

# 2011 Texas “Probate and Trust” Legislative Preview

## Proposed Statutory Changes Affecting Probate, Guardianships, Trusts, Powers of Attorneys, and Other Areas of Interest to Estate and Probate Practitioners

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While this version was last updated **August 18, 2010**, the paper will be updated frequently through the end of the 2011 legislative session. You may check for a more recent version of the paper at:

[www.brownmccarroll.com/public/documents/2011\\_REPTL\\_Update.pdf](http://www.brownmccarroll.com/public/documents/2011_REPTL_Update.pdf)

**Estate Planning Council of Central Texas  
Austin, Texas  
August 24, 2010**





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**Legal Experience**

Bill Pargaman has been certified by the Texas Board of Legal Specialization as a specialist in Estate Planning and Probate Law. He is also a Fellow in the American College of Trust and Estate Counsel. Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues. His practice also includes the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities.

**Education**

- i Doctor of Jurisprudence, *with honors*, University of Texas School of Law, 1981, Order of the Coif, Chancellors
- i Bachelor of Arts, Government, *with high honors*, University of Texas at Austin, 1978, Phi Beta Kappa

**Professional Licenses**

- i Attorney at Law, Texas, 1981

**Court Admissions**

- i United States Tax Court

**Speeches and Publications**

Mr. Pargaman has been a speaker or author at numerous seminars, including:

- i State Bar of Texas, Advanced Estate Planning and Probate Course, Estate Planning and Probate Drafting Course, and Advanced Guardianship Law Course
- i Real Estate, Probate and Trust Law Section Annual Meeting
- i University of Houston Law Foundation, General Practice Institute, and Wills and Probate Institute
- i South Texas College of Law, Wills and Probate Institute
- i Austin Bar Association, Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- i Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- i Houston Bar Association Probate, Trusts & Estate Section
- i Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- i Texas Bankers Association, Advanced Trust Forum
- i Estate Planning Council of Central Texas, Amarillo Area Estate Planning Council, Corpus Christi Estate Planning Council, East Texas Estate Planning Council, and South Plains Trust & Estate Council
- i Austin Association of Life Underwriters
- i Austin Chapter, University of Texas Medical Branch (Galveston) Alumni Association
- i SAGE Group, University of Texas

**Professional Memberships and Activities**

- i American College of Trust and Estate Counsel, Fellow
- i State Bar of Texas
  - i Real Estate, Probate and Trust Law Section, Member
  - i Real Estate, Probate, and Trust Law Council, Member, 2004–2008
  - i Legislative – Probate Committee, Member, 2000–Present (Co-Chair, 2008–Present)
  - i Trust Code Committee, Member, 2000–Present (Chair, 2004–2008)
  - i Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
- i Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997

## **2011 Texas “Probate and Trust” Legislative Preview**

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- i Estate Planning Council of Central Texas, Member (President, 1991-1992)
- i Austin Bar Association, Member
  - i Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

### **Honors**

- i Listed in *The Best Lawyers in America*®
- i Listed in *Texas Super Lawyers* (Texas Monthly)
- i Listed in *The Best Lawyers in Austin* (Austin Monthly)

### **Community Involvement**

- i St. Stephen’s Episcopal School Professional Advisory Council, Member
- i City of Austin, XERISCAPE Advisory Board, Past Member
- i Volunteer Guardianship Program of Family Eldercare, Inc. of Austin, Past Member, Advisory Board

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### 1. Preliminary Stuff .

**1.1. Introduction and Scope.** The 82<sup>nd</sup> Regular Session of the Texas Legislature will begin on January 11, 2011, and will end on May 30, 2011. This paper presents a summary of the bills the author expects will be filed relating to probate (*i.e.*, decedents’ estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. However, those issues are relegated to the subtitle of this paper due to their length, and the main title is limited to “probate and trust,” as in the “Real Estate, *Probate and Trust Law Section*” of the State Bar of Texas. Issues of interest to elder law practitioners are touched upon, but are not a focus of this paper.

**1.2. Acknowledgments.** A lot of the effort in the 2011 session, as in past sessions, will come from the Real Estate, Probate and Trust Law Section of the State Bar of Texas (“REPTL”). REPTL, with its approximately 7,000 members, has been active in proposing legislation in this area for more than 25 years. During the past two years, its Council worked hard to come up with a package which addresses the needs of its members and the public, and continues to work hard to get the package enacted into law. Thanks go to:

- i Harry Wolff of San Antonio, Immediate Past Section Chair
- i Craig Adams of Tyler, Section Chair-Elect and Chair – Power of Attorney Committee
- i Bill Pargaman of Austin, Chair, Legislative – Probate Committee<sup>1</sup>
- i Glenn Karisch of Austin, Past Section Chair (2007-2008), Co-Chair, Legislative – Probate Committee, and a past author of this article<sup>2</sup>

- i Jim Woo of San Antonio, Past Chair – Decedents’ Estates Committee
- i Tina Green of Texarkana, Current Chair – Decedents’ Estates Committee
- i Deborah Green of Austin, Chair – Guardianship Committee and Co-Chair, Guardianship Recodification Committee
- i Linda Goehrs of Houston, Co-Chair, Guardianship Recodification Committee
- i Shannon Guthrie of Dallas, Chair – Trust Code Committee
- i Clint Hackney of Austin, Lobbyist
- i Barbara Klitch of Austin, who provides invaluable service tracking legislation for REPTL

REPTL is helped along the way by the State Bar, its Board of Directors, and its excellent staff (in particular, KaLyn Laney, the Bar’s Director of Governmental Relations).

REPTL works closely with the Texas Academy of Probate and Trust Lawyers (Al Golden of Austin, Chair, Charles Giraud of Houston, Treasurer, and Clint Hackney). The Academy is a group of attorneys who are Board Certified in Estate Planning and Probate Law or Fellows of the American College of Trust and Estate Counsel (ACTEC) (or both) who go the extra mile and help support quality legislation in this area. Attorneys who are eligible for membership but who are not yet members should consider supporting this fine organization. **You’ll find a membership application for the Academy at the end of this paper.**

Other groups have an interest in legislation in this area, and REPTL tries to work with them to mutual

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<sup>1</sup> The chutzpah of an author who thanks himself!

<sup>2</sup> Preparation of this article is an evolutionary process, and thanks also go to Glenn Karisch, Jerry Frank

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Jones, and Al Golden, all of Austin and prior Legislative Chairs, who are authors of previous incarnations of this article.

advantage. These include the statutory probate judges (Judge Guy Herman of Austin, Presiding Statutory Probate Judge) and the Wealth Management and Trust Division of the Texas Bankers Association (Leslie Amann of Houston, Chair, Deborah Cox of Dallas, Governmental Relations Chair, and John Brigance, Executive Director).

Last, and of course not least, are the legislators and their capable staffs. In the 2009 session, Rep. Will Hartnett of Dallas, and Senator Kirk Watson of Austin, together with their staffs, were particularly helpful. Currently, the Chairs of the two committees that most of REPTL’s legislation must pass through are Rep. Todd Hunter of Corpus Christi, Chair of the House Committee on Judiciary & Civil Jurisprudence, and Senator Chris Harris of Arlington, the new (as of July, 2010) Chair of the Senate Committee on Jurisprudence.

Thanks go to all of these persons and the many others who have helped in the past and will continue to do so in the future.

Hopefully, the effort that goes into the legislative process will become apparent to the reader. In the best of circumstances, this effort results in passing good bills and blocking bad ones. But in the real world of legislating, the best of circumstances is never realized.

