

PROBATE CODE

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Sec. 57. WHO MAY EXECUTE A WILL. Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 801, ch. 334, Sec. 1, eff. Aug. 28, 1967.

Sec. 58. INTERESTS WHICH MAY PASS UNDER A WILL. (a) Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in property the person has at the time of the person's death, subject to the limitations prescribed by law.

(b) A person who makes a last will and testament may:

(1) disinherit an heir; and

(2) direct the disposition of property or an interest passing under the will or by intestacy.

(c) A legacy of personal property does not include any contents of the property unless the will directs that the contents are included in the legacy. A devise of real property does not include any personal property located on or associated with the real property or any contents of personal property located on the real property unless the will directs that the personal property or contents are included in the devise.

(d) In this section:

(1) "Contents" means tangible personal property, other than titled personal property, found inside of or on a specifically bequeathed or devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that do not require a formal transfer of title and that are located in another item of tangible personal property such as a cedar chest or other furniture.

(2) "Titled personal property" includes all tangible personal property represented by a certificate of title, certificate of ownership, written label, marking, or designation that signifies ownership by a person. The term includes a motor vehicle, motor home, motorboat, or other similar property that requires a formal transfer of title.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 642, Sec. 1, eff. Sept. 1, 1995.

Sec. 58a. DEVISES OR BEQUESTS TO TRUSTEES. (a) A testator may validly devise or bequeath property in a will to the trustee of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and another person, or by another person, including a funded or unfunded life insurance trust, in which the settlor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise or bequest to the trustee, if the trust is identified in the testator's will and its terms are in a written instrument, other than a will, that is executed before, with, or after the execution of the testator's will or in another person's will if that other person has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) A devise or bequest is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(c) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described by Subsection (a) of this section is not held under a testamentary trust of the testator. The property becomes a part of the trust to which it is devised or bequeathed and must be administered and disposed of in accordance with the provisions of the instrument establishing the trust, including any amendments to the instrument made before or after the testator's death.

(d) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

Added by Acts 1961, 57th Leg., p. 43, ch. 29, Sec. 1. Amended by

Acts 1993, 73rd Leg., ch. 846, Sec. 7, eff. Sept. 1, 1993.

Sec. 58b. DEVISES AND BEQUESTS THAT ARE VOID. (a) A devise or bequest of property in a will is void if the devise or bequest is made to:

(1) an attorney who prepares or supervises the preparation of the will;

(2) a parent, descendant of a parent, or employee of the attorney described by Subdivision (1) of this subsection; or

(3) a spouse of an individual described by Subdivision (1) or (2) of this subsection.

(b) This section does not apply to:

(1) a devise or bequest made to a person who:

(A) is the testator's spouse;

(B) is an ascendant or descendant of the testator; or

(C) is related within the third degree by consanguinity or affinity to the testator; or

(2) a bona fide purchaser for value from a devisee in a will. Added by Acts 1997, 75th Leg., ch. 1054, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 527, Sec. 1, eff. June 11, 2001.

Subsec. (a) amended by Acts 2005, 79th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2005.

Sec. 58c. EXERCISE OF POWER OF APPOINTMENT. A testator may not exercise a power of appointment through a residuary clause in the testator's will or through a will providing for general disposition of all the testator's property unless:

(1) the testator makes a specific reference to the power in the will; or

(2) there is some other indication in writing that the testator intended to include the property subject to the power in the will.

Added by Acts 2003, 78th Leg., ch. 1060, Sec. 8, eff. Sept. 1, 2003.

Sec. 59. REQUISITES OF A WILL. (a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths under the laws of this State. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Testator

Witness

Witness

Subscribed and sworn to before me by the said _____,
testator, and by the said _____ and _____,
witnesses, this _____ day of _____ A.D.
_____.

(SEAL)

(Signed)

(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will is a "self-proved will." Substantial compliance with the form of such affidavit shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

(c) A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 936, ch. 412, Sec. 1, eff. June 17, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 5, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 974, ch. 173, Sec. 5, eff. Jan. 1, 1972; Acts 1991, 72nd Leg., ch. 895, Sec. 7, eff. Sept. 1, 1991.

