held and a determination made not later than the 10th day after the date the request was made. If a request is not made on or before the 15th day after the date that the letters of appointment are issued, the appointment of a temporary administrator continues for the period specified in the order, unless made permanent under Subsection (j) of this section. During the pendency of a contest of the appointment of a temporary administrator, the temporary appointee shall continue to act as administrator of the estate to the extent of the powers conferred by his appointment. If the court sets aside the appointment, the court may require the temporary administrator to prepare and file, under oath, a complete exhibit of the condition of the estate and detail the disposition the temporary administrator has made of the property of the estate.

(j) At the conclusion of the term of appointment of a temporary administrator, the court may, by written order, make the

appointment permanent if the permanent appointment is in the interest of the estate.

Added by Acts 1987, 70th Leg., ch. 460, Sec. 2, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1035, Sec. 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 540, Sec. 2, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 765, Sec. 1, eff. June 17, 2005.

Sec. 132. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL OR ADMINISTRATION. (a) Appointment of Temporary Administrator. Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. The power of appointment in this Subsection is in addition to the court's power of appointment under Section 131A of this Code.

(b) Additional Powers Relative to Claims. When temporary administration has been granted pending a will contest, or pending a contest on an application for letters of administration, the court may, at any time during the pendency of the contest, confer upon the temporary administrator all the power and authority of a permanent administrator with respect to claims against the estate, and in such case the court and the temporary administrator shall act in the same manner as in permanent administration in connection with such matters as the approval or disapproval of claims, the payment of claims, and the making of sales of real or personal property for the payment of claims; provided, however, that in the event such power and authority is conferred upon a temporary administrator, he shall be required to give bond in the full amount required of a permanent administrator. The provisions of this Subsection are cumulative and shall not be construed to exclude the right of the court to order a temporary administrator to do any and all of the things covered by this Subsection in other cases where the doing of such things shall be necessary or expedient to preserve the estate pending final determination of the contest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1987, 70th Leg., ch. 460, Sec. 3, eff. Sept. 1, 1987.

Sec. 133. POWERS OF TEMPORARY ADMINISTRATORS. Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 25, eff. Sept. 1, 1993.

Sec. 134. ACCOUNTING. At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate which has come into his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such appointee.

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

Sec. 135. CLOSING TEMPORARY ADMINISTRATION. The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

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

#### PART 3. SMALL ESTATES

Sec. 137. COLLECTION OF SMALL ESTATES UPON AFFIDAVIT. (a) The distributees of the estate of a decedent who dies intestate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, exclusive of liabilities secured by homestead and exempt property, without awaiting the appointment of a personal representative when:

(1) No petition for the appointment of a personal representative is pending or has been granted; and

(2) Thirty days have elapsed since the death of the

decedent; and

(3) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000; and

(4) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses, by all such distributees that have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or the guardian of any other incapacitated person who is also a distributee, which affidavit shall be examined by the judge of the court having jurisdiction and venue; and

(5) The affidavit shows the existence of the foregoing conditions and includes a list of all of the known assets and liabilities of the estate, the names and addresses of the distributees, and the relevant family history facts concerning heirship that show the distributees' rights to receive the money or property of the estate or to have such evidences of money, property, or other rights of the estate as are found to exist transferred to them as heirs or assignees; and

(6) The judge, in the judge's discretion, finds that the affidavit conforms to the terms of this section and approves the affidavit; and

(7) A copy of the affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property, or other right belonging to the estate.

(b) This section does not affect the disposition of property under the terms of a will or other testamentary document nor, except as provided by Subsection (c) of this section, does it transfer title to real property.

(c) Title to a decedent's homestead that is the only real property in a decedent's estate may be transferred on an affidavit that meets the requirements of this section. An affidavit that is used to transfer title to a homestead under this section must be recorded in the deed records of a county in which the homestead is located. A bona fide purchaser for value may rely on a recorded affidavit under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in a recorded affidavit under this section acquires title to a homestead free of the interests of the undisclosed heir, but the bona fide purchaser remains subject to any claim a creditor of the decedent has by law. A purchaser has constructive notice of an heir who is not disclosed in a recorded affidavit under this section if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records identifies the heir of the decedent who is not disclosed in the affidavit as an heir of the decedent. An heir who is not disclosed in a recorded affidavit under this section may recover from an heir who receives consideration from a purchaser in a transfer for value of title to a homestead passing under the affidavit.