## 2. The Players.

The *dramatis personae* in our legislative drama are many and varied:

**2.1. REPTL.** The Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting through its Council. Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL-carried legislation. REPTL is not allowed to sponsor legislation or oppose legislation without the approval of the Board of Directors of the State Bar. There is no provision to support legislation offered by someone other than REPTL, and the ability of REPTL to react during the legislative session is hampered by the necessity for Bar approval. REPTL is seeking or has received permission to carry the proposals discussed in this paper that are identified as 2011 REPTL proposals. REPTL has hired Clint Hackney to assist the Section obtain passage of its legislative proposals.

**2.2. The Academy.** As noted above, the Texas Academy of Probate and Trust Lawyers, a non-profit § 501(c)(6) organization composed of dues-paying members who are either Board Certified in Estate Planning and Probate Law or Fellows of the American College of Trust and Estate Counsel (or both). Unfettered by Bar control, the Academy can react to legislation, negotiate compromises, or oppose or support legislation. One of its primary missions is to support REPTL legislation and legislation approved by the REPTL Council which does not have State Bar approval for one reason or another. The Academy has hired Clint Hackney for many sessions. Clint has worked very hard, and has been a major contributor to the Academy’s success. The author and Glenn Karisch wear hats representing both REPTL and the Academy and are the principal volunteers in the legislative process. **As noted above, an Academy membership application is attached at the end of this paper for those eligible and interested.**

**2.3. The Statutory Probate Judges.** The Texas Statutory Probate Judges hear the vast majority of probate and guardianship cases. Judge Guy Herman of the Probate Court No. 1 of Travis County (Austin) is the Presiding Statutory Probate Judge and has been very active in promoting legislative solutions to problems in our area for many years.

**2.4. The Texas Bankers Association.** The Wealth Management and Trust Division of the Texas Bankers Association (“TBA”) represents the interests of corporate fiduciaries in Texas. While the interests of REPTL and TBA do not always coincide, the two groups have had an excellent working relationship during the past several sessions.

**2.5. The Texas Legislative Council.** Among other duties, the Texas Legislative Council provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by the Legislative Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision program, the Legislative Council has embarked on, and is the primary drafter of, a nonsubstantive revision of the Texas Probate Code (discussed below). The guardianship portions of the Probate Code proposed for nonsubstantive revision by the 82<sup>nd</sup> Legislature

are under the direction of Anne Peters of the Legislative Council's legal staff. Questions, comments, or suggestions relating to the project may be directed to Ms. Peters at P.O. Box 12128, Austin, Texas 78711, at 512-463-1155, or at [anne.peters@tlc.state.tx.us](mailto:anne.peters@tlc.state.tx.us).

**2.6. The Authors and Sponsors.** All legislation needs an author, the Representative or Senator who introduces the legislation. A sponsor is the person who introduces a bill from the other house in the house of which he or she is a member. Many bills have authors in both houses originally, but either the House or Senate version will eventually be voted out if it is to become law; and so, for example, the Senate author of a bill may become the sponsor of a companion House bill when it reaches the Senate. In any event, the sponsor or author controls the bill and its fate in their respective house. Without the dedication of the various authors and sponsors, much of the legislative success of this session would not have been possible. The unsung heroes are the staffs of the legislators, who make sure that the bill does not get off track.

### **3. The Process.**

**3.1. The Genesis of REPTL's Package.** REPTL<sup>3</sup> begins work on its legislative package shortly after the previous legislative session ends. In August or September of odd-numbered years, the chairs of the main REPTL legislative committees (Decedents' Estates, Guardianship, Trust Code, and Powers of Attorney) put together lists of proposals for discussion by their committees. These items are usually gathered from a variety of sources. They may be ideas that REPTL Council or committee members come up with on their own, or they may be suggestions from practitioners around the state, accountants, law professors, legislators, judges – you name it. Most suggestions usually receive at least some review at the committee level.

**3.2. Preliminary Approval by the REPTL Council.** The full "PTL" or probate, guardianship, and trust law side of the REPTL Council reviews each committee's suggestions and gives preliminary approval (or rejection) to those proposals at its Fall

meeting (usually in September or October) in odd-numbered years. Draft language may or may not be available for review at this stage – this step really involves a review of concepts, not language.

**3.3. Actual Language is Drafted by the Committees, With Council Input and Approval.** Following the Fall Council meeting, the actual drafting process usually begins by the committees. Proposals may undergo several redrafts as they are reviewed by the full Council at subsequent meetings. By the Spring meeting of the Council in even-numbered years (usually in April), language is close to being final, so that final approval by the Council at its annual meeting held in conjunction with the State Bar's Annual Meeting is mostly pro forma. Note that items may be added to or removed from the legislative package at any time during this process as issues arise.

**3.4. REPTL's Package is Submitted to the Bar.** In order to obtain permission to support legislation, the entire REPTL package is submitted to the other substantive law sections of the State Bar for review and comment in early July. This procedure is designed to assure that legislation with the State Bar's "seal of approval" will be relatively uncontroversial and will further the State Bar's goal of promoting the interests of justice.

**3.5. Legislative Policy Committee Review.** Following a comment period (and sometimes revisions in response to comments received), REPTL representatives appear before the State Bar's Legislative Policy Committee in August to explain and seek approval for REPTL's legislative package.

**3.6. State Bar Board of Directors Approval.** Assuming REPTL's package receives preliminary approval from the State Bar's Legislative Policy Committee, it is submitted to the full Board of Directors of the State Bar for approval in September. At times, REPTL may not receive approval of portions of its package. In these cases, REPTL usually works to satisfy any concerns raised, and then seeks approval from the full Board of Directors through an appeal process. **Note that until REPTL receives Board of Directors approval for its legislative package, it is not officially "REPTL's package." Therefore, the REPTL proposals described in this paper are subject to revision or even elimination following completion of this approval process.**

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<sup>3</sup> Note that the "RE" or real estate side of REPTL usually does not have a legislative package, but is very active in monitoring legislation filed in its areas of interest. In 2011, it will propose an act relating to assignment of rents.

**3.7. REPTL is Ready to Go.** After REPTL receives approval from the State Bar’s Board of Directors to carry its package, it then meets with appropriate Representatives and Senators to obtain sponsors, who submit the legislation to the Legislative Council for review, revision, and drafting in bill form. REPTL’s legislation is usually filed (in several different bills) in the early days of the sessions that begin in January of odd-numbered years. In order to avoid the logjam that doomed some of REPTL’s 2009 legislation, REPTL hopes that most, if not all, of its proposals will be prefiled before the 2011 session begins.

**3.8. This Year’s REPTL Package.** The 2011 REPTL package will include a Decedents’ Estates bill, a Guardianship bill, a Trust Code bill, and a Statutory Power of Attorney bill. REPTL also will support the bill prepared by the Legislative Council containing the nonsubstantive recodification of the guardianship provisions of the Probate Code for inclusion in the new Estates Code.

**3.9. The Academy Steps In.** While there are procedures for expedited consideration of additional proposals that do not meet the State Bar’s deadlines described above, REPTL rarely, if ever, uses those procedures. For items that may come up relatively late in the game, or for items that may be considered inappropriate for the REPTL package, the Academy may step in and work for approval of legislation.

**3.10. During the Session.** During the legislative session, the work of REPTL and the Academy is not merely limited to working for passage of their respective bills. An equally important part of their roles is monitoring bills introduced by others and working with their sponsors to improve those bills, or, where appropriate, to oppose them.

**3.11. Where You Can Find Information About Filed Bills.** You can find information about any of the bills mentioned in this paper (whether or not they passed), including text, lists of witnesses and analyses (if available), and actions on the bill, at the Texas Legislature Online website: [www.legis.state.tx.us](http://www.legis.state.tx.us). You can even perform your own searches for legislation based on your selected search criteria.

