

PROBATE CODE  
CHAPTER I. GENERAL PROVISIONS

Sec. 1. SHORT TITLE. This Act shall be known, and may be cited, as the "Texas Probate Code."

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

Sec. 2. EFFECTIVE DATE AND APPLICATION. (a) Effective Date. This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) Rights Not Affected. No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

(c) Subdivisions Have No Legal Effect. The division of this Code into Chapters, Parts, Sections, Subsections, and Paragraphs is solely for convenience and shall have no legal effect.

(d) Severability. If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable, and the Legislature hereby states that it would have enacted such portions of the Code which can lawfully be given effect regardless of the possible invalidity of other provisions of the Code.

(e) Nature of Proceeding. The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 2, eff. Sept. 1, 1993.

Sec. 3. DEFINITIONS AND USE OF TERMS. Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors and administrators.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include a child who has no presumed father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, and debts due such estates.

(d) "Corporate fiduciary" means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state, or the United States, which is authorized by law to act under the order or appointment of any court of record, without giving bond, as receiver, trustee, executor, administrator, or, although without general depository powers, depository for any moneys paid into court, or to become sole guarantor or surety in or upon any bond required to be given under the laws of this state.

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

(j) "Distributee" denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) "Docket" means the probate docket.

(l) "Estate" denotes the real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) "Exempt property" refers to that property of a decedent's estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) Repealed by Acts 1995, 74th Leg., ch. 1039, Sec. 73(1), eff. Sept. 1, 1995.

(o) "Heirs" denote those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(p) "Incapacitated" or "Incapacitated person" means:

(1) a minor;

(2) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or

(3) a person who must have a guardian appointed to receive funds due the person from any governmental source.

(q) "Independent executor" means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term "independent executor" includes the term "independent administrator."

(r) "Interested persons" or "persons interested" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of a minor or incompetent ward.

(s) "Legacy" includes any gift or devise by will, whether of personalty or realty. "Legatee" includes any person entitled to a legacy under a will.

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

(u) "Minutes" means the probate minutes.

(v) "Mortgage" or "Lien" includes deed of trust, vendor's lien, chattel mortgage, mechanic's, materialman's or laborer's lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

(w) "Net estate" means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) "Person" includes natural persons and corporations.

(y) Repealed by Acts 1995, 74th Leg., ch. 1039, Sec. 73(1),

eff. Sept. 1, 1995.

(z) "Personal property" includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to the estate of a decedent.

(cc) "Property" includes both real and personal property.

(dd) "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(ee) "Surety" includes both personal and corporate sureties.

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely:

(1) appoints an executor or guardian;

(2) directs how property may not be disposed of; or

(3) revokes another will.

(gg) The singular number includes the plural; the plural number includes the singular.

(hh) The masculine gender includes the feminine and neuter.

(ii) "Statutory probate court" means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this Code unless the court is designated a statutory probate court under Chapter 25, Government Code.

(jj) "Next of kin" includes an adopted child or his or her descendants and the adoptive parent of the adopted child.

(kk) "Charitable organization" means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 because the entity is organized and operated exclusively for religious, charitable, scientific, educational, or literary purposes, testing for public safety, prevention of cruelty to children or animals, or promotion of amateur sports competition; or

(2) any other entity or organization that is organized and operated exclusively for the purposes listed in Section 501(c)(3) of the Internal Revenue Code of 1986.

(ll) "Governmental agency of the state" means:

(1) an incorporated city or town, a county, a public school district, a special-purpose district or authority, or a district, county, or justice of the peace court;

(2) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(3) the legislature or a legislative agency; and

(4) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(mm) "Ward" is a person for whom a guardian has been appointed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 2(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 44, ch. 30, Sec. 2, eff. Aug. 28, 1961; Acts 1969, 61st Leg., p. 1703, ch. 556, Sec. 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 1, eff. June 12, 1969; Acts 1975, 64th Leg., p. 104, ch. 45, Sec. 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, Sec. 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1061, ch. 390, Sec. 1, 2, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, Sec. 1, eff. Aug. 27, 1979; Acts 1985, 69th Leg., ch. 159, Sec. 1, 2, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 591, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 375, Sec. 33, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1035, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(96), eff. Sept. 1, 1991; Acts 1991, 72nd

Leg., ch. 895, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 957, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1039, Sec. 4, 73(1), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 52, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 6.001, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 379, Sec. 1, eff. Sept. 1, 1999.