(d) If the judge approves the affidavit under this section, the affidavit is to be recorded as an official public record under Chapter 194, Local Government Code. If the county has not adopted a microfilm or microphotographic process under Chapter 194, Local Government Code, the county clerk shall provide and keep in his office an appropriate book labeled "Small Estates," with an accurate index showing the name of the decedent and reference to land, if any, involved, in which he shall record every such affidavit so filed, upon being paid his legal recording fee.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 4, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1978, ch. 670, Sec. 1, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 1402, ch. 543, Sec. 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, Sec. 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 1747, ch. 713, Sec. 14, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4560, ch. 757, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 594, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 642, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1039, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 540, Sec. 3, eff. Sept. 1, 1997.

Sec. 138. EFFECT OF AFFIDAVIT. The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if

made to a personal representative of the decedent, and shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 4, eff. Sept. 1, 1995.

Sec. 139. APPLICATION FOR ORDER OF NO ADMINISTRATION. If the value of the entire assets of an estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse and minor children of the decedent are entitled as a family allowance, there may be filed by or on behalf of the surviving spouse or minor children an application in any court of proper venue for administration, or, if an application for the appointment of a personal representative has been filed but not yet granted, then in the court where such application has been filed, requesting the court to make a family allowance and to enter an order that no administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse and minor children, as in the case of other family allowances provided for by this Code.

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

Sec. 140. HEARING AND ORDER UPON THE APPLICATION. Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse and minor children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse and minor children.

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

Sec. 141. EFFECT OF ORDER. The order that no administration be had on the estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

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

Sec. 142. PROCEEDING TO REVOKE ORDER. At any time within one year after the entry of an order of no administration, and not thereafter, any interested person may file an application to revoke the same, alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property described in the application was incorrectly valued, and that if said property were added, included, or correctly valued, as the case may be, the total value of the property would exceed that necessary to

justify the court in ordering no administration. Upon proof of any of such grounds, the court shall revoke the order of no administration. In case of any contest as to the value of any property, the court may appoint two appraisers to appraise the same in accordance with the procedure hereinafter provided for inventories and appraisements, and the appraisement of such appraisers shall be received in evidence but shall not be conclusive.

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

Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory, appraisement, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

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

#### PART 4. INDEPENDENT ADMINISTRATION

Sec. 145. INDEPENDENT ADMINISTRATION. (a) Independent administration of an estate may be created as provided in Subsections (b) through (e) of this section.

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

(c) In situations where an executor is named in a decedent's will, but the will does not provide for independent administration of the decedent's estate as provided in Subsection (b) of this section, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) In situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate his inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for

administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisement, and list aforesaid has been filed by the executor and approved by the county court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the incapacitated person, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is an incapacitated person has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of the distributees.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

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

(l) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this

section, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(o) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county court shall waive bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. This subsection does not repeal any other section of this Code.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor or independent administrator under Subsections (c), (d), and (e) of the section. Section 36 of this code does not apply to the appointment of an independent executor or administrator under Subsection (c), (d), or (e) of this section.

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 2(b); Acts 1977, 65th Leg., p. 1061, ch. 390, Sec. 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, Sec. 16, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 895, Sec. 10, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1039, Sec. 9, eff. Sept. 1, 1995.

Sec. 146. PAYMENT OF CLAIMS AND DELIVERY OF EXEMPTIONS AND ALLOWANCES. (a) Duty of the Independent Executor. An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) shall give the notices required under Sections 294 and 295;

(2) may give the notice permitted under Section 294(d) and bar a claim under that subsection;

(3) shall approve, classify, and pay, or reject, claims against the estate in the same order of priority, classification, and proration prescribed in this Code; and

(4) shall set aside and deliver to those entitled thereto exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this Code, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

(b) Secured Claims for Money. Within six months after the date letters are granted or within four months after the date notice is received under Section 295, whichever is later, a creditor with a claim for money secured by real or personal property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. If the election is not made, the claim is a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the

estate.

(c) Liability of Independent Executor. An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the personal representative if:

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

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

(d) Notice Required of Unsecured Creditor. An unsecured creditor who has a claim for money against an estate and receives a notice under Section 294(d) shall give notice to the independent executor of the nature and amount of the claim not later than the 120th day after the date on which the notice is received or the claim is barred.

