

PROBATE CODE
CHAPTER VII. EXECUTORS AND ADMINISTRATORS
PART 1. APPOINTMENT AND ISSUANCE OF LETTERS

Sec. 178. WHEN LETTERS TESTAMENTARY OR OF ADMINISTRATION SHALL BE GRANTED. (a) Letters Testamentary. When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(b) Letters of Administration. When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the distributees, but mention of these two instances of necessity for administration shall not prevent the court from finding other instances of necessity upon proof before it.

(c) Failure to Issue Letters Within Prescribed Time. Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

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

Sec. 179. OPPOSITION TO GRANT OF LETTERS OF ADMINISTRATION. When application is made for letters of administration, any person may at any time before the application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

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

Sec. 180. EFFECT OF FINDING THAT NO NECESSITY FOR ADMINISTRATION EXISTS. When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital 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 or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees 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. 181. ORDERS GRANTING LETTERS TESTAMENTARY OR OF ADMINISTRATION. When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

- (a) The name of the testator or intestate; and
- (b) The name of the person to whom the grant of letters is made; and
- (c) If bond is required, the amount thereof; and
- (d) If any interested person shall apply to the court for the appointment of an appraiser or appraisers, or if the court deems an appraisal necessary, the name of not less than one nor more than three disinterested persons appointed to appraise the estate and return such appraisement to the court; and

(e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, Sec. 1, eff. Aug. 28, 1967;

Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 10, eff. June 12, 1969.

Sec. 182. WHEN CLERK SHALL ISSUE LETTERS. Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying.

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

Sec. 183. WHAT CONSTITUTES LETTERS. Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

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

Sec. 186. LETTERS OR CERTIFICATE MADE EVIDENCE. Letters testamentary or of administration or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate and of the date of qualification.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 28, eff. Sept. 1, 1993.

Sec. 187. ISSUANCE OF OTHER LETTERS. When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

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

Sec. 188. RIGHTS OF THIRD PERSONS DEALING WITH EXECUTORS OR ADMINISTRATORS. When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and the law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled, and declared invalid.

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

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

Sec. 189. HOW EXECUTORS AND ADMINISTRATORS SHALL QUALIFY. A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 29, eff. Sept. 1, 1993.

Sec. 190. OATHS OF EXECUTORS AND ADMINISTRATORS. (a) Executor, or Administrator With Will Annexed. Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor, or appointed administrator with the will annexed, shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of _____, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said _____."

(b) Administrator. Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that _____, deceased, died without leaving any lawful will (or that the named executor in any such will is dead or has failed or neglected to offer the same for probate, or to accept and qualify as executor, within the time required, as the case may be), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased."

(c) Temporary Administrator. Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and

truly perform the duties of temporary administrator of the estate of _____, deceased, in accordance with the law, and with the order of the court appointing me such administrator."

(d) Filing and Recording of Oaths. All such oaths may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

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

Sec. 192. TIME FOR TAKING OATH AND GIVING BOND. The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 30, eff. Sept. 1, 1993.

Sec. 194. BONDS OF PERSONAL REPRESENTATIVES OF ESTATES. Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary or of administration, the recipient of letters shall enter into bond conditioned as required by law, payable to the county judge or probate judge of the county in which the probate proceedings are pending and to his successors in office. Such bonds shall bear the written approval of either of such judges in his official capacity, and shall be executed and approved in accordance with the following rules:

1. Court to Fix Penalty. The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

2. Bond to Protect Creditors Only, When. If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

3. Before Fixing Penalty, Court to Hear Evidence. In any case where a bond is, or shall be, required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

(a) The amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm or ranch owned by the estate, and expenses of administration for one (1) year; and

(b) The revenue anticipated to be received in the succeeding twelve (12) months from dividends, interest, rentals, or use of real or personal property belonging to the estate and the aggregate amount of any installments or periodical payments to be collected; and

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

4. Penalty of Bond. The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

5. Agreement as to Deposit of Assets. It shall be lawful, and the court may require such action when deemed in the best interest

of an estate, for a personal representative to agree with the surety or sureties, either corporate or personal, for the deposit of any or all cash, and safekeeping of other assets of the estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this State under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

6. Deposits Authorized or Required, When. Cash or securities or other personal assets of an estate or which an estate is entitled to receive may, and if deemed by the court in the best interest of such estate shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond. It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.