Sec. 4. JURISDICTION OF COUNTY COURT WITH RESPECT TO PROBATE PROCEEDINGS. The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary and of administration, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration, including the settlement, partition, and distribution of such estates.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 4, eff. Sept. 1, 1993.

Sec. 5. JURISDICTION WITH RESPECT TO PROBATE PROCEEDINGS. (a) Repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16.

(b) In those counties in which there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding probate and administrations shall be filed and heard in the county court. In contested probate matters, the judge of the county court may on the judge's own motion or shall on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested portion of the proceeding, as provided by Section 25.0022, Government Code; or

(2) transfer the contested portion of the proceeding to the district court, which may then hear the contested matter as if originally filed in district court.

(b-1) If the judge of the county court has not transferred a contested probate matter to the district court under this section by the time a party files a motion for assignment of a statutory probate court judge, the county judge shall grant the motion and may not transfer the matter to district court unless the party withdraws the motion. A party to a proceeding may file a motion for assignment of a statutory probate court judge under this section before the matter becomes a contested probate matter, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (b) of this section if the matter later becomes contested. A transfer of a contested probate matter to district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the matter to have the matter assigned to a statutory probate court judge in accordance with this section.

(b-2) A statutory probate court judge assigned to a contested probate matter as provided by Subsection (b) of this section has the jurisdiction and authority granted to a statutory probate court by this section and Sections 5A and 5B of this code. On resolution of a contested matter, including an appeal of a matter, to which a statutory probate court judge has been assigned, the statutory probate court judge shall transfer the resolved portion of the case to the county court for further proceedings not inconsistent with the orders of the statutory probate court judge.

(b-3) In contested matters transferred to the district court, the district court has the general jurisdiction of a probate court. On resolution of a contested matter, including an appeal of a matter, the district court shall transfer the resolved portion of the case to the county court for further proceedings not inconsistent with the orders of the district court.

(b-4) The county court shall continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned statutory probate court judge or the district court.

(b-5) If a contested portion of the proceeding is transferred to a district court under Subsection (b-3) of this section, the clerk of the district court may perform in relation to the transferred portion of the proceeding any function a county clerk may perform in that type of contested proceeding.

(c) In those counties in which there is no statutory probate court, but in which there is a county court at law or other

statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding probate and administrations shall be filed and heard in those courts and the constitutional county court, unless otherwise provided by law. The judge of a county court may hear any of those matters regarding probate or administrations sitting for the judge of any other county court. In contested probate matters, the judge of the constitutional county court may on the judge's own motion, and shall on the motion of a party to the proceeding, transfer the proceeding to the county court at law or a statutory court exercising the jurisdiction of a probate court other than a statutory probate court. The court to which the proceeding is transferred may hear the proceeding as if originally filed in the court.

(d) In those counties in which there is a statutory probate court, all applications, petitions, and motions regarding probate or administrations shall be filed and heard in the statutory probate court.

(e) A statutory probate court has concurrent jurisdiction with the district court in all personal injury, survival, or wrongful death actions by or against a person in the person's capacity as a personal representative, in all actions by or against a trustee, in all actions involving an inter vivos trust, testamentary trust, or charitable trust, and in all actions involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate.

(f) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate. When a surety is called on to perform in place of an administrator, all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

(g) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of appeals.

(h) A statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which a personal representative of an estate pending in the statutory probate court is a party.

(i) A statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 1684, ch. 610, Sec. 1; Acts 1975, 64th Leg., p. 2195, ch. 701, Sec. 2, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4122, ch. 647, Sec. 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5434, ch. 1015, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 159, Sec. 3, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 459, Sec. 4, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 957, Sec. 5, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1435, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1389, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 63, Sec. 1, eff. Sept. 1, 2001. Section heading amended by Acts 2003, 78th Leg., ch. 1060, Sec. 1, eff. Sept. 1, 2003; Subsec. (a) repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16, eff. Sept. 1, 2003; Subsecs. (b) and (c) to (e) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 2, eff. Sept. 1, 2003; Subsecs. (b-1) to (b-5), (h), and (i) added by Acts 2003, 78th Leg., ch. 1060, Sec. 2, eff. Sept. 1, 2003; Subsecs. (b-1), (b-2), and (e) amended by Acts 2005, 79th Leg., ch. 551, Sec. 1, eff. Sept. 1, 2005.