(e) Placement of Notice. Notice required by Subsections (b) and (d) must be contained in:

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

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

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 2(c), eff. Aug. 21, 1957; Acts 1995, 74th Leg., ch. 1054, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1302, Sec. 8, eff. Sept. 1, 1997.

Sec. 147. ENFORCEMENT OF CLAIMS BY SUIT. Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 980, ch. 376, Sec. 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, Sec. 4, eff. Sept. 1, 1977.

Sec. 148. REQUIRING HEIRS TO GIVE BOND. When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, Sec. 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, Sec. 17, eff. Aug. 27, 1979.

Sec. 149. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. When it has been provided by will, regularly probated, that an independent executor appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such independent executor is mismanaging the property, or



has betrayed or is about to betray his trust, or has in some other way become disqualified, in which case, upon proper proceedings had for that purpose, as in the case of executors or administrators acting under orders of the court, such executor may be required to give bond.

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

Sec. 149A. ACCOUNTING. (a) Interested Person May Demand Accounting. At any time after the expiration of fifteen months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.

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 in his hands.

6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.

7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

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

(b) Enforcement of Demand. Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the county court, as that term is defined by Section 3 of this code. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

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

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

Added by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 10, eff. Jan. 1, 1972. Amended by Acts 1973, 63rd Leg., p. 412, ch. 184, Sec. 1, eff. May 25, 1973; Acts 1977, 65th Leg., p. 1065, ch. 390, Sec. 6, eff. Sept. 1, 1977; Acts 1999, 76th Leg., ch. 855, Sec. 3, eff. Sept. 1, 1999.

Sec. 149B. ACCOUNTING AND DISTRIBUTION. (a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date that an independent administration was created and the order appointing an independent executor was entered, a person interested in the estate may petition the county court, as that term is defined by Section 3 of this code, for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

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

administered under the direction of the county court.

(c) If all the property in the estate is ordered distributed by the executor and the estate is fully administered, the court also may order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

Added by Acts 1979, 66th Leg., p. 1751, ch. 713, Sec. 18, eff. Aug. 27, 1979. Amended by Acts 1985, 69th Leg., ch. 882, Sec. 1, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 760, Sec. 1, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 565, Sec. 1, eff. June 18, 1987; Acts 1999, 76th Leg., ch. 855, Sec. 4, eff. Sept. 1, 1999.

Sec. 149C. REMOVAL OF INDEPENDENT EXECUTOR. (a) The county court, as that term is defined by Section 3 of this code, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge;

(2) sufficient grounds appear to support belief that he has misapplied or embezzled, or that he is about to misapply or embezzle, all or any part of the property committed to his care;

(3) he fails to make an accounting which is required by law to be made;

(4) he fails to timely file the notice required by Section 128A of this code;

(5) he is proved to have been guilty of gross misconduct or gross mismanagement in the performance of his duties; or

(6) he becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing his fiduciary duties.

(b) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 154A of this code.

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

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

Added by Acts 1979, 66th Leg., p. 1751, ch. 713, Sec. 19, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 719, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 1035, Sec. 10, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 1039, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 855, Sec. 5, eff. Sept. 1, 1999.

Sec. 149D. DISTRIBUTION OF REMAINING ESTATE PENDING JUDICIAL DISCHARGE. (a) On or before filing an action under Section 149E of this code, the independent executor must distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the hands of the independent executor after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account.

(b) The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1999.

Sec. 149E. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

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

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

Added by Acts 1999, 76th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1999.

Sec. 149F. COURT COSTS AND OTHER CHARGES RELATED TO FINAL ACCOUNT IN JUDICIAL DISCHARGE. (a) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs of a proceeding incurred in relation to a final account required under Section 149E of this code.

(b) The independent executor shall be personally liable to refund any amount not approved by the court as a proper charge against the estate.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1999.

Sec. 149G. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies conferred by Sections 149D, 149E, and 149F of this code are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1999.

Sec. 150. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for either partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both; and the same either shall be partitioned and distributed or shall be sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in estates administered under the direction of the county court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, Sec. 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1752, ch. 713, Sec. 20, eff. Aug. 27, 1979.

Sec. 151. CLOSING INDEPENDENT ADMINISTRATION BY AFFIDAVIT. (a) Filing of Affidavit. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court:

(1) a closing report verified by affidavit that shows:

(i) The property of the estate which came into the hands of the independent executor;

(ii) The debts that have been paid;

(iii) The debts, if any, still owing by the estate;

(iv) The property of the estate, if any, remaining on hand after payment of debts; and

(v) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

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

(b) Effect of Filing the Affidavit. (1) The filing of such an affidavit and proof of delivery, if required, shall terminate the independent administration and the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the affidavit. When such an affidavit has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims shall

in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such affidavit.