8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond. (a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may on its own motion, or upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless the same be filed within twenty (20) days after being personally served with notice of the filing of an application by another, or entry of the court's motion, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

9. Withdrawal of Deposits When Estate Closed. Upon the

closing of an estate, any such deposit or portion thereof remaining on hand, whether of the assets of the representative, or of the assets of the estate, or of the surety, shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards, and then only in the event distribution has been ordered by the court, and to the extent only of such distribution as shall have been ordered.

10. Who May Act as Sureties. The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

11. Procedure When Bond Exceeds Fifty Thousand Dollars (\$50,000). When any such bond shall exceed Fifty Thousand Dollars (\$50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

12. Qualifications of Personal Sureties. If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, a personal surety, instead of making affidavit, or creating a lien on specific real estate when such is required, may, in the same manner as a personal representative, deposit his own cash or securities, in lieu of pledging real property as security, subject, so far as applicable, to the provisions covering such deposits when made by personal representatives.

13. Bonds of Temporary Appointees. In case of a temporary administrator, the bond shall be in such sum as the judge shall direct.

14. Increased or Additional Bonds When Property Sold, Rented, Leased for Mineral Development, or Money Borrowed or Invested. The provisions in this Section with respect to deposit of cash and safekeeping of securities shall cover, so far as they may be applicable, the orders to be entered by the court when real or personal property of an estate has been authorized to be sold or rented, or money borrowed thereon, or when real property, or an interest therein, has been authorized to be leased for mineral development or subjected to unitization, the general bond having been found insufficient.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 6(b), eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 983, ch. 173, Sec. 14, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1754, ch. 713, Sec. 25, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 957, Sec. 31, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 344, Sec. 6.003, eff. Sept. 1, 1999.

Sec. 195. WHEN NO BOND REQUIRED. (a) By Will. Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, the court finding that such person or persons are qualified, letters testamentary shall be issued to the persons so named, without requirement of bond.

(b) Corporate Fiduciary Exempted From Bond. If a personal representative is a corporate fiduciary, as said term is defined in this Code, no bond shall be required.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 12, eff. Sept. 1, 1995.

Sec. 196. FORM OF BOND. The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of _____

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of _____, and his successors in office, in the sum of _____ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of _____ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of _____ County, administrator of the estate of J. C., deceased, or

has been appointed by the said judge of _____ County, temporary administrator of the estate of J. C., deceased, as the case may be), shall well and truly perform all of the duties required of him by law under said appointment."

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 32, eff. Sept. 1, 1993.

Sec. 197. BONDS TO BE FILED. All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, when approved by the court, be filed with the clerk. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 198. BONDS OF JOINT REPRESENTATIVES. When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

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

Sec. 199. BONDS OF MARRIED PERSONS. When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

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

Sec. 200. BOND OF MARRIED PERSON UNDER EIGHTEEN YEARS OF AGE. When a person under eighteen years of age who is or has been married shall accept and qualify as executor or administrator, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 105, ch. 45, Sec. 3, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 957, Sec. 33, eff. Sept. 1, 1993.

Sec. 201. (A) AFFIDAVIT OF PERSONAL SURETY; (B) LIEN ON SPECIFIC PROPERTY, WHEN REQUIRED; (C) SUBORDINATION OF LIEN AUTHORIZED. (a) Affidavit of Personal Surety. Before the judge may consider a bond with personal sureties, each person offered as surety shall execute an affidavit stating the amount of his assets, reachable by creditors, of a value over and above his liabilities, the total of the worth of such sureties to be equal to at least double the amount of the bond, and such affidavit shall be presented to the judge for his consideration and, if approved, shall be attached to and form part of the bond.

(b) Lien on Specific Property, When Required. If the judge finds that the estimated value of personal property of the estate which cannot be deposited or held in safekeeping as hereinabove provided is such that personal sureties cannot be accepted without the creation of a specific lien on real property of such sureties, he shall enter an order requiring that each surety designate real property owned by him within this State subject to execution, of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of such property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and be attached to and form part of the bond. If compliance with such order is not had, the judge may in his discretion require that the bond be signed by an authorized corporate surety, or by such corporate surety and two (2) or more personal sureties.