Sec. 5A. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE. (a) In proceedings in the constitutional county courts and statutory county courts at law, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills, and generally all matters relating to the

settlement, partition, and distribution of estates of deceased persons.

(b) In proceedings in the statutory probate courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the collection, settlement, partition, and distribution of estates of deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any heirship proceeding or decedent's estate, including estates administered by an independent executor; all such suits, actions, and applications are appertaining to and incident to an estate. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. Except for situations in which the jurisdiction of a statutory probate court is concurrent with that of a district court as provided by Section 5(e) of this Code or any other court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court.

(c) to (e) Repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16.

(f) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code. Added by Acts 1979, 66th Leg., p. 1741, ch. 713, Sec. 3, eff. Aug. 27, 1979. Amended by Acts 1985, 69th Leg., ch. 875, Sec. 1, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1035, Sec. 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 957, Sec. 6, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1302, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 64, Sec. 1, eff. Sept. 1, 1999. Section heading amended by Acts 2003, 78th Leg., ch. 1060, Sec. 3, eff. Sept. 1, 2003; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 4, eff. Sept. 1, 2003; Subsecs. (c) to (e) repealed by Acts 2003, 78th Leg., ch. 1060, Sec. 16, eff. Sept. 1, 2003; Subsec. (f) added by Acts 2003, 78th Leg., ch. 204, Sec. 3.05, eff. Sept. 1, 2003.

Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code. Added by Acts 1983, 68th Leg., p. 5228, ch. 958, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1431, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 204, Sec. 3.06, eff. Sept. 1, 2003.

Sec. 5C. ACTIONS TO COLLECT DELINQUENT PROPERTY TAXES. (a) This section applies only to a decedent's estate that:

- (1) is being administered in a pending probate proceeding;
- (2) owns or claims an interest in property against which a taxing unit has imposed ad valorem taxes that are delinquent; and
- (3) is not being administered as an independent administration under Section 145 of this code.

(b) Notwithstanding any provision of this code to the contrary, if the probate proceedings are pending in a foreign jurisdiction or in a county other than the county in which the taxes

were imposed, a suit to foreclose the lien securing payment of the taxes or to enforce personal liability for the taxes must be brought under Section 33.41, Tax Code, in a court of competent jurisdiction in the county in which the taxes were imposed.

(c) If the probate proceedings have been pending for four years or less in the county in which the taxes were imposed, the taxing unit may present a claim for the delinquent taxes against the estate to the personal representative of the estate in the probate proceedings.

(d) If the taxing unit presents a claim against the estate under Subsection (c) of this section:

(1) the claim of the taxing unit is subject to each applicable provision in Parts 4 and 5, Chapter VIII, of this code that relates to a claim or the enforcement of a claim in a probate proceeding; and

(2) the taxing unit may not bring a suit in any other court to foreclose the lien securing payment of the taxes or to enforce personal liability for the delinquent taxes before the first day after the fourth anniversary of the date the application for the probate proceeding was filed.

(e) To foreclose the lien securing payment of the delinquent taxes, the taxing unit must bring a suit under Section 33.41, Tax Code, in a court of competent jurisdiction for the county in which the taxes were imposed if:

(1) the probate proceedings have been pending in that county for more than four years; and

(2) the taxing unit did not present a delinquent tax claim under Subsection (c) of this section against the estate in the probate proceeding.

(f) In a suit brought under Subsection (e) of this section, the taxing unit:

(1) shall make the personal representative of the decedent's estate a party to the suit; and

(2) may not seek to enforce personal liability for the taxes against the estate of the decedent.

Added by Acts 1999, 76th Leg., ch. 1481, Sec. 36, eff. Sept. 1, 1999.

Sec. 6. VENUE FOR PROBATE OF WILLS AND ADMINISTRATION OF ESTATES OF DECEDENTS. Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(a) In the county where the deceased resided, if he had a domicile or fixed place of residence in this State.

(b) If the deceased had no domicile or fixed place of residence in this State but died in this State, then either in the county where his principal property was at the time of his death, or in the county where he died.