Sec. 59A. CONTRACTS CONCERNING SUCCESSION. (a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by:

(1) provisions of a written agreement that is binding and enforceable; or

(2) provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

Added by Acts 1979, 66th Leg., p. 1746, ch. 713, Sec. 10, eff. Aug. 27, 1979.

Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 9, eff. Sept. 1, 2003.

Sec. 60. EXCEPTION PERTAINING TO HOLOGRAPHIC WILLS. Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, Sec. 6, eff. June 12, 1969.

Sec. 61. BEQUEST TO WITNESS. Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

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

Sec. 62. CORROBORATION OF TESTIMONY OF INTERESTED

WITNESS. In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.

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

Sec. 63. REVOCATION OF WILLS. No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

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

Sec. 64. CAPACITY TO MAKE A NUNCUPATIVE WILL. Any person who is competent to make a last will and testament may dispose of his personal property by a nuncupative will made under the conditions and limitations prescribed in this Code.

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

Sec. 65. REQUISITES OF A NUNCUPATIVE WILL. No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his home or where he has resided for ten days or more next preceding the date of such will, except when the deceased is taken sick away from home and dies before he returns to such home; nor when the value exceeds Thirty Dollars, unless it be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

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

Sec. 67. PRETERMITTED CHILD. (a) Whenever a pretermitted child is not mentioned in the testator's will, provided for in the testator's will, or otherwise provided for by the testator, the pretermitted child shall succeed to a portion of the testator's estate as provided by Subsection (a)(1) or (a)(2) of this section.

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the parent of the pretermitted child.

(B) Provision, whether vested or contingent, is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate to which the pretermitted child is entitled is limited to the disposition made to children under the will.

(ii) The pretermitted child shall receive such share of the testator's estate, as limited in Subparagraph (i), as he would have received had the testator included all pretermitted children with the children upon whom benefits were conferred under the will, and given an equal share of such benefits to each such child.

(iii) To the extent that it is feasible, the interest of the pretermitted child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred upon his children under the will.

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(c) A "pretermitted child," as used in this section, means a child of a testator who, during the lifetime of the testator, or after his death, is born or adopted after the execution of the will of the testator.

(d) For the purposes of this section, a child is provided for or a provision is made for a child if a disposition of property to or for the benefit of the pretermitted child, whether vested or contingent, is made:

(1) in the testator's will, including a devise or bequest to a trustee as authorized by Section 58(a) of this code; or

(2) outside the testator's will and is intended to take effect at the testator's death.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1989, 71st Leg., ch. 1035, Sec. 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 895, Sec. 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, Sec. 8, eff. Sept. 1, 1993.

Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1060, Sec. 10, eff. Sept. 1, 2003.

Sec. 68. PRIOR DEATH OF LEGATEE. (a) If a devisee who is a descendant of the testator or a descendant of a testator's parent is deceased at the time of the execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator by Section 47 of this code or otherwise, the descendants of the devisee who survived the testator by 120 hours take the devised property in place of the devisee. The property shall be divided into as many shares as there are surviving descendants in the nearest degree of kinship to the devisee and deceased persons in the same degree whose descendants survived the testator. Each surviving descendant in the nearest degree receives one share, and the share of each deceased person in the same degree is divided among his descendants by representation. For purposes of this section, a person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee unless the person died before the date the will was executed.

(b) Except as provided by Subsection (a) of this section, if a devise or bequest, other than a residuary devise or bequest, fails for any reason, the devise or bequest becomes a part of the residuary estate.

(c) Except as provided by Subsection (a) of this section, if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate.

(d) Except as provided by Subsection (a) of this section, if all residuary devisees are dead at the time of the execution of the will, fail to survive the testator, or are treated as if they predeceased the testator, the residuary estate passes as if the testator had died intestate.

(e) This section applies unless the testator's last will and testament provides otherwise. For example, a devise or bequest in the testator's will such as "to my surviving children" or "to such of my children as shall survive me" prevents the application of Subsection (a) of this section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 9, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, Sec. 9, eff. Sept. 1, 1993.

Sec. 69. VOIDNESS ARISING FROM DIVORCE. (a) If, after making a will, the testator is divorced or the testator's marriage is annulled, all provisions in the will in favor of the testator's former spouse, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, must be read as if the former spouse failed to survive the testator, and shall be null and void and of no effect unless the will expressly provides otherwise.