**3.12. Summary of the Legislative Process.** Watching the process is like being on a roller coaster; one minute a bill is sailing along, and the

next it is in dire trouble. The real work is done in committees, and the same legislation must ultimately pass both houses. Thus, even if an identical bill is passed by the Senate as a Senate bill and by the House as a House bill, it cannot be sent to the Governor until either the House has passed the Senate bill or vice-versa. At any point in the process, members can and often do put on amendments which require additional steps and additional shuttling. It is always a race against time, and it is **much** easier to kill legislation than to pass it.

#### 4. Key Dates.

Key dates for the enactment of bills in the 2011 legislative session included:

- i **Monday, November 8, 2010** – Prefiling of legislation for the 82<sup>nd</sup> Legislature begins
- i **Tuesday, January 11, 2011** (1<sup>st</sup> day) – 82<sup>nd</sup> Legislature convenes at noon
- i **Friday, March 11, 2011** (60<sup>th</sup> day) – Deadline for filing most bills and joint resolutions
- i **Monday, May 9, 2011** (119<sup>th</sup> day) – Last day for House committees to report House bills and joint resolutions
- i **Thursday, May 12, 2011** (122<sup>nd</sup> day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading
- i **Friday, May 13, 2011** (123<sup>rd</sup> day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading
- i **Saturday, May 21, 2011** (131<sup>st</sup> day) – Last day for House committees to report Senate bills and joint resolutions
- i **Tuesday, May 26, 2011** (134<sup>th</sup> day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading
- i **Wednesday, May 25, 2011** (135<sup>th</sup> day) – Last day for House to consider most Senate bills or joint resolutions on **third** reading

Last day for Senate to consider any bills or joint resolutions on third reading

- i **Friday, May 27, 2011** (137<sup>th</sup> day) – Last day for House to consider Senate amendments

Last day for Senate committees to report all bills

- i **Sunday, May 29, 2011** (139<sup>th</sup> day) – Last day for House to adopt conference committee reports

Last day for Senate to concur in House amendments or adopt conference committee reports

- i **Monday, May 30, 2011** (140<sup>th</sup> day) – Last day of 82<sup>nd</sup> Regular Session; corrections only in House and Senate

- i **Sunday, June 19, 2011** (20<sup>th</sup> day following final adjournment) – Last day governor can sign or veto bills passed during the previous legislative session

- i **Monday, August 29, 2011** (91<sup>st</sup> day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law

## 5. The New Estates Code.

### 5.1. A New Beginning. **January 1, 2014.**

That’s a date you’ll need to remember if you’re still practicing in our area. It is the effective date of our new Estates Code, which will replace our current Probate Code. Here’s the background . . . .

**5.2. Our Current Probate Code is Not a “Code”.** Texas has had a number of statutory compilations during its history. In 1925, the 39<sup>th</sup> Legislature adopted its fourth bulk revision of Texas laws, the Revised Statutes of Texas, 1925.<sup>4</sup> In 1936, The Vernon Law Book Company published an unannotated compilation of the 1925 Revised Civil and Criminal Statutes, updated with changes through January 1, 1936. Between 1936 and 1948, this was updated with non-cumulative biennial supplements. In 1948, a new compilation was published, and biennial updates continued. The “Texas Probate Code” was first enacted in 1955, effective January 1, 1956. However, Texas had not yet adopted any organized system of statutory codification at the time, so the Texas Probate Code was incorporated into Vernon’s Revised Civil Statutes, known as the

“Black Statutes” for those of us old enough to have practiced with the hard copies of these volumes.

**5.3. The “Codification” Process Began in 1963, After Our Probate Code Was Enacted.** In the 38 years since the 1925 general revision of Texas laws, the statutes had become confusing and difficult to use. In 1963, the 58<sup>th</sup> Legislature passed S.B. 367, which ordered the creation of a permanent, ongoing statutory revision program. The Texas Legislative Council was charged with making a complete, **non-substantive** revision of Texas statutes. Legislation enacting new code sections is generally based on a Revisor’s Report which contains the proposed language of the new code, the language of the old statutes, and brief notes. When the program is complete, all general and permanent statutes will be included in one of 27 codes. The Probate Code is not a “code” for purposes of the Code Construction Act and the Legislative Council codification initiative since (1) it was enacted before the codification effort began, and (2) it does not comply with the organizational and stylistic principles of modern Texas codes. (The Criminal Procedure Code is the only other remaining “uncodified” code. The Probate Code just happened to draw the short straw in 2006.)

**5.4. The Legislative Council’s Procedure.** The Texas Legislative Council’s **nonsubstantive** revision process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes “more accessible, understandable, and usable” without altering the sense, meaning, or effect of the law. The Legislative Council staff encourages examination and review of all proposed code chapters by any interested person. The staff attempts to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. A complete and adequate outside review is necessary, however.

**5.5. REPTL’s Probate Codification Committee.** When REPTL learned in the summer of 2006 that the Legislative Council was going to codify the Probate Code, it began to work actively

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<sup>4</sup> The source of this “timeline” is <http://www.lrl.state.tx.us/research/texasLawTimeline.html>.

with the Legislative Council staff on the codification project. It established a Probate Code Codification Committee, which is co-chaired by Professor Thomas M. Featherston, Jr., the Mills Cox Professor of Law at Baylor Law School, and by Barbara McComas Anderson, a Dallas attorney, both of whom are former REPTL chairs. Through a series of meetings with Legislative Council staff, it was ultimately decided that:

1. REPTL and the Legislative Council would cooperate in determining how the new code would be organized.
2. The Legislative Council would take the lead in drafting the new code, although REPTL’s committee would work on some of the thorniest provisions, like jurisdiction, venue, and independent administration, where it was considered difficult or impossible to codify the current statutes without some tweaking.
3. The chapters of the code governing decedents’ estates would be drafted first, to be submitted to the Legislature for adoption in 2009.
4. The remaining chapters of the code, including those provisions governing guardianships and powers of attorney, would be drafted after the 2009 session, with a goal of submitting these chapters to the Legislature for adoption in 2011.
5. The new code would become effective after the 2013 session in order to make that session available to correct any errors identified after the 2009 and 2011 enactments but prior to their effective date.
6. REPTL would assist the Legislative Council during the entire legislative process, including providing expert review of chapters as they are drafted and expert testimony about legislation before the Legislature.

**5.6. The Nonsubstantive Estates Code Passed.** Legislative Council chose the “Estates and Guardianship Code” as the new name for the recodified Probate Code. It was filed in the as **H.B. 2502** by Rep. Hartnett and **S.B. 2071** by Senator Duncan. However, Rep. Hartnett felt that the new name was a mouthful, so the name of the new Code was shortened to just the “Estates Code” when **H.B. 2502** passed on the floor of the House. It

passed the Senate without further amendment and will go into effect on January 1, 2014.

**5.7. Revisor’s Report for the Estates Code.** Legislative Council has prepared and posted online an **882-page** Revisor’s Report indicating the derivation of each section of the new Estates Code. The last 20 pages consist of a handy disposition table, and has been reproduced as **Attachment 1**. The full Revisor’s Report can be found at:

[http://www.tlc.state.tx.us/legal/estatescode/81st\\_revisors\\_report.pdf](http://www.tlc.state.tx.us/legal/estatescode/81st_revisors_report.pdf).

**5.8. The Substantive Independent Administration Recodification Bill Did Not Pass.** The substantive recodification bill relating to independent administration did not pass in 2009, falling victim to the last-minute logjam of bills in the Senate that had a multitude of causes, an explanation of which would substantially lengthen this paper. However, they are being included in REPTL’s proposed 2011 Decedents’ Estates bill.