(c) Subordination of Lien Authorized. If a personal surety who has been required to create a lien on specific real estate desires to lease such property for mineral development, he may file his written application in the court in which the proceedings are pending, requesting subordination of such lien to the proposed lease, and the judge of such court may, in his discretion, enter an order granting such application. A certified copy of such order, filed and recorded in the deed records of the proper county, shall be sufficient to subordinate such lien to the rights of a lessee, in the proposed lease.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 6(c).

Sec. 202. BOND AS LIEN ON REAL PROPERTY OF SURETY. When a personal surety has been required by the court to create a lien on specific real property as a condition of his acceptance as surety on a bond, a lien on the real property of the surety in this State which is described in the affidavit of the surety, and only upon such property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before

letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 6(d).

Sec. 203. WHEN NEW BOND MAY BE REQUIRED. A personal representative may be required to give a new bond in the following cases:

(a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or

(b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or

(c) When, in the opinion of the court, any such bond is defective; or

(d) When the amount of any such bond is insufficient; or

(e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or

(f) When the bond and the record thereof have been lost or destroyed.

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

Sec. 204. DEMAND FOR NEW BOND BY INTERESTED PERSON. Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

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

Sec. 205. JUDGE TO REQUIRE NEW BOND. When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall without delay cause the representative to be cited to show cause why he should not give a new bond.

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

Sec. 206. ORDER REQUIRING NEW BOND. Upon the return of a citation ordering a personal representative to show cause why he should not give a new bond, the judge shall, on the day named therein for the hearing of the matter, proceed to inquire into the sufficiency of the reasons for requiring a new bond; and, if satisfied that a new bond should be required, he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

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

Sec. 207. ORDER SUSPENDS POWERS OF PERSONAL REPRESENTATIVE. When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

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

Sec. 208. DECREASE IN AMOUNT OF BOND. A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate, and upon the approval of an accounting

filed at the time of the application, may permit the filing of a new bond in a reduced amount.

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

Sec. 209. DISCHARGE OF SURETIES UPON EXECUTION OF NEW BOND. When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.

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

Sec. 210. RELEASE OF SURETIES BEFORE ESTATE FULLY ADMINISTERED. The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

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

Sec. 211. RELEASE OF LIEN BEFORE ESTATE FULLY ADMINISTERED. If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

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

Sec. 212. RELEASE OF RECORDED LIEN ON SURETY'S PROPERTY. A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

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

Sec. 213. REVOCATION OF LETTERS FOR FAILURE TO GIVE BOND. If at any time a personal representative fails to give bond as required by the court, within the time fixed by this Code, another person may be appointed in his stead.

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

Sec. 214. EXECUTOR WITHOUT BOND REQUIRED TO GIVE BOND. Where no bond is required of an executor appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor to appear and show cause why he should not be required to give bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 34, eff. Sept. 1, 1993.

Sec. 215. ORDER REQUIRING BOND. Upon hearing such complaint, if it appears to the court that such executor is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor to give bond within ten days from the date of such order.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 34, eff. Sept. 1, 1993.

Sec. 216. BOND IN SUCH CASE. Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 34, eff. Sept. 1, 1993.

Sec. 217. FAILURE TO GIVE BOND. Should the executor fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor and appoint some competent person in his stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon

the administration of said estate, shall take the oath required of an administrator with the will annexed, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 34, eff. Sept. 1, 1993.

Sec. 218. BONDS NOT VOID UPON FIRST RECOVERY. The bonds of personal representative shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

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

PART 3. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL

Sec. 220. APPOINTMENT OF SUCCESSOR REPRESENTATIVE. (a) Because of Death, Resignation or Removal. When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order. Upon the finding that a necessity for the immediate appointment of a successor representative exists, the court may appoint such successor without citation or notice.

(b) Because of Existence of Prior Right. Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

(c) When Named Executor Becomes an Adult. If one named in a will as executor is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

(d) Upon Return of Sick or Absent Executor. If one named in a will as executor was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor within twenty days after the probate of the will, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

(e) When Will Is Discovered After Administration Granted. If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

(f) When Application and Service Necessary. Except when otherwise expressly provided in this Code, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted.