(c) If he had no domicile or fixed place of residence in this State, and died outside the limits of this State, then in any county in this State where his nearest of kin reside.

(d) But if he had no kindred in this State, then in the county where his principal estate was situated at the time of his death.

(e) In the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is applicant, citation shall be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.

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

Sec. 8. CONCURRENT VENUE AND TRANSFER OF PROCEEDINGS. (a) Concurrent Venue. When two or more courts have concurrent venue of an estate, the court in which application for probate proceedings thereon is first filed shall have and retain jurisdiction of the estate to the exclusion of the other court or courts. The proceedings shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless the decree admitting the will to probate or granting administration in the prior proceeding shall be recorded in the office of the county clerk of the county in which such

property is located.

(b) Proceedings in More Than One County. If proceedings for probate are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and proceedings shall thereupon be had in the proper county in the same manner as if the proceedings had originally been instituted therein.

(c) Transfer of Proceeding.

(1) Transfer for Want of Venue. If it appears to the court at any time before the final decree that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the minutes theretofore made, and administration of the estate in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(2) Transfer for Convenience of the Estate. If it appears to the court at any time before the estate is closed that it would be in the best interest of the estate, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State. The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index.

(d) Validation of Prior Proceedings. When a proceeding is transferred to another county under any provision of this Section of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

(e) Jurisdiction to Determine Venue. Any court in which there has been filed an application for proceedings in probate shall have full jurisdiction to determine the venue of such proceeding, and of any proceeding relating thereto, and its determination shall not be subject to collateral attack.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 4754, ch. 833, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 786, Sec. 1, eff. Aug. 31, 1987. Subsec. (c)(2) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 5, eff. Sept. 1, 2003.

Sec. 9. DEFECTS IN PLEADING. No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

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

Sec. 10. PERSONS ENTITLED TO CONTEST PROCEEDINGS. Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

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

Sec. 10A. NECESSARY PARTY. (a) An institution of higher education as defined by Section 61.003, Education Code, a private institution of higher education, or a charitable organization is a necessary party to a will contest or will construction suit involving a will in which the institution or organization is a distributee.

(b) If an institution or organization is a necessary party under Subsection (a) of this section, the court shall serve the institution or organization in the manner provided for service on other parties by this code.

Added by Acts 1989, 71st Leg., ch. 1035, Sec. 4, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 675, Sec. 1, eff. Sept. 1, 1991.



Sec. 10B. COMMUNICATIONS OR RECORDS RELATING TO DECEDENT'S CONDITION BEFORE DEATH. Notwithstanding the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), a person who is a party to a will contest or a proceeding in which a party relies on the mental or testamentary capacity of a decedent before the decedent's death as part of the party's claim or defense is entitled to production of all communications or records relevant to the decedent's condition before the decedent's death. On receipt of a subpoena of communications or records under this section and proof of filing of the will contest or proceeding, by file-stamped copy, the appropriate physician, hospital, medical facility, custodian of records, or other person in possession of the communications or records shall release the communications or records to the party requesting the records without further authorization. Added by Acts 1997, 75th Leg., ch. 1302, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 855, Sec. 1, eff. Sept. 1, 1999.

Sec. 10C. EFFECT OF FILING OR CONTESTING PLEADING. (a) The filing or contesting in probate court of any pleading relating to a decedent's estate does not constitute tortious interference with inheritance of the estate.

(b) This section does not abrogate any rights of a person under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 1060, Sec. 6, eff. Sept. 1, 2003.

Sec. 11. APPLICATIONS AND OTHER PAPERS TO BE FILED WITH CLERK. All applications for probate proceedings, complaints, petitions and all other papers permitted or required by law to be filed in the court in probate matters, shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number, and his official signature.

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

Sec. 12. COSTS AND SECURITY THEREFOR. (a) Applicability of Laws Regulating Costs. The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

(b) Security for Costs Required, When. When any person other than the personal representative of an estate files an application, complaint, or opposition in relation to the estate, he may be required by the clerk to give security for the probable cost of such proceeding before filing the same; or any one interested in the estate, or any officer of the court, may, at any time before the trial of such application, complaint, or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the probable costs of such proceeding. The rules governing civil suits in the county court respecting this subject shall control in such cases.