(b) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, Sec. 12, eff. Aug. 27, 1979; Acts 1995, 74th Leg., ch. 642, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1302, Sec. 5, eff. Sept. 1, 1997.

Sec. 69A. CHANGING WILLS. (a) A court may not prohibit a person from executing a new will or a codicil to an existing will.

(b) Notwithstanding Section 3(g) of this code, in this section, "court" means a constitutional county court, district court, or statutory county court, including a statutory probate court.

Added by Acts 1993, 73rd Leg., ch. 120, Sec. 1, eff. Sept. 1, 1993.

Sec. 70. PROVISION IN WILL FOR MANAGEMENT OF SEPARATE PROPERTY. The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep testator's separate property together until each of the several distributees shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and subject to such other restrictions as are imposed by such will; provided, that any child or distributee entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

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

Sec. 70A. INCREASE IN SECURITIES; ACCESSIONS. (a) Unless the will clearly provides otherwise, a devise of securities that are owned by the testator on the date of execution of the will includes the following additional securities subsequently acquired by the testator as a result of the testator's ownership of the devised securities:

(1) securities of the same organization acquired because of action initiated by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment; and

(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment.

(b) Unless the will clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities and accruing before death, whether or not the distribution is paid before death.

(c) In this section:

(1) "Securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), and its subsequent amendments.

(2) "Stock" means securities.

Added by Acts 1993, 73rd Leg., ch. 846, Sec. 10, eff. Sept. 1, 1993.

Sec. 71. DEPOSIT OF WILL WITH COURT DURING TESTATOR'S LIFETIME. (a) Deposit of Will. A will may be deposited by the person making it, or by another person for him, with the county clerk of the county of the testator's residence. Before accepting any will for deposit, the clerk may require such proof as shall be satisfactory to him concerning the testator's identity and residence. The clerk, on being paid a fee of Three Dollars therefor, shall receive and keep the will, and shall give a certificate of deposit for it. All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

(b) How Will Shall Be Enclosed. Every will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper, which shall have indorsed thereon "Will of," followed by the name, address and signature of the testator. The wrapper must also be indorsed with the name and current address of each person who shall be notified of the deposit of the will after the death of the testator.

(c) Index To Be Kept of All Wills Deposited. Each county clerk shall keep an index of all wills so deposited with him.

(d) To Whom Will Shall Be Delivered. During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order. Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

(e) Proceedings Upon Death of Testator. If there shall be submitted to the clerk an affidavit to the effect that the testator of any will deposited with the clerk has died, or if the clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince him that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the indorsement of the wrapper of the will that the will is on deposit in his office, and, upon request, he shall deliver the will to such person or persons, taking a receipt therefor. If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. If no executor is named in the will, or if the person so named is deceased, or fails to take the will within thirty days after the clerk's notice to him is mailed, or if notice to the person so named is returned undelivered, the clerk shall give notice by registered mail, with return receipt requested, to the devisees and legatees named in the will that the will is on deposit, and, upon request, the clerk shall deliver the will to any or all of such devisees and legatees.

(f) Depositing Has No Legal Significance. These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

(g) Depositing Does Not Constitute Notice. The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 71A. NO RIGHT TO EXONERATION OF DEBTS; EXCEPTION. (a) Except as provided by Subsection (b) of this section, a specific devise passes to the devisee subject to each debt secured by the property that exists on the date of the testator's death, and the devisee has no right to exoneration from the testator's estate for payment of the debt.

(b) A specific devise does not pass to the devisee subject to a debt described by Subsection (a) of this section if the will in which the devise is made specifically states that the devise passes without being subject to the debt. A general provision in the will stating that debts are to be paid is not a specific statement for purposes of this subsection.

(c) Subsection (a) of this section does not affect the rights of creditors provided under this code or the rights of other persons or entities provided under Part 3, Chapter VIII, of this code. If a creditor elects to have a debt described by Subsection (a) of this section allowed and approved as a matured secured claim, the claim shall be paid in accordance with Section 306(c-1) of this code.

Added by Acts 2005, 79th Leg., ch. 551, Sec. 3, eff. Sept. 1, 2005.