(g) Payment or Tender of Money Due During Vacancy. Money or other thing of value falling due to an estate while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 11, eff. June 12, 1969; Acts 1993, 73rd Leg., ch. 957, Sec. 35, eff. Sept. 1, 1993.

Sec. 221. RESIGNATION. (a) Application to Resign. A personal representative who wishes to resign his trust shall file

with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.

(b) Successor Representatives. If the necessity exists, the court may immediately accept a resignation and appoint a successor, but shall not discharge the person resigning, or release him or the sureties on his bond until final order or judgment shall have been rendered on his final account.

(c) Citation. Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

(d) Hearing. At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it.

(e) Requisites of Discharge. No resigning personal representative shall be discharged until the application has been heard, the exhibit and account examined, settled, and approved, and until he has satisfied the court that he has delivered the estate, if there be any remaining in his possession, or has complied with all lawful orders of the court with relation to his trust.

(f) Final Discharge. When the resigning applicant has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if he is under bond, his sureties.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 36, eff. Sept. 1, 1993.

Sec. 221A. CHANGE OF RESIDENT AGENT. (a) A personal representative may change its resident agent to accept service of process in a probate proceeding or other action relating to the estate by filing a statement of the change titled "Designation of Successor Resident Agent" with the court in which the probate proceeding is pending. The statement must contain the names and addresses of the:

- (1) personal representative;
- (2) resident agent; and
- (3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1999.

Sec. 221B. RESIGNATION OF RESIDENT AGENT. (a) A resident agent of a personal representative may resign as the resident agent by giving notice to the personal representative and filing with the court in which the probate proceeding is pending a statement titled "Resignation of Resident Agent" that:

- (1) contains the name of the personal representative;
- (2) contains the address of the personal representative most recently known by the resident agent;
- (3) states that notice of the resignation has been given to the personal representative and that the personal representative has not designated a successor resident agent; and
- (4) contains the date on which the notice of the resignation was given to the personal representative.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to:

- (1) the personal representative at the address most recently known by the agent; and
- (2) each party in the case or the party's attorney or other designated representative of record.

(c) The resignation of a resident agent takes effect on the

date on which the court enters an order accepting the agent's resignation. A court may not enter an order accepting the agent's resignation unless the agent complies with the requirements of this section.

Added by Acts 1999, 76th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1999.

Sec. 222. REMOVAL. (a) Without Notice. (1) The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

(A) Neglects to qualify in the manner and time required by law;

(B) 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;

(C) Having been required to give a new bond, fails to do so within the time prescribed;

(D) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State;

(E) Cannot be served with notices or other processes because of the fact that the:

(i) personal representative's whereabouts are unknown;

(ii) personal representative is eluding service; or

(iii) personal representative is a nonresident of this state who does not have a resident agent to accept service of process in any probate proceeding or other action relating to the estate; or

(F) Has misapplied, embezzled, or removed from the State, or is about to misapply, embezzle, or remove from the State, all or any part of the property committed to the personal representative's care.

(2) The court may remove a personal representative under Paragraph (F), Subdivision (1), of this subsection only on the presentation of clear and convincing evidence given under oath.

(b) With Notice. The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

(1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care;

(2) He fails to return any account which is required by law to be made;

(3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties;

(4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties;

(5) He becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust;

(6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

(7) As executor or administrator, he fails to timely file the notice required by Section 128A of this code.

(c) Order of Removal. The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 11, eff. June 12, 1969; Acts 1989, 71st Leg., ch. 1035, Sec. 11, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 905, Sec. 11, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 957, Sec. 37, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1039, Sec. 13, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 855, Sec. 8, eff. Sept. 1, 1999.

Sec. 222A. REINSTATEMENT AFTER REMOVAL. (a) Not later than

the 10th day after the date the court signs the order of removal, a personal representative who is removed under Subsection (a)(1)(F) or (G), Section 222, of this code may file an application with the court for a hearing to determine whether the personal representative should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the decedent, and the name of the applicant. The clerk shall issue the notice to the applicant and to the successor representative of the decedent's estate. The notice must cite all persons interested in the estate to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Added by Acts 1993, 73rd Leg., ch. 905, Sec. 12, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 12, eff. Sept. 1, 2003.