(c) Suit for Fiduciary. No security for costs shall be required of an executor or administrator appointed by a court of this state in any suit brought by him in his fiduciary character.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1985, 69th Leg., ch. 959, Sec. 4, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 957, Sec. 7, eff. Sept. 1, 1993.

Sec. 13. JUDGE'S PROBATE DOCKET. The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

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

Sec. 14. CLAIM DOCKET. The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each

column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 9, eff. Sept. 1, 1993.

Sec. 15. CASE FILES. The county clerk shall maintain a case file for each decedent's estate in which a probate proceeding has been filed. The case file must contain all orders, judgments, and proceedings of the court and any other probate filing with the court, including all:

(1) applications for the probate of wills and for the granting of administration;

(2) citations and notices, whether published or posted, with the returns thereon;

(3) wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded;

(4) bonds and official oaths;

(5) inventories, appraisements, and lists of claims;

(6) exhibits and accounts;

(7) reports of hiring, renting, or sale;

(8) applications for sale or partition of real estate and reports of sale and of commissioners of partition;

(9) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and

(10) reports of lending or investing money.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 10, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 67, Sec. 1, eff. Sept. 1, 1999.

Sec. 16. PROBATE FEE BOOK. The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable therefor, and the date on which any such costs or fees are paid.

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

Sec. 17. MAINTAINING RECORDS IN LIEU OF RECORD BOOKS. In lieu of keeping the record books described by Sections 13, 14, and 16 of this code, the county clerk may maintain the information relating to a person's or estate's probate proceedings maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Added by Acts 1999, 76th Leg., ch. 67, Sec. 1, eff. Sept. 1, 1999.

Sec. 17A. INDEX. The county clerk shall properly index the records and keep the index open for public inspection, but may not release the index from the clerk's custody.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Renumbered from V.A.T.S. Probate Code, Sec. 17 and amended by Acts 1999, 76th Leg., ch. 67, Sec. 1, eff. Sept. 1, 1999.

Sec. 18. USE OF RECORDS AS EVIDENCE. The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in preceding sections of this code, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1999, 76th Leg., ch. 67, Sec. 1, eff. Sept. 1, 1999.

Sec. 19. CALL OF THE DOCKETS. The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 11, eff. Sept. 1, 1993.

Sec. 20. CLERK MAY SET HEARINGS. Whenever, on account of the county judge's absence from the county seat, or his being on vacation, disqualified, ill, or deceased, such judge is unable to designate the time and place for hearing a probate matter pending in his court, authority is hereby vested in the county clerk of the county in which such matter is pending to designate such time and place, entering such setting on the judge's docket and certifying thereupon why such judge is not acting by himself. If, after service of such notices and citations as required by law with reference to such time and place of hearing has been perfected, no qualified judge is present for the hearing, the same shall automatically be continued from day to day until a qualified judge is present to hear and determine the matter.

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

Sec. 21. TRIAL BY JURY. In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 1685, ch. 610, Sec. 2.

Sec. 22. EVIDENCE. In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.

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

Sec. 23. DECREES AND SIGNING OF MINUTES. All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court except in cases where it is otherwise specially provided. The probate minutes shall be approved and signed by the judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, such approval shall be entered on the preceding or succeeding day.

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

Sec. 24. ENFORCEMENT OF ORDERS. The county or probate judge may enforce obedience to all his lawful orders against executors and administrators by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 12, eff. Sept. 1, 1993.

Sec. 25. EXECUTIONS. Executions in probate matters shall be directed "to any sheriff or any constable within the State of Texas," made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

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

Sec. 26. ATTACHMENTS FOR PROPERTY. Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent that the executor or administrator is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided,

however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 13, eff. Sept. 1, 1993.

Sec. 27. ENFORCEMENT OF SPECIFIC PERFORMANCE. When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

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

Sec. 28. PERSONAL REPRESENTATIVE TO SERVE PENDING APPEAL OF APPOINTMENT. Pending appeals from orders or judgments appointing administrators or temporary administrators, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, Sec. 3, eff. June 21, 1975; Acts 1993, 73rd Leg., ch. 957, Sec. 14, eff. Sept. 1, 1993.

Sec. 29. APPEAL BONDS OF PERSONAL REPRESENTATIVES. When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 15, eff. Sept. 1, 1993.

Sec. 31. BILL OF REVIEW. Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment.