(2) If the independent executor is required to give bond, the independent executor's filing of the affidavit and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal.

(c) Authority to Transfer Property of a Decedent After Filing the Affidavit. An independent executor's affidavit closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

(d) Delivery Subject to Receipt or Proof of Delivery. An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor shall receive, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee. An independent executor shall not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

(e) Community Administration. A community administrator may use the procedures in this section to terminate community administration under Section 175 of this code. The independent executor's filing of the affidavit releases the sureties on the community administrator's bond from all liability for the future acts of the principal.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, Sec. 21, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 895, Sec. 11, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 642, Sec. 5, eff. Sept. 1, 1995.

Sec. 152. CLOSING INDEPENDENT ADMINISTRATION UPON APPLICATION BY DISTRIBUTE. (a) At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order:

(1) requiring the independent executor to file a verified report meeting the requirements of Section 151(a) of this code;

(2) closing the administration;

(3) terminating the power of the independent executor to act as such; and

(4) releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

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

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, Sec. 22, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 895, Sec. 12, eff. Sept. 1, 1991.

Sec. 153. ISSUANCE OF LETTERS. At any time before the authority of an independent executor has been terminated in the manner set forth in the preceding Sections, the clerk shall issue such number of letters testamentary as the independent executor shall request.

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

Sec. 154. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Grant of Powers by Court. Whenever a

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

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

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

(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property. The court, in addition, may, upon application, citation, and hearing, order, authorize and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be to the best interest of the estate and shall, from time to time, order and direct.

(e) Application for Grant of Powers. The granting to such administrator by the court of some, or all, of the powers and authorities set forth in this Section shall be upon application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) Citation. Upon the filing of such application, the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Such citation shall be served by posting.

(g) Hearing and Order. The court shall hear such application and evidence thereon, upon the return day named in the citation, or

thereafter, and, if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, the court shall so order; otherwise, the court shall refuse said application.

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

Sec. 154A. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR. (a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration his inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

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

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the

distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Section 36 of this code does not apply to an appointment of a successor independent executor under this section. Added by Acts 1977, 65th Leg., p. 1066, ch. 390, Sec. 8, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, Sec. 23, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 846, Sec. 16, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1039, Sec. 11, eff. Sept. 1, 1995.

#### PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

Sec. 155. ADMINISTRATION OF COMMUNITY PROPERTY. When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon, community or otherwise, shall be necessary.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 156. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS. The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. In the administration of community estates, the survivor or personal representative shall keep a separate, distinct account of all community debts allowed or paid in the administration and settlement of such estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 160. POWERS OF SURVIVING SPOUSE WHEN NO ADMINISTRATION IS PENDING. (a) When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership, without qualifying as community administrator as hereinafter provided, has power to sue and be sued for the recovery of community property; to sell, mortgage, lease, and otherwise dispose of community property for the purpose of paying community debts; to collect claims due to the community estate; and has such other powers as shall be necessary to preserve the community property, discharge community obligations, and wind up community affairs.

(b) If an affidavit stating that the affiant is the surviving spouse and that no one has qualified as executor or administrator of the estate of the deceased spouse is furnished to a person owing money to the community estate for current wages at the time of the death of the deceased spouse, the person making payment or delivering to the affiant the deceased spouse's final paycheck for wages, including unpaid sick pay or vacation pay, if any, is released from liability to the same extent as if the payment or delivery was made to a personal representative of the deceased spouse. The person is not required to inquire into the truth of the affidavit. The affiant to whom the payment or delivery is made is answerable to any person having a prior right and is accountable to any personal representative who is appointed. The affiant is

liable for any damage or loss to any person that arises from a payment or delivery made in reliance on the affidavit.

(c) This section does not affect the disposition of the property of the deceased spouse.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 846, Sec. 17, eff. Sept. 1, 1993.