**6. Changes Affecting Decedents’ Estates.**

**6.1. The REPTL Decedents’ Estates Bill.** The REPTL 2011 Decedents’ Estates bill contains a number of proposals.<sup>5</sup>

**(a) Determination of Heirship Sought by Trustees (Sections 48 and 49).** Sections 48 and 49 are amended to add **trustees** to the list of persons who may bring a determination of heirship action where necessary to determine the beneficiaries of the trust (*i.e.*, “if no descendant of settlor is then surviving, the trust estate shall be distributed to settlor’s then surviving heirs.”)

**(b) “One-Step” Procedure for Will Execution (Section 59).** Ever find yourself trying to explain to your clients why it’s necessary for them and the witnesses to sign the will twice? Ever consider the procedure archaic? Well REPTL has something just for you – a handy, dandy revision to Section 59 that allows an **optional** method of simultaneously executing, attesting, and making a will self-proved, so that everyone signs just once. For those of you who think this is just too radical a departure from current law, rest assured that the Uniform Probate Code has contained an optional one-step method for years. Further, if that still doesn’t make you feel better, the tried-and-true two-

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<sup>5</sup> Section references are to the Texas Probate Code unless otherwise noted.

step method will remain available. (This provision was included in the ill-fated 2009 decedents' estates bill, but a similar provision relating to self-proving affidavits in guardianship designations went into effect September 1, 2009, thanks to REPTL's 2009 guardianship bill.)

**(c) No Contest Provisions in Wills (Section 64).** A 2009 amendment expressly made no contest provisions unenforceable if probable cause exists for commencing the contest and the contest was brought and maintained in good faith. REPTL proposes to revise this provision to conform the language with Probate Code Section 243, relating to allowances for defending wills and to extend protection to the descendants of the contestant. (A similar change is proposed for Trust Code Section 112.038 relating to trust contests, also added in 2009).

**(d) Pretermitted Children (Section 67).** This change revises the provisions relating to pretermitted children (children born after the execution of a will who are not otherwise provided for) so that the pretermitted child takes only portion not given to either testator's surviving spouse or the other parent of pretermitted child. Since the rationale for this change isn't as self-evident as some of the other changes, here's some background.

Professor Stanley Johanson brought the following hypothetical to REPTL's attention, taken from one of his law school exams (edited for brevity):

*Harvey and Lucille were married, lived in Dallas, and had no children. In 2000, Harvey executed a will that gave all of his property to Lucille. In 2002, Harvey had an affair with Blaze Starr, resulting in a son: Curly. While threatening divorce, Lucille decided to stick with Harvey. Harvey died in 2005 without changing his will. Harvey separate personal property of \$300,000 and an interest in a community estate of \$600,000. What are Curly's rights, if any?*

Under current Probate Code §67(a)(2), because Harvey had no children when he executed his will, Curly succeeds to an amount equal to what he would inherit if Harvey had died intestate and unmarried, "owning only that portion of his estate not devised or bequeathed to the **parent** of the pretermitted child." Since the other parent of the child was Blaze and Harvey had understandably given nothing to her in his will, Curly gets Harvey's entire estate, leaving

Lucille with only her half of the community property. Prof. Johanson questioned whether this was the appropriate result when Curly would have taken nothing had he been born to Lucille.

The REPTL Council agreed, proposing an amendment that would exclude from consideration the portion of the estate passing to **either** the other parent of the pretermitted child **or the surviving spouse** of the testator.

**(e) Repeal of Testamentary Provision for Management of Separate Property (Section 70).** Section 70 allows a testator to include a provision in his or her will giving the surviving spouse the power to keep testator's separate property together until each of the beneficiaries becomes an adult, using the same provisions applicable to the management of community property. Since this provision is rarely (if ever) used, REPTL proposed repealing it in 2009, and proposes repeal again in 2011.

**(f) Foreign Self-Proving Affidavit (Section 84).** Ever find yourself with a will executed in another state that appears to have a perfectly good self-proving affidavit, only to determine it doesn't comply with Section 59? This change provides that if a will is properly executed with a self-proving affidavit that complies with the laws of the testator's domicile (at the time of execution), the will should be considered self-proved for purposes of probating it here in Texas even if the affidavit does not conform to our normal Texas form of self-proving affidavit.

**(g) Independent Administration.** A number of independent administration revisions were proposed in 2009 designed to bring some clarification to three areas of independent administration:

1. Specifying the authority of an independent executor or administrator to sell assets in the absence of an express grant in the will;
2. Detailing the procedures for presenting and dealing with creditors' claims; and
3. Providing a simpler procedure for filing a notice that an independent administration has "closed" without the need for a full accounting of all receipts and disbursements.

They are being proposed again in 2011. Here are the highlights:

(i) **Determination of Heirships (Section 145).** While not originally a REPTL proposal in 2009, the 2011 proposal requires a judicial determination of heirship in the event of an independent administration by agreement in an intestate situation. (This is already the case by local rule in most statutory probate courts.)

(ii) **Independent Administration by Agreement (Section 145).** Provisions are added allowing parents of minor children and trustees to consent to independent administration by agreement where no conflict exists.

(iii) **Power of Sale by Consent (Sections 145A, 145B, and 145C).** The revisions confirm that an independent representative may sell without a court order under the same circumstances that a dependent representative could sell with a court order. In administrations without a will, or where a will fails to expressly grant a power of sale, an independent administrator may be granted a power of sale over real property in the order of appointment if the beneficiaries who would receive the real property consent to the power (avoiding a later need to obtain their consent). Perhaps more importantly from a practical standpoint, the revisions include a new concept (borrowed from the Trust Code) providing statutory protection for third parties who rely on the apparent authority of an independent representative where a power of sale is granted in the will or the representative provides an affidavit that the sale is necessary under the circumstances described in current Probate Code Section 341(1).

**Drafting Tip**

When you are drafting a will, make sure you give your executor a power of sale, or, better yet, “all of the powers granted trustees under the Texas Trust Code.”

(iv) **Secured Claims (Section 146).** Over twenty years ago, the Texas Supreme Court ruled that Probate Code Section 306 applies to independent administrations. *See Geary v. Texas Commerce Bank*, 967 S.W.2d 836 (Tex. 1998). However, the Probate Code has never been amended to recognize this. Therefore, the revisions pay special attention to providing guidance regarding the handling of secured claims. Secured creditors

electing matured, secured status must file a notice in the official records of the county in which the real property securing the indebtedness is located. Those creditors must obtain court approval or the administrator’s consent to exercise any foreclosure rights. Secured creditors electing preferred debt and lien status may not exercise any nonjudicial foreclosure rights during the first six months of the administration.

(v) **Method of Presenting Claims and Notices (Section 146).** Creditors must present their claims or respond to notices (i) in a written instrument that is hand-delivered or sent by certified mail, in either case with proof of receipt, to the administrator or the administrator’s attorney; (ii) in a pleading filed in a lawsuit with respect to the claim; or (iii) in a written instrument or pleading filed in the court in which the administration is pending.

(vi) **Statute of Limitations (Section 146).** The running of the statute of limitations is tolled **only** by (i) a written approval of a claim signed by the administrator, (ii) a pleading filed in a suit pending at the time of the decedent’s death, or (iii) a suit brought by the creditor against the administrator. The mere presentment of a claim or notice **does not** toll the running of the statute of limitations.

(vii) **Other Claims Procedures (Section 146).** Other claims procedures generally **do not** apply. Specifically, a claim is not barred merely because a creditor fails to file suit within ninety days following the rejection of a claim.

(viii) **Time for Petition for Accounting and Distribution (Section 149B).** The Probate Code currently allows an interested person to seek an accounting and distribution of an estate from an independent executor or administrator after the expiration of two years from the grant of letters testamentary or administration. This change clarifies that in the case of successor administrators or executors, the two-year waiting period runs from the **initial** grant of letters to the first representative, and does not restart when the successor is appointed.