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

Sec. 32. COMMON LAW APPLICABLE. The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 17, eff. Sept. 1, 1993.

Sec. 33. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF CITATION, NOTICES, AND WRITS IN PROBATE MATTERS. (a) When Citation or Notice Necessary. No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice; provided, however, that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require that notice be given, and prescribe the form and manner of service and return thereof.

(b) Issuance by the Clerk or by Personal Representative. The

county clerk shall issue necessary citations, writs, and process in probate matters, and all notices not required to be issued by personal representatives, without any order from the court, unless such order is required by a provision of this Code.

(c) Contents of Citation, Writ, and Notice. Citation and notices issued by the clerk shall be signed and sealed by him, and shall be styled "The State of Texas." Notices required to be given by a personal representative shall be in writing and shall be signed by the representative in his official capacity. All citations and notices shall be directed to the person or persons to be cited or notified, shall be dated, and shall state the style and number of the proceeding, the court in which it is pending, and shall describe generally the nature of the proceeding or matter to which the citation or notice relates. No precept directed to an officer is necessary. A citation or notice shall direct the person or persons cited or notified to appear by filing a written contest or answer, or to perform other acts required of him or them and shall state when and where such appearance or performance is required. No citation or notice shall be held to be defective because it contains a precept directed to an officer authorized to serve it. All writs and other process except citations and notices shall be directed "To any sheriff or constable within the State of Texas," but shall not be held defective because directed to the sheriff or any constable of a specific county if properly served within the named county by such officer.

(d) Where No Specific Form of Notice, Service, or Return is Prescribed, or When Provisions Are Insufficient or Inadequate. In all situations in which this Code requires that notice be given, or that a person be cited, and in which a specific method of giving such notice or of citing such person, or a specific method of service and return of such citation or notice is not given, or an insufficient or inadequate provision appears with respect to any of such matters, or when any interested person so requests, such notice or citation shall be issued, served, and returned in such manner as the court, by written order, shall direct in accordance with this Code and the Texas Rules of Civil Procedure, and shall have the same force and effect as if the manner of service and return had been specified in this Code.

(e) Service of Citation or Notice Upon Personal Representatives. Except in instances in which this Code expressly provides another method of service, any notice or citation required to be served upon any personal representative or receiver shall be served by the clerk issuing such citation or notice. The clerk shall serve the same by sending the original thereof by registered or certified mail to the attorney of record for the personal representative or receiver, but if there is no attorney of record, to the personal representative or receiver.

(f) Methods of Serving Citations and Notices.

(1) Personal Service. Where it is provided that personal service shall be had with respect to a citation or notice, any such citation or notice must be served upon the attorney of record for the person to be cited. Notwithstanding the requirement of personal service, service may be made upon such attorney by any of the methods hereinafter specified for service upon an attorney. If there is no attorney of record in the proceeding for such person, or if an attempt to make service upon the attorney was unsuccessful, a citation or notice directed to a person within this State must be served by the sheriff or constable upon the person to be cited or notified, in person, by delivering to him a true copy of such citation or notice at least ten (10) days before the return day thereof, exclusive of the date of service. Where the person to be cited or notified is absent from the State, or is a nonresident, such citation or notice may be served by any disinterested person competent to make oath of the fact. Said citation or notice shall be returnable at least ten (10) days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to same; it shall show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer, and returned to the county clerk who issued same. If in either case such citation or notice is returned with the notation that the person sought to be served, whether within or without this State, cannot be found, the clerk shall issue

a new citation or notice directed to the person or persons sought to be served and service shall be by publication.

(2) Posting. When citation or notice is required to be posted, it shall be posted by the sheriff or constable at the courthouse door of the county in which the proceedings are pending, or at the place in or near the courthouse where public notices customarily are posted, for not less than ten (10) days before the return day thereof, exclusive of the date of posting. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or any constable of the proper county, who shall post said copy as herein prescribed and return the original to the clerk, stating in a written return thereon the time when and the place where he posted such copy. The date of posting shall be the date of service. When posting of notice by a personal representative is authorized or required, the method herein prescribed shall be followed, such notices to be issued in the name of the representative, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

(3) Publication. When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceedings are pending, and said publication shall be not less than ten (10) days before the return day thereof, exclusive of the date of publication. The date of publication which said newspaper bears shall be the date of service. If no newspaper is published, printed, or of general circulation, in the county where citation or notice is to be had, service of such citation or notice shall be by posting.