Sec. 161. COMMUNITY ADMINISTRATION. Whenever an interest in community property passes to someone other than the surviving spouse, the surviving spouse may qualify as community administrator in the manner hereinafter provided if

(a) The deceased spouse failed to name an executor in his will, or

(b) If the executor named in the will of the deceased spouse is for any reason unable or unwilling to qualify as such, or

(c) If the deceased spouse died intestate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 162. APPLICATION FOR COMMUNITY ADMINISTRATION. A surviving spouse who desires to qualify as a community administrator shall, within four years after the death of the other spouse, file a written application in the court having venue over the estate of the deceased spouse, stating:

(a) That the other spouse is dead, setting forth the time and place of such death; and

(b) The name and residence of each person to whom an interest in community property has passed by the will of the decedent or by intestacy; and

(c) That there is a community estate between the deceased spouse and the applicant, and the facts that authorize the applicant to be appointed as community administrator; and

(d) That, by virtue of facts set forth in the application, the court has venue over the estate of the deceased spouse; and

(e) If the applicant desires that appraisers be appointed, that not less than one nor more than three appraisers should be appointed to appraise such estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 163. APPOINTMENT OF APPRAISERS. If the appointment of appraisers is requested by the applicant, or by any interested person, the judge shall, without notice or citation, enter an order appointing appraisers to appraise such estate as in other administrations.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 164. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. The surviving spouse, with the assistance of the appraisers, if any be appointed, shall make out a full, fair, and complete inventory, appraisement, and list of claims of the community estate as in other administrations, shall attach thereto a list of all indebtedness owing by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is owing, and his or their postoffice address, and shall return same to the court within ninety (90) days after the date of the order appointing appraisers, if any be appointed, unless a longer time shall be granted by the court. If no appraisers be appointed, such return shall be made within ninety (90) days after the date of the application for community administration, unless a longer time shall be granted by the court. In either event, the court may, for good cause shown, require the filing of the inventory and appraisement within a shorter period of time. Such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said surviving spouse, and said inventory, appraisement, and list of claims owing said community estate shall be sworn to by said appraisers, if any appraisers have been appointed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, Sec. 11, eff. Jan. 1, 1972.

Sec. 165. BOND OF COMMUNITY ADMINISTRATOR. The community administrator shall at the time the inventory, appraisement, and list of claims are returned, present to the court a bond with two or more good and sufficient sureties, payable to and to be approved by the judge and his successors in a sum as is found by the judge to be adequate under all the circumstances, or a bond with one surety in a sum as is found by the judge to be adequate under all the circumstances, if the surety is an authorized corporate surety.



The condition of the bond shall be that such surviving spouse will faithfully administer such community estate and will, after the payment of debts with which such property is properly chargeable, deliver to such person or persons as shall be entitled to receive the same the portion of the community estate devised or bequeathed to them under the terms of the will of the deceased spouse, or which passes to them under the laws of descent and distribution. Either spouse may by will apportion community indebtedness as between the devisees and legatees of such testator and the surviving spouse, but this shall not include the power to charge the community share of the surviving spouse with more than the portion of the community debts for which it would otherwise be liable.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 717, ch. 339, Sec. 1, eff. June 9, 1965; Acts 1971, 62nd Leg., p. 982, ch. 173, Sec. 12, eff. Jan. 1, 1972.

Sec. 166. ORDER OF THE COURT. When such inventory, appraisalment, list of claims, and bond are returned to the judge, he shall examine the same and approve or disapprove them by an order to that effect and, when approved, the order approving them shall also authorize the survivor as community administrator to control, manage, and dispose of the community property in accordance with the provisions of this Code.

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

Sec. 167. POWERS OF COMMUNITY ADMINISTRATOR. When the order mentioned in the preceding section has been entered, the survivor, without any further action in the court, shall have the power to control, manage, and dispose of the community property, as provided in this Code, as fully and completely as if he or she were the sole owner thereof, and to sue and be sued with regard to the same; and a certified copy of the order of the court shall be evidence of the qualification and right of such survivor. After paying community debts outstanding at the death of the deceased spouse, the qualified community administrator may carry on as statutory trustee for the owners of the community estate, investing and reinvesting the funds of the estate and continuing the operation of community enterprises until the termination of the trust as provided in this Code. The qualified community administrator is not entitled to mortgage community property to secure debts incurred for his individual benefit, or otherwise to appropriate the community estate to his individual benefit; but he may transfer or encumber his individual interest in the community estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, Sec. 13, eff. Jan. 1, 1972.