(ix) **Notice of Closing Estate (Section 151).** In addition to existing procedures for closing independent administrations, an administrator may elect to close an independent administration by filing an affidavit stating that all known debts have been paid, or have been paid to

the extent the assets of the estate will permit; that all remaining assets have been distributed; and the names and addresses of the distributees. Once the administration is closed, third parties may deal directly with the distributees.

**(x) Closing Not Required (Section 151).** A new provision explicitly recognizes that independent administrations are not **required** to be closed.

**(h) Compensation of Representatives (Section 241).** In a significant departure from current Texas law, REPTL proposes to change standard compensation of an executor or administrator from the historical 5%-of-receipts-plus-5%-of-disbursements-up-to-5%-of-the-estate formula to a “reasonable compensation” standard, which is in accordance with the rule in the vast majority of states.

**(i) Affidavit in Lieu of Inventories (Section 250).** If no debts remain by the inventory due date, this change allows the executor or administrator to file an affidavit in lieu of the inventory stating those fact. The executor or administrator must still **prepare** a sworn inventory and provide a copy to all all beneficiaries other than those receiving specific gifts.

**(j) No More Listing of Co-Owners on Inventories (Section 250).** The Probate Code currently requires a listing of the co-owners of property on an inventory. REPTL proposes deleting this requirement.

## **7. Changes Affecting Guardianships.**

**7.1. The REPTL Guardianship Bill.** The REPTL Guardianship bill deals with a variety of issues, the most significant of which may be the proposed change in guardian compensation described below.

**(a) Term of Attorney Ad Litem in Temporary Guardianship (Section 646).** Current law provides that the appointment of an attorney ad litem in response to the filing of an application for the appointment of a guardian expires upon the appointment of the guardian. The proposed change provides that the attorney ad litem’s appointment **does not** expire upon appointment of **temporary** guardian; only upon the appointment of a permanent guardian.

**(b) “Reasonable Compensation” for Guardians (Section 665).** REPTL proposes to change standard compensation of guardians and trustees of Section 867 management trusts from the current 5%-of-income-receipts-plus-5%-of-disbursements formula to a “reasonable compensation” standard as determined by the court, which is in accordance with the rule in the vast majority of states.

**(c) Assessment of Costs of Guardianship (Section 665A).** A court, in appropriate circumstances, would be expressly allowed to assess attorneys fees, including attorney ad litem and guardian ad litem fees, against a party in a guardianship proceeding (and not just against the ward’s estate).

**(d) Physician’s Certificate (Section 687).** This change further clarifies the necessary requirements of a physician’s or psychologist’s report in a guardianship proceeding. (These requirements were modified in 2009.)

**(e) No More Listing of Co-Owners on Inventories (Section 729(c)).** The Probate Code currently requires a listing of the co-owners of property on an inventory. REPTL proposes deleting this requirement.

**(f) Termination of Guardianship by Transfer to Pooled Interest Trust (Sections 745(6) and 867).** This change allows the complete termination of a guardianship proceeding if all of the assets of the guardianship estate have been transferred to a pooled interest trust sub-account for the ward.

**(g) Admission of Ward to Psychiatric Facility (Section 770(c)(3)).** This change increases the age of wards whom a guardian may admit to an inpatient to psychiatric facility from 16 to 18 or younger.

**(h) Gifts for Non-Tax Purposes (Section 865).** The Probate Code currently allows court-approved gifts motivated by tax considerations. This change also allow gifts or transfers in order to make the ward eligible for government benefits.

**(i) Asset Report Within 30 Days of Management Trust Funding (Section 867).** A court could require the trustee of a management trust

to file a report showing the current value and descriptions of trust assets within 30 days of trust funding.

**(j) Management Trusts for Persons With Physical Disability Only (Sections 867, 871, and 873).** Another change would expand the list of persons eligible to apply for establishment of a management trust to include a person with a physical disability only. In that case, there would be no requirement for annual accounts.

**(k) Person Eligible to Apply for Establishment of Pooled Interest Sub-Account (Section 911).** The final change would expand the list of persons eligible to apply for establishment of pooled interest trust sub-account.

## 8. Changes Affecting Trusts.

**8.1. The REPTL Trust Code Bill.** The REPTL Trust Code package is relatively modest.

**(a) No Contest Provisions in Trusts (Trust Code Section 112.038).** This section of the Trust Code, relating to the enforceability of forfeiture clauses in trust contests, was added in 2009, and is similar to Probate Code Section 64 relating to will contests, also added in 2009. REPTL proposes to revise Probate Code Section 64 to conform the language with Probate Code Section 243, related to allowances for defending wills, and believes it appropriate to make the same change applicable to trusts so the same standard will apply to both wills and trusts. As with the Probate Code change, this change also extends protection to the descendants of the contestant.

**(b) Waiver of Notice of Combination of Trusts (Trust Code Section 112.057).** This section of the Trust Code allows trustees to divide and combine trusts when appropriate (usually to achieve beneficial tax results) upon 30-days notice to the beneficiaries. New subsections (e) and (f) allow waiver by the beneficiaries of the 30-day notice provision for combination of trusts, and allow waiver of the notice by guardians, parents, etc., of incapacitated beneficiaries.

**(c) Trust Jurisdiction of Statutory County Courts (Trust Code Section 115.001).** Recent changes to the Probate Code extend jurisdiction over trusts created by a decedent to statutory county courts (as opposed to just statutory

probate courts) while administration of the decedent’s estate is pending (e.g., Section 4B(b)(2) and (3)). However, the Trust Code still provides that jurisdiction is exclusively in the district court in these cases. This change expands jurisdiction over trusts created by a decedent to statutory county courts while administration of the decedent’s estate is pending.

**(d) Permissive Venue of Trust Proceedings While Estate is Pending (Trust Code Section 115.002).** Generally, venue for a trust proceeding is in the county of the trustee’s residence. However, since courts in which the administration of a deceased settlor’s estate is pending have jurisdiction over such proceedings, this change adds permissive venue in those counties.

**(e) Necessary Parties to Trust Proceedings (Trust Code Section 115.011(b)).** Necessary parties to a trust proceeding include any beneficiary designated by name in the instrument creating a trust. Technically, this includes anyone named as a beneficiary in a will creating a testamentary trust, even if the person is not a beneficiary of the trust. It also includes persons whose interest in the trust may have previously terminated. This change limits necessary parties to persons designated by name as a beneficiary of the trust, and whose interests have not been previously extinguished.

**8.2. Effect of Divorce on Revocable Trusts .** Changes to Probate Code Section 69 in 2007 revoked provisions in a will in favor of the relatives of an ex-spouse when the will was executed prior to the divorce. The changes also included references to a declaration that a marriage is void (in addition to divorce and annulment). REPTL’s 2009 Decedents’ Estates bill included conforming amendments to Probate Code Sections 471, 472, and 473 relating to provisions in a revocable trust in favor of an ex-spouse or the ex-spouse’s relatives. However, as noted previously, above, the 2009 proposal did not pass. Therefore, they are included in the 2011 package.

### *Drafting Tip*

Until this change to the Probate Code passes (and maybe even after it passes), consider incorporating the substance of Probate Code Section 69 in your

revocable management trusts by including a provision such as:

“If settlor’s marriage to settlor’s spouse is dissolved, whether by divorce, annulment, or a declaration that the marriage is void, all provisions in this agreement, including all fiduciary appointments, shall be read as if settlor’s spouse and each relative of settlor’s spouse who is not a relative of settlor failed to survive settlor.”

## 9. Changes to Jurisdiction and Venue.

**9.1. The REPTL Decedents’ Estates Bill.** The REPTL 2011 Decedents’ Estates bill contains several changes to both jurisdiction and venue.

