

## **Real Property, Probate & Trust Law Section of the State Bar of Texas**

### **2021 Proposed Legislation Relating to Decedents' Estates**

1. Section 1 of the proposed bill amends Texas Estates Code (TEC) Section 22.027 to expand, clean-up and modernize the definition of “person.”
2. Sections 2-7, 9, 12, 15, 31-34, 36-41, and 45-47 of the proposed bill amend TEC Sections 22.035, 51.052, 51.055, 51.056, 51.103, 56.002, 113.251, 202.051, 202.203, 308.002, 308.051, 308.053, 308.054, 356.654, 361.052, 362.005, 403.056, 404.0035, 452.006, 501.003, 505.005 and 505.101 to provide alternatives to registered or certified mail to meet notice requirements under the Code. The provisions allow the alternative of a “qualified delivery method,” which includes private delivery service that are available to the general public, as timely and reliable as United States mail, and keeps an electronic database of deliveries.
3. Section 8 of the proposed bill amends TEC Section 101.052 to clarify which community property assets of a married couple are subject to certain creditors’ claims when a spouse dies. This proposal does not change existing law.
4. Section 10 of the proposed bill repeals TEC Sections 123.052-123.056 and amends 123.051 to direct readers to Subchapter E, Chapter 112 of the Trust Code where the provisions of TEC Sections 123.051-123.056, which address effects of divorce on certain trust dispositions, are now more appropriately located.
5. Section 11 of the proposed bill amends TEC Section 202.005 to clarify that the required listing of estate property in an heirship proceeding only applies to property that would be governed by the judgment in the proceeding.
6. Sections 13 and 20 of the proposed bill amend TEC Sections 202.056 and 258.002 to allow certain persons to waive citation on behalf of a minor under the age of 16 and allow minors 16 years of age or older to waive citation in proceedings to declare heirship and in proceedings to probate a copy of a written will not produced in court. This modifies existing law, which requires personal service on all minors over the age of 12.
7. Section 14 of the proposed bill amends TEC Section 202.151 to clarify that an affidavit of heirship described by TEC Section 203.001 can serve as testimony in a proceeding to declare heirship. This would allow the Court to consider as evidence a sworn affidavit of heirship that has been of record for 5 or more years in the deed records of the county.
8. Sections 16, 18 and 21 of the proposed bill amend TEC Sections 256.052, 257.051 and 301.052 to remove the requirement for an applicant to list the last three digits of his or her social security number and driver’s license number in applications to probate wills and applications for letters testamentary or of administration.
9. Sections 17, 19, 22, and 23 of the proposed bill amend TEC Sections 256.158, 258.001, 301.155 and 303.001 to allow courts to approve routine, uncontested probate applications

by written submission. Under the proposal, courts will have the flexibility to avoid the requirement of a hearing when there is no objection. The proposal does not require courts to accept applications to probate by written submission.

10. Sections 24-30 of the proposed bill amend TEC Sections 305.001-305.003, 305.051-305.053 and 305.055 to allow a person to make an unsworn declaration in lieu of taking a sworn oath in order to qualify as a personal representative. This will allow greater flexibility for personal representatives to qualify if no notary or clerk is available to take their oath, or if it is inadvisable for health reasons for the personal representative to appear in person before the notary or clerk.
11. Section 35 of the proposed bill amends TEC Section 356.105(a) to apply existing provisions that address the sale of real estate in a dependent administration to the sale of personal property in a dependent administration. The amendments are not meant to make substantive changes to existing provisions.
12. Sections 42-44 of the proposed bill amend TEC Sections 453.003, 453.006 and 453.007 to remove references to community debts and community obligations, which are meaningless and misleading in the context of the administration of a decedent's estate.
13. Section 48 contains the effective date of the proposed bill.

REPTL has received no statements of position on these proposed changes, and has submitted these proposals to all sections and committees of the State Bar of Texas, as required by its Legislative Policy. If any comments are received, they will be forwarded to the State Bar.

Real Estate, Probate, and Trust Law Section  
State Bar of Texas

By: \_\_\_\_\_

Craig Hopper, Co-Chair, Estate & Trust  
Legislative Affairs Committee

Date: \_\_\_\_\_