(4) Mailing.

(A) When any citation or notice is required or permitted to be served by registered or certified mail, other than notices required to be given by personal representatives, the clerk shall issue such citation or notice and shall serve the same by sending the original thereof by registered or certified mail. Any notice required to be given by a personal representative by registered or certified mail shall be issued by him, and he shall serve the same by sending the original thereof by registered or certified mail. In either case the citation or notice shall be mailed with instructions to deliver to the addressee only, and with return receipt requested. The envelope containing such citation or notice shall be addressed to the attorney of record in the proceeding for the person to be cited or notified, but if there is none, or if returned undelivered, then to the person to be cited or notified. A copy of such citation or notice, together with the certificate of the clerk, or of the personal representative, as the case may be, showing the fact and date of mailing, shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When any citation or notice is required or permitted to be served by ordinary mail, the clerk, or the personal representative when required by statute or by order of the court, shall serve the same by mailing the original to the person to be cited or notified. A copy of such citation or notice, together with a certificate of the person serving the same showing the fact and time of mailing, shall be filed and recorded.

(C) When service is made by mail, the date of mailing shall be the date of service. Service by mail shall be made not less than twenty (20) days before the return day thereof, exclusive of the date of service.

(D) If a citation or notice served by mailing is returned undelivered, a new citation or notice shall be issued, and such citation or notice shall be served by posting.

(g) Return of Citation or Notice. All citations and notices issued by the clerk and served by personal service, by mail, by posting, or by publication, shall be returnable to the court from which issued on the first Monday after the service is perfected.

(h) Sufficiency of Return in Cases of Posting. In any probate matter where citation or notice is required to be served by posting, and such citation or notice is issued in conformity with the applicable provision of this Code, the citation or notice and the service and return thereof shall be sufficient and valid if any sheriff or constable posts a copy or copies of such citation or notice at the place or places prescribed by this Code on a day which is sufficiently prior to the return day named in such citation or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day of such

citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time elapses for which such citation or notice is required to be posted, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof, even though such return is made, and such citation or notice is returned into court, on the same day it is issued.

(i) Proof of Service. Proof of service in all cases requiring notice or citation, whether by publication, posting, mailing, or otherwise, shall be filed before the hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the affidavit of the person. Proof of service by publication shall be made by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied in it a copy of the published notice or citation. In the case of service by mail, proof shall be made by the certificate of the clerk, or the affidavit of the personal representative or other person making such service, stating the fact and time of mailing. In the case of service by registered or certified mail, the return receipt shall be attached to the certificate, if a receipt has been returned.

(j) Request for Notice. At any time after an application is filed for the purpose of commencing any proceeding in probate, including, but not limited to, a proceeding for the probate of a will, grant of letters testamentary or of administration and determination of heirship, any person interested in the estate may file with the clerk a request in writing that he be notified of any and all, or of any specifically designated, motions, applications, or pleadings filed by any person, or by any particular persons specifically designated in the request. The fees and costs for such notices shall be borne by the person requesting them, and the clerk may require a deposit to cover the estimated costs of furnishing such person with the notice or notices requested. The clerk shall thereafter send to such person by ordinary mail copies of any of the documents specified in the request. Failure of the clerk to comply with the request shall not invalidate any proceeding.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, Sec. 1, eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 967, ch. 173, Sec. 1, eff. Jan. 1, 1972; Acts 1993, 73rd Leg., ch. 957, Sec. 18, eff. Sept. 1, 1993.

Sec. 34. SERVICE ON ATTORNEY. If any attorney shall have entered his appearance of record for any party in any proceeding in probate, all citations and notices required to be served on the party in such proceeding shall be served on the attorney, and such service shall be in lieu of service upon the party for whom the attorney appears. All notices served on attorneys in accordance with this section may be served by registered or certified mail or by delivery to the attorney in person. They may be served by a party to the proceeding or his attorney of record, or by the proper sheriff or constable, or by any other person competent to testify. A written statement by an attorney of record, or the return of the officer, or the affidavit of any other person showing service shall be prima facie evidence of the fact of service.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 970, ch. 173, Sec. 2, eff. Jan. 1, 1972.