**(a) Transfer of Entire Proceeding from Constitutional County Court (Section 4D).** The jurisdictional proposed change allows a constitutional county court in a contested matter to transfer the entire proceeding (not just the contested part) to a statutory probate judge or district court (this is consistent with similar proposed changes to guardianship jurisdiction).

**(b) Consolidation of Venue Provisions (Sections 6, 7, 8, and 48).** The proposed change consolidates venue provisions, including venue for heirship proceedings previously located in the heirship provisions.

**9.2. The REPTL Guardianship Bill.** The REPTL 2011 Guardianship bill also contains several similar changes to jurisdiction in guardianship proceedings.

**(a) Transfer of Entire Proceeding from Constitutional County Court (Sections 601, 605, 606, 606A, 607, 607A, 607B, 607C, 607D, 607E, 608, and 609).** The proposed changes allow a constitutional county court in a contested matter to transfer the entire proceeding (not just the contested part) to a statutory probate judge or district court (this is consistent with similar proposed changes to decedents’ estates jurisdiction). In addition, the changes make the guardianship provisions more consistent with those applicable to decedents’ estates.

## 10. Changes Affecting Charitable Trusts or Organizations.

**10.1. [Reserved for Future Developments].** [Reserved.]

## 11. Court Administration.

**11.1. [Reserved for Future Developments].** [Reserved.]

## 12. Nontestamentary Transfers.

**12.1. Charities as Beneficiaries of POD Accounts (Section 436).** The REPTL Decedents’ Estates bill clarifies that a charitable organization may be made the beneficiary of a pay-on-death (P.O.D.) account at a financial institution upon the death of the accountholder.

**12.2. Community Property Survivorship Agreements (Sections 439 and 452).** The recent case of *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009), held that community property survivorship agreements need not meet the same requirements of survivorship agreements between nonspouses. REPTL’s Decedents’ Estates bill adds language intended to reverse the result of that case by providing that an account designation as “JT TEN” **alone** is insufficient to create a community property right of survivorship.

## 13. Disability Documents.

**13.1. Uniform Power of Attorney Act.** Our current Durable Power of Attorney Act was enacted in 1993 and is based, in large part, on the Uniform Durable Power of Attorney Act last amended by the National Conference of Commissioners on Uniform State Laws in 1987, over 20 years ago. A national survey conducted by NCCUSL concluded that a durable power of attorney should:

- i provide for confirmation that contingent powers are activated;
- i revoke a spouse-agent's authority upon the dissolution or annulment of the marriage to the principal;
- i include a portability provision;
- i require gift-making authority to be expressly stated in the grant of authority;
- i provide a default standard for fiduciary duties;

- i permit the principal to alter the default fiduciary standard;
- i require notice by an agent when the agent is no longer willing or able to act;
- i include safeguards against abuse by the agent;
- i include remedies and sanctions for abuse by the agent;
- i protect the reliance of other persons on a power of attorney; and
- i include remedies and sanctions for refusal of other persons to honor a power of attorney.

In 2006, NCCUSL promulgated a new Uniform Power of Attorney Act responding to these concerns. REPTL has been studying this act since then and is now ready to propose replacement of our current act with a “Texified” version of the newer uniform act. Highlights of REPTL’s proposal include the following:

- i The default rule will now be that a power of attorney is durable unless provided otherwise.
- i The agent is expressly allowed reasonable compensation and reimbursement of expenses.
- i An agent’s duties only arise following acceptance by exercising authority or performing duties under the power.
- i The act includes a list of statutory duties owed by the agent to the principal, including preservation of the principal’s estate plan.
- i The act expands the class of individuals with standing to intervene on the principal’s behalf.
- i The act imposes liability on third parties for refusal to accept the power of attorney.
- i The statutory form will change (significantly, but not drastically).
- i The act expressly provides for successor agents and co-agents.
- i Each power listed in the statutory form (such as a power to make gifts) has a corresponding definitional section in the act.

**14.Exempt Property.**

14.1. *[Reserved for Future Developments].*  
[Reserved.]

**15.Changes Affecting Marital Property.**

15.1. *[Reserved for Future Developments].*  
[Reserved.]

**16.Conclusion.**

It’s a bit early for any “conclusions.” Without diminishing the significance of some of REPTL’s proposals, most of what we’re seeing right now consists of “tinkering” while waiting for 2014 when our new Estates Code will go into effect.

**Proposed Statutory Changes Affecting Probate, Guardianships, Trusts, Powers of Attorneys, Etc.**

**Attachment 1 – Probate Code-to-Estates Code Disposition Table**

*(Italicized Estates Code section numbers indicate temporary placement pending future revision or redesignation.)*

<b>Probate Code §</b>	<b>Estates Code §</b>	<b>Probate Code §</b>	<b>Estates Code §</b>	<b>Probate Code §</b>	<b>Estates Code §</b>
2	2	9	54.002	(h)	51.102
(a) (part)	21.006	10	55.001	(i)	51.103
(part)	RN 21.006	10A (a) (part)	55.051	(j)	51.202
(b)	RN 21.006	(part)	55.052	34	51.055
(c)	21.004	(b)	55.053	34A	53.104
(d)	RN 21.002	10B (part)	55.101	35	51.201
3 (part)	22.001	(part)	55.102	36 (a) (part)	351.352
(a)	22.002	10C	54.001	(part)	351.353
(b)	22.004	11	52.051	(part)	351.354
(c)	22.005	11A	53.053	(b)	351.355
(d)	22.006	12 (a)	53.051	36B	151.001
(e)	22.007	(b)	53.052	36C	151.002
(f)	22.019	(c)	53.052	36D	151.003
(g)	22.007	13 (part)	52.001	36E	151.004
(h)	22.008	(part)	52.051	36F	151.005
(i)	22.009	14	52.002	37 (part)	101.001
(j)	22.010	15	52.052	(part)	101.003
(k)	22.011	16	52.003	(part)	101.051
(l)	22.012	17	52.004	37A(a)	122.002
(m)	22.013	17A	52.053	(b)	122.003
(o)	22.015	18	54.052	(c)	122.101
(p)	22.016	19	53.101	(d)	122.102
(q)	22.017	20	53.102	(e)	122.001
(r)	22.018	21	55.002	(f)	122.103
(s) (part)	22.020	22 (part)	51.203	(g)	122.051
(part)	22.021	(part)	54.051	(h) (part)	122.052
(t)	22.022	23 (part)	53.103	(part)	122.053
(u)	22.023	(part)	53.105	(part)	122.054
(v)	22.024	24	53.001	(part)	122.055
(w)	22.025	25	53.106	(i)	122.056
(x)	22.027	26 (part)	55.151	(j)	122.005
(z)	22.028	(part)	55.152	(k)	122.004
(aa)	22.031	27 (part)	55.201	(l) (part)	122.151
(bb)	22.029	(part)	55.202	(part)	122.152
(cc)	RN 22.034	(part)	55.203	(m)	122.153
(dd)	22.030	28	351.053	(n)	122.104
(cc)	22.032	29	351.002	(o) (part)	122.105
(ff)	22.034	31 (part)	55.251	(part)	122.106
(gg)	RN 22.034	(part)	55.252	37B (a)	122.201
(hh)	RN 22.034	32	351.001	(b) (part)	122.202
(ii)	22.007	33 (a)	51.001	(part)	122.203
(jj)	22.026	(b)	51.001	(c)	122.204
(kk)	22.003	(c) (part)	51.002	(d)	122.205
(ll)	22.014	(part)	51.003	(e)	122.206
(mm)	22.033	(d)	51.151	37C (a)	255.101
4	4	(e)	51.056	(b)	255.102
5	5	(f) (1) (part)	51.051	38 (a)	201.001
5A	5A	(1) (part)	51.101	(b)	201.002
5B	5B	(2)	51.053	39 (part)	201.102
5C	5C	(3)	51.054	(part)	201.103
6	6	(4)	51.052	40	201.054
8	8	(g)	51.104	41 (a)	201.056