PART 4. SUBSEQUENT PERSONAL REPRESENTATIVES

Sec. 223. FURTHER ADMINISTRATION WITH OR WITHOUT WILL ANNEXED. Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments, except that when the court finds that there is a necessity for the immediate appointment of a successor representative, such successor may be appointed upon application but without citation or notice.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 11, eff. June 12, 1969.

Sec. 224. SUCCESSORS SUCCEED TO PRIOR RIGHTS, POWERS, AND DUTIES. When a representative of the estate not administered succeeds another, he shall be clothed with all rights, powers, and duties of his predecessor, except such rights and powers conferred on the predecessor by will which are different from those conferred by this Code on personal representatives generally. Subject to this exception, the successor shall proceed to administer such estate in like manner as if his administration were a continuation of the former one. He shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give in order to enforce the delivery of the estate and the liability of the sureties of his predecessor for so much as is not delivered. He shall be excused from accounting for such of the estate as he has failed to recover after due diligence.

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

Sec. 225. ADDITIONAL POWERS OF SUCCESSOR APPOINTEE. In addition, such appointee may make himself, and may be made, a party to suits prosecuted by or against his predecessors. He may settle with the predecessor, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the predecessor in his own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by him.

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

Sec. 226. SUBSEQUENT EXECUTORS ALSO SUCCEED TO PRIOR RIGHTS AND DUTIES. Whenever an executor shall accept and qualify after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any legal directions of the testator contained in the will in relation to the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 38, eff. Sept. 1, 1993.

Sec. 227. SUCCESSIONS RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisal, and list of claims of the estate, within ninety days after being qualified, in like manner as is required of original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 11, eff. June 12, 1969.

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

Sec. 230. CARE OF PROPERTY OF ESTATES. The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 268, ch. 114, Sec. 1, eff. April 30, 1975; Acts 1993, 73rd Leg., ch. 957, Sec. 39, eff. Sept. 1, 1993.

Sec. 232. REPRESENTATIVE OF ESTATE SHALL TAKE POSSESSION OF PERSONAL PROPERTY AND RECORDS. The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal property, record books, title papers, and other business papers of the estate, and all such in his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

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

Sec. 233. COLLECTION OF CLAIMS AND RECOVERY OF PROPERTY. (a) Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect.

(b) Except as provided by Subsection (c) of this section, a personal representative may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys, subject only to approval of the court in which the estate is being administered.

(c) A personal representative, including an independent executor or independent administrator, may convey or contract to convey for services of an attorney a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(d) In approving a contract or conveyance under Subsection (b) or (c) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

(e) On satisfactory proof to the court, a personal representative of an estate is entitled to all necessary and reasonable expenses incurred by the personal representative in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 848, Sec. 1, eff. Sept. 1, 1993.

Sec. 233A. SUITS BY EXECUTORS OR ADMINISTRATORS. Suits for the recovery of personal property, debts, or damages and suits for title or possession of lands or for any right attached to or growing out of the same or for injury or damage done thereto may be instituted by executors or administrators appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 3, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 40, eff. Sept. 1, 1993.

Sec. 234. EXERCISE OF POWERS WITH AND WITHOUT COURT ORDER. (a) Powers To Be Exercised Under Order of the Court. The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting authority:

- (1) Purchase or exchange property;
- (2) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate;
- (3) Compound bad or doubtful debts due or owing to the estate;
- (4) Make compromises or settlements in relation to property or claims in dispute or litigation;
- (5) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim;
- (6) Abandon the administration of property of the estate that is burdensome or worthless. Abandoned real or personal property may be foreclosed by a secured party, trustee, or mortgagee without further order of the court.

(b) Powers To Be Exercised Without Court Order. The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

- (1) Release liens upon payment at maturity of the debt secured thereby;
- (2) Vote stocks by limited or general proxy;
- (3) Pay calls and assessments;
- (4) Insure the estate against liability in appropriate cases;
- (5) Insure property of the estate against fire, theft, and other hazards;
- (6) Pay taxes, court costs, bond premiums.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 984, ch. 173, Sec. 15, eff. Jan. 1, 1972; Acts 1997, 75th Leg., ch. 1302, Sec. 9, eff. Sept. 1, 1997.