Sec. 168. ACCOUNTING BY SURVIVOR. The survivor, whether qualified as community administrator or not, shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of the community property; and, upon final partition of such estate, shall deliver to the heirs, devisees or legatees of the deceased spouse their interest in such estate, and the increase and profits of the same, after deducting therefrom the proportion of the community debts chargeable thereto, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. Neither the survivor nor his bondsmen shall be liable for losses sustained by the estate, except when the survivor has been guilty of gross negligence or bad faith.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, Sec. 13, eff. Jan. 1, 1972.

Sec. 169. PAYMENT OF DEBTS. The community administrator shall pay all just and legal community debts within the time, and according to the classification, and in the order prescribed for the payment of debts in other administrations. Where there is a deficiency of assets to pay all claims of the same class, such claims shall be paid pro rata.

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

Sec. 170. NEW APPRAISEMENT OR NEW BOND. Any person interested in a community estate may cause a new appraisalment to be made of the same, or may cause a new bond to be required of the survivor, for the same causes and in like manner as provided in other administrations.

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

Sec. 171. CREDITOR MAY REQUIRE EXHIBIT. Any creditor of the community estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisalment, list of claims, and bond by the survivor, may by written application

to the court cause such survivor to be cited by personal service to appear and make an exhibit to the court in writing and under oath, showing fully and specifically:

(a) The debts that have been presented to him against such community estate and their class; and

(b) The debts that have been paid by him and those that remain unpaid, and the class of each; and

(c) The property that has been disposed of by him, and the amount received therefor; and

(d) The property remaining on hand; and

(e) An account of losses, expenses, and commissions.

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

Sec. 172. ACTION OF COURT UPON EXHIBIT. When such exhibit has been returned to the court and filed, the court shall examine the same and hear exceptions and objections thereto, and evidence in support of or against same. Should it appear to the court from such exhibit or from other evidence that such community estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, the court shall enter an order requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect the same for thirty days after the date of such order, the following proceedings shall be had:

(a) If said debt be for the amount of One Thousand Dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them by personal service to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

(b) If the amount due and payable to such creditor exceeds One Thousand Dollars, exclusive of interest, the creditor may have his action against such survivor and the sureties upon his bond in the District Court of the county where the survivor's bond is filed. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 173. APPROVAL OF EXHIBIT. If, after examining the exhibit and after receiving evidence in support of or against the same, the court is satisfied that the estate has been fairly administered in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order approving such exhibit and directing the same to be recorded, and shall also in such order declare the community administration closed.

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

Sec. 174. FAILURE TO FILE EXHIBIT. Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed as if the creditor's right to the payment of his claim had been fully established.

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

Sec. 175. TERMINATION OF COMMUNITY ADMINISTRATION. After the lapse of twelve months from the filing of the bond of the survivor, the community administration may be terminated whenever termination is desired by either the survivor or the persons entitled to the share of the deceased spouse, or to any portion thereof. Partition and distribution of the community estate may be had and the administration closed either by proceedings as in other independent administration or by proceedings in the appropriate District Court. When the community administration is closed, the community administrator shall be discharged and his bondsmen released from further liability.

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

Sec. 176. REMARRIAGE OF SURVIVING SPOUSE. The remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community administrator or administratrix; nor shall it terminate his or her powers as a surviving partner.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, Sec. 23, eff. Aug. 27, 1979.

Sec. 177. DISTRIBUTION OF POWERS AMONG PERSONAL REPRESENTATIVES AND SURVIVING SPOUSE. (a) When Community Administrator Has Qualified. The qualified community administrator is entitled to administer the entire community estate, including the part which was by law under the management of the deceased

spouse during the continuance of the marriage.

(b) When No Community Administrator Has Qualified. When a personal representative of the estate of a deceased spouse has duly qualified, the personal representative is authorized to administer, not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage and all of the community property that was by law under the joint control of the spouses during the continuance of the marriage. The surviving spouse, as surviving partner of the marital partnership, is entitled to retain possession and control of all community property which was legally under the sole management of the surviving spouse during the continuance of the marriage and to exercise over that property all the powers elsewhere in this part of this code authorized to be exercised by the surviving spouse when there is no administration pending on the estate of the deceased spouse. The surviving spouse may by written instrument filed with the clerk waive any right to exercise powers as community survivor, and in such event the personal representative of the deceased spouse shall be authorized to administer upon the entire community estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, Sec. 13, eff. Jan. 1, 1972; Acts 2001, 77th Leg., ch. 10, Sec. 2, eff. Sept. 1, 2001.