**2011 Texas “Probate and Trust” Legislative Preview**

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(b)	201.057	53 (a)	202.151	68 (a) (part)	255.153
(c)	201.060	(b)	202.009	(part)	255.154
(d) (part)	201.058	(c)	202.009	(b)	255.152
(part)	201.059	53A (a)	204.051	(c)	255.152
(part)	201.061	(b)	204.052	(d)	255.152
(e)	201.062	(c)	204.053	(e)	255.151
(f)	201.062	(d)	204.053	69 (a)	123.001
42 (a)	201.051	(e)	204.054	(b)	123.001
(b) (1)	201.052	(f)	204.055	(c)	123.002
(2)	201.053	(g)	204.056	69A	253.001
(c) (part)	102.001	53B (a)	204.101	70	255.201
(part)	353.001	(b)	204.102	70A (a)	255.252
(d)	201.055	(c)	204.103	(b)	255.253
43	201.101	53C (a)	204.151	(c)	255.251
44 (a)	201.151	(b)	204.152	71 (a) (part)	252.001
(b)	201.151	(c)	204.152	(part)	252.003
(c)	201.152	(d)	204.153	(b)	252.002
45	201.003	53D	204.201	(c)	252.004
46 (a) (part)	101.002	53E	204.001	(d) (part)	252.051
(part)	111.001	54	202.201	(part)	252.052
(b)	111.002	55 (a) (part)	202.202	(e) (part)	252.101
47 (a) (part)	121.051	(part)	202.203	(part)	252.102
(part)	121.052	(b)	202.204	(part)	252.103
(part)	121.053	(c)	202.205	(part)	252.104
(b)	121.151	56	202.206	(part)	252.105
(c) (part)	121.101	57	251.001	(f) (part)	252.151
(part)	121.102	58 (a)	251.002	(part)	252.152
(d)	121.152	(b)	251.002	(g)	252.153
(e)	121.153	(c) (part)	255.002	71A (a)	255.301
(f)	121.001	(part)	255.003	(b)	255.302
47A (a)	123.101	(d)	255.001	(c)	255.303
(b)	123.102	58a	254.001	72 (a) (part)	256.002
(c)	123.102	58b	254.003	(part)	301.001
(d)	123.103	58c	255.351	(part)	454.001
(e)	123.103	59 (a) (part)	251.051	(part)	454.002
(f)	123.104	(part)	251.052	(part)	454.004
48 (a) (part)	202.001	(part)	251.102	(part)	454.051
(part)	202.002	(part)	251.103	(part)	454.052
(part)	202.003	(part)	251.104	(part)	RN 454.052
(b)	202.006	(b) (part)	251.101	(b)	454.003
(c)	202.003	(part)	251.104	73	256.003
49 (a) (part)	202.004	(part)	251.105	74	301.002
(part)	202.005	(c) (part)	251.102	75 (part)	252.201
(b) (part)	202.007	(part)	251.106	(part)	252.202
(part)	202.008	59A	254.004	(part)	252.203
50 (a) (part)	202.051	60 (part)	251.052	(part)	252.204
(part)	202.054	(part)	251.107	76 (part)	256.051
(b)	202.052	61	254.002	(part)	301.051
(c)	202.053	62	254.002	77	304.001
(d)	202.055	63	253.002	78	304.003
(e)	202.056	67 (a) (part)	255.052	79	304.002
51 (part)	202.101	(1)	255.053	80 (a)	301.201
(part)	202.102	(2)	255.054	(b) (part)	301.201
(part)	202.103	(b)	255.055	(part)	301.202
52	203.001	(c)	255.051	(c)	301.203
52A	203.002	(d)	255.052	81 (a) (part)	256.052

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		101 (part)	504.051	(c)	258.051
(part)	256.053	(part)	504.052	(d)	258.052
(b)	256.054	102	504.053	(e)	258.053
82	301.052	103	502.001	129	RN 258.101
83 (a)	256.101	104	502.002	129A	258.101,
(b)	256.102	105	501.006		303.003
(c)	256.103	105A (a) (part)	505.001	131A (a) (part)	452.001
84 (a)	256.152	(part)	505.003	(part)	452.003
(b)	256.153	(b) (part)	505.004	(b)	452.002
(c)	256.154	(part)	505.005	(c)	452.003
(d)	256.155	(c)	505.002	(d)	452.004
85	256.156	(d)	505.002	(e)	452.005
87	256.157	(e)	505.006	(f)	452.006
88 (a) (part)	256.151	106	505.051	(g)	452.006
(part)	301.151	107	505.052	(h)	452.006
(b)	256.152	107A (a)	505.101	(i)	452.007
(c)	301.152	(b)	505.101	(j)	452.008
(d)	301.153	(c)	505.102	132 (a)	452.051
(e)	301.154	(d)	505.103	(b)	452.052
89	256.201	108 (part)	152.001	133 (part)	452.101
89A (a) (part)	257.051	(part)	152.004	(part)	452.102
(part)	257.052	109	152.001	134	452.151
(b)	257.053	110	152.001	135	452.152
89B	257.054	111 (a)	152.002	137 (a)(part)	205.001
89C (a)	257.001	(b)	152.003	(part)	205.002
(b)	257.101	112	152.002	(part)	205.003
(c)	257.102	113 (a)	152.051	(part)	205.004
(d)	257.103	(b)	152.052	(b)	205.008
90	256.202	(c)	152.054	(c)	205.006
91	256.203	(d)	152.055	(d)	205.005
92	362.002	114 (a)	152.053	138	205.007
93	256.204	(b)	152.055	139	451.001
94	256.001	115 (a)	152.101	140	451.002
95 (a)	501.001	(b)	152.101	141	451.003
(b) (1) (part)	501.002	(c)	152.102	142	451.004
(part)	501.003	(d)	152.102	143	354.001
(2) (part)	501.002	128 (a)(part)	258.001	145	145
(part)	501.003	(part)	303.001	(q) (part)	351.351
(c) (part)	501.002	(b)	258.002	146	146
(part)	503.002	(c) (part)	258.003	147	147
(part)	505.052	(part)	303.002	148	148
(d) (1) (part)	501.004	128A (a) (as	308.001	149	149
(part)	501.005	amended Ch. 801,		149A	149A
(2) (part)	501.004	80 <sup>th</sup> Leg.)		149B	149B
(part)	501.005	128A (a) (as	RN 308.001	149C	149C
(part)	504.003	amended Ch. 1170,		149D	149D
(e)	501.007	80 <sup>th</sup> Leg.)		149E	149E
(f)	501.008	(b)	308.002	149F	149F
96 (part)	503.001	(c)	308.002	149G	149G
(part)	503.003	(d)	308.002	150	150
97	503.001	(e)	308.003	151	151
98	503.051	(f)	308.002	152	152
99	503.052	(g)	308.004	153	153
100 (a)	504.001	(h)	308.004	154	154
(b) (part)	504.002	128B (a)	258.051	154A	154A
(part)	504.004	(b)	258.051	(i) (part)	351.351
(c)	504.003				