Sec. 34A. ATTORNEYS AD LITEM. Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem to represent the interests of a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir in any probate proceeding. Each attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

Added by Acts 1983, 68th Leg., p. 747, ch. 178, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 467, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 957, Sec. 19, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 664, Sec. 1, eff. Sept. 1, 2001.

Sec. 35. WAIVER OF NOTICE. Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of

notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, Sec. 20, eff. Sept. 1, 1993.

Sec. 36. DUTY AND RESPONSIBILITY OF JUDGE. (a) It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court and other officers of the court perform the duty enjoined upon them by law pertaining to such estates. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates and the solvency of the bonds of personal representatives of estates. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

(b) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, decedent, or personal representative, including social security numbers, in addition to identifying information the applicant or fiduciary is required to produce under this code. The court shall maintain the information required under this subsection, and the information may not be filed with the clerk.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 979, ch. 375, Sec. 1, eff. June 19, 1975; Acts 1993, 73rd Leg., ch. 957, Sec. 21, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1302, Sec. 3, eff. Sept. 1, 1997.

Sec. 36B. EXAMINATION OF DOCUMENTS OR SAFE DEPOSIT BOX WITH COURT ORDER. (a) A judge of a court having probate jurisdiction of a decedent's estate may order a person to permit a court representative named in the order to examine a decedent's documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain a will of the decedent, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's documents or safe deposit box in the presence of:

(1) the judge ordering the examination or an agent of the judge; and

(2) the person who has possession or control of the documents or who leased the safe deposit box or, if the person is a corporation, an officer of the corporation or an agent of an officer.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, Sec. 1, eff. Sept. 1, 1981.

Sec. 36C. DELIVERY OF DOCUMENT WITH COURT ORDER. (a) A judge who orders an examination by a court representative of a decedent's documents or safe deposit box under Section 36B of this code may order the person who possesses or controls the documents or who leases the safe deposit box to permit the court representative to take possession of the following documents:

(1) a will of the decedent;

(2) a deed to a burial plot in which the decedent is to be buried; or

(3) an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall deliver:

(1) the will to the clerk of a court that has probate jurisdiction and that is located in the same county as the court of the judge who ordered the examination;

(2) the burial plot deed to the person designated by the judge in the order for the examination; or

(3) the insurance policy to a beneficiary named in the policy.

(c) A court clerk to whom a will is delivered under Subsection (b) of this section shall issue a receipt for the will to the court representative who delivers it.



Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, Sec. 1, eff. Sept. 1, 1981.

Sec. 36D. EXAMINATION OF DOCUMENT OR SAFE DEPOSIT BOX WITHOUT COURT ORDER. (a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit any of the following persons to examine the document or the contents of the safe deposit box:

- (1) the spouse of the decedent;
- (2) a parent of the decedent;
- (3) a descendant of the decedent who is at least 18 years old; or
- (4) a person named as executor of the decedent's estate in a copy of a document that the person has and that appears to be a will of the decedent.

(b) The examination shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, Sec. 1, eff. Sept. 1, 1981.

Sec. 36E. DELIVERY OF DOCUMENT WITHOUT COURT ORDER. (a) A person who permits an examination of a decedent's document or safe deposit box under Section 36D of this code may deliver:

(1) a document appearing to be the decedent's will to the clerk of a court that has probate jurisdiction and that is located in the county in which the decedent resided or to the person named in the document as an executor of the decedent's estate;

(2) a document appearing to be a deed to a burial plot in which the decedent is to be buried or appearing to give burial instructions to the person making the examination; or

(3) a document appearing to be an insurance policy on the decedent's life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document appearing to be a will that the person delivers under Subsection (a) of this section. The person shall keep the copy for four years after the day of delivery.

(c) A person may not deliver a document under Subsection (a) of this section unless requested to do so by the person examining the document and unless the person examining the document issues a receipt for the document to the person who is to deliver it.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, Sec. 1, eff. Sept. 1, 1981.

Sec. 36F. RESTRICTION ON REMOVAL OF CONTENTS OF SAFE DEPOSIT BOX. A person may not remove the contents of a decedent's safe deposit box except as provided by Section 36C or 36E of this code or except as provided by another law.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, Sec. 1, eff. Sept. 1, 1981.