Sec. 235. POSSESSION OF PROPERTY HELD IN COMMON OWNERSHIP. If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

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

Sec. 238. OPERATION OF FARM, RANCH, FACTORY, OR OTHER BUSINESS. If the estate owns a farm, ranch, factory, or other business, the disposition of which has not been specifically directed by will, and if the same be not required to be sold at once for the payment of debts or other lawful purposes, the representative, upon order of the court, shall carry on the

operation of such farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interest of the estate. In deciding, the court shall consider the condition of the estate, and the necessity that may exist for future sale of such property or business for the payment of debts, claims, or other lawful expenditures, and shall not extend the time of renting any of the property beyond what appears consistent with the speedy settlement of the estate of a deceased person or the settlement of his estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 41, eff. Sept. 1, 1993.

Sec. 238A. ADMINISTRATION OF PARTNERSHIP INTEREST BY PERSONAL REPRESENTATIVE. If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence.

Added by Acts 1979, 66th Leg., p. 71, ch. 46, Sec. 1, eff. April 11, 1979.

Sec. 239. PAYMENT OR CREDIT OF INCOME. In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate, except as otherwise provided by sections of this Code; provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 407, ch. 182, Sec. 1, eff. May 25, 1973.

Sec. 240. JOINT EXECUTORS OR ADMINISTRATORS. Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred. Provided, however, that this Section shall not be construed to authorize one of several executors or administrators to convey real estate, but in such case all the executors or administrators who have qualified as such and are acting as such shall join in the conveyance, unless the court, after due hearing, authorizes less than all to act.

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

PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

Sec. 241. COMPENSATION OF PERSONAL REPRESENTATIVES. (a) Executors, administrators, and temporary administrators shall be entitled to receive a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate on a finding by the court that the executor or administrator has taken care of and managed the estate in compliance with the

standards of this code; provided, no commission shall be allowed for receiving funds belonging to the testator or intestate which were on hand or were held for the testator or intestate at the time of his death in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account; nor for collecting the proceeds of any life insurance policy; nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services, including unusual effort to collect funds or life insurance. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors. The court may, on application of an interested person or on its own motion, deny a commission allowed by this subsection in whole or in part if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 149C or 222 of this code.

(b) Definition. In this section, "financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 8; Acts 1987, 70th Leg., ch. 919, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 468, Sec. 1, 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 957, Sec. 42, eff. Sept. 1, 1993.

Sec. 242. EXPENSES ALLOWED. Personal representatives of estates shall also be entitled to all necessary and reasonable expenses incurred by them in the preservation, safekeeping, and management of the estate, and in collecting or attempting to collect claims or debts, and in recovering or attempting to recover property to which the estate has a title or claim, and all reasonable attorney's fees, necessarily incurred in connection with the proceedings and management of such estate, on satisfactory proof to the court.

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

Sec. 243. ALLOWANCE FOR DEFENDING WILL. When any person designated as executor in a will or an alleged will, or as administrator with the will or alleged will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will or alleged will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in such proceedings. When any person designated as a devisee, legatee, or beneficiary in a will or an alleged will, or as administrator with the will or alleged will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will or alleged will admitted to probate, whether successful or not, he may be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in such proceedings.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 5227, ch. 957, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 462, Sec. 1, eff. Sept. 1, 1987.

Sec. 244. EXPENSE ACCOUNTS. All expense charges shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by affidavit of the representative, filed with the clerk and entered on the claim docket, and shall be acted on by the court in like manner as other claims against the estate.

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

Sec. 245. WHEN COSTS ARE ADJUDGED AGAINST REPRESENTATIVE. When a personal representative neglects to perform a required duty or if a personal representative is removed for cause, the personal representative and the sureties on the personal representative's bond are liable for:

(1) costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code; and

(2) reasonable attorney's fees incurred in removing the personal representative or in obtaining compliance regarding any statutory duty the personal representative has neglected.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, Sec. 3, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 631, ch. 140, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 2003, 78th Leg., ch. 1060, Sec. 13, eff. Sept. 1, 2003.