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155 (part)	101.052	196	305.108	(c)	351.152
(part)	453.001	197 (part)	305.107	(d)	351.152
(part)	453.002	(part)	305.109	(e)	351.153
156 (part)	101.052	198	305.103	233A	351.054
(part)	453.006	199	305.104	234 (a)	351.051
160 (a)	453.003	200	305.105	(b)	351.052
(b)	453.004	201 (a)	305.203	235	351.103
(c)	453.003,	(b)	305.204	238 (a)	351.201
	453.004	(c)	305.205	(b)	351.202
168 (part)	453.006	202	305.204	(c)	351.203
(part)	453.007	203	305.251	(d)	351.203
(part)	453.008	204	305.251	(e)	351.203
176	453.005	205	305.252	(f)	351.202
177	453.009	206 (a)	305.252	(g)	351.204
178 (a)	306.001	(b)	305.253	(h)	351.205
(b)	306.002	207	305.254	(i)	351.303
(c)	306.001	208	305.255	238A	351.104
179	301.101	209	305.257	239 (part)	351.301
180	301.153	210	305.256	(part)	351.302
181	306.003	211	305.206	(part)	351.303
182	306.004	212	305.206	240	307.002
183	306.005	213	305.110	241 (a)(part)	352.002
186	306.007	214	305.102	(part)	352.003
187	306.006	215	305.102	(part)	352.004
188	307.001	216	305.102	(b)	352.001
189	305.002	217	305.102	242	352.051
190 (a)	305.051	218	305.111	243	352.052
(b)	305.052	220 (a)	361.102	244	352.053
(c)	305.053	(b)	361.103	245	351.003
(d) (part)	305.054	(c)	361.104	248 (as amended	309.001
(part)	305.055	(d)	361.105	Ch. 701, 79 <sup>th</sup> Leg.)	
192 (part)	305.003	(e)	361.106	248 (as amended	309.001
(part)	305.054	(f)	361.101	Ch. 765, 79 <sup>th</sup> Leg.)	
194 (part)	305.101	(g)	361.151	249	309.003
(part)	305.106	221 (a)	361.001	250	309.051
Subdiv. 1	305.151	(b)	361.002	251	309.052
Subdiv. 2	305.151	(c)	361.003	252	309.053
Subdiv. 3	305.152	(d)	361.004	253	309.002
Subdiv. 4	305.153	(e)	361.005	255	309.054
Subdiv. 5	305.154	(f)	361.005	256	309.101
Subdiv. 6	305.155	221A	56.001	257	309.102
Subdiv. 7	305.156	221B	56.002	258	309.103
Subdiv. 8 (a)	305.157	222 (a)(1)	361.051	259	309.104
(b)	305.156	(2)	361.054	260	309.055
(c)	305.156	(b)	361.052	261	309.151
(d)	305.156	(c)	361.053	262	354.051
(e)	305.158	222A	361.054	263	354.052
Subdiv. 9	305.159	223	361.152	264	354.053
Subdiv. 10	305.201	224	361.153	265	354.054
Subdiv. 11	305.202	225	361.153	266	354.055
Subdiv. 12	305.201	226	361.154	267	354.056
(part)		227	361.155	268	354.057
(part)	305.207	230	351.101	269	354.058
Subdiv. 13	305.153	232	351.102	270	102.004
Subdiv. 14	305.160	233 (a)	351.151	271	353.051
195	305.101	(b)	351.152	272	353.052

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273	353.053	310	355.052	332	356.002
274 (part)	353.055	311	355.053	333	356.051
(part)	353.056	312 (a)	355.054	334 (part)	356.101
275	353.054	(b)	355.055	(part)	356.102
276	353.056	(c)	355.056	335 (part)	356.151
277	353.151	(d)	355.057	(part)	356.152
278	353.152	(e)	355.058	(part)	356.153
279	353.153	313 (part)	355.064	(part)	356.154
280	353.154	(part)	355.066	(part)	356.155
281	353.155	314	355.065	336	356.103
282	102.002	315	355.111	337	356.104
283	102.003	316	355.202	338 (part)	356.201
284	102.005	317	355.201	(part)	356.202
285	102.006	318	355.063	(part)	356.203
286	353.101	319	355.101	339	356.105
287	353.102	320 (a)	355.103	340	356.257
288	353.101	(b)	355.104	341	356.251
289	353.103	(c)	355.105	342	356.252
290	353.104	(d)	355.106	344	356.253
291	353.105	320A	355.110	345	356.254
292 (part)	353.106	321	355.108	345A	356.255
(part)	353.107	322	355.102	346	356.256
293	353.107	322A (a)	124.001	347 (part)	356.601
294 (a)	308.051	(b)	124.005	(part)	356.602
(b)	308.052	(c)	124.006	348 (a)(part)	356.301
(c)	308.051	(d)	124.006	(part)	356.302
(d)	308.054	(e)	124.006	(b) (part)	356.351
295	308.053	(f)	124.006	(part)	356.352
296	308.055	(g)	124.007	(part)	356.353
297	308.056	(h)	124.008	349 (a)	356.401
298 (a)(part)	355.001	(i)	124.009	(b)	356.402
(part)	355.060	(k)	124.010	(c)	356.403
(b)	355.061	(l)	124.003	(d)	356.404
299	355.008	(m)	124.010	(e)	356.405
301 (part)	355.004	(n)	124.014	350	356.451
(part)	355.059	(o)	124.015	351 (part)	356.501
302	355.007	(p)	124.004	(part)	356.502
303 (part)	355.006	(q)	124.011	352 (a)	356.651
(part)	355.062	(r)	124.012	(b)	356.652
304	355.005	(s)	124.001	(c)	356.653
306 (a)	355.151	(t)	124.013	(d)	356.654
(b)	355.152	(u)	124.015	(e)	356.655
(c)	355.153	(v)	124.016	353	356.551
(c-1)	355.153	(w)	124.017	354 (part)	356.553
(d)	355.154	(x)	124.002	(part)	356.554
(e)	355.155	(y)	124.018	(part)	356.555
(f)	355.156	322B	355.109	355 (part)	356.552
(g)	355.157	323	355.112	(part)	356.556
(h)	355.158	324	355.203	356	356.557
(i) (1)	355.158	326	355.107	357	356.558
(2)	355.159	328	355.113	358	356.559
(j)	355.158	329 (a)	351.251	359	357.001
(k)	355.160	(b)	351.252	360	357.001
307	355.003	(c) (part)	351.252	361	357.002
308	355.002	(part)	351.253	362	357.005
309	355.051	331	356.001	363	357.003

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364	357.004	(b)	360.202	(3)	113.001
365	357.051	(c)	360.202	(4)	113.004
366	357.052	(d)	360.203	(5)	113.004
367 (a)	358.001	382	360.252	(6)	113.003
(b)	358.051	384	360.301	(7)	113.002
(c) (part)	358.051	385	360.253	(8)	113.001
(part)	358.052	386	360.254	(9)	113.001
(part)	358.053	387	360.103	(10)	113.004
(part)	358.054	398A	351.105	(11)	113.001
(part)	358.055	399 (a)	359.001	(12)	113.001
(part)	358.056	(b)	359.002	(13)	113.001
(part)	358.057	(c) (part)	359.003	(14)	113.004
(part)	358.058	(part)	359.004	(15)	113.001
(part)	358.059	(d)	359.005	437	113.101
(part)	358.060	400	359.101	438 (a)	113.102
(part)	RN 358.060	401 (a)	359.051	(b)	113.103
368 (a)	358.101	(b)	359.051	(c)	113.104
(b)	358.102	(c)	359.051	438A (a)	113.004
369 (a)	358.151	(d)	359.051	(b)	113.105
(b) (part)	358.151	(e) (part)	359.052	(c)	113.105
(part)	358.152	(part)	359.053	(d)	113.154
(part)	358.153	(part)	359.054	(e)	113.105
(part)	358.154	402	359.006	(f) (part)	113.206
(part)	358.155	403	359.102	(part)	113.208
370	358.201	404	362.001	(g)	113.208
371 (part)	358.251	405 (part)	362.003	439 (a)	113.151
(part)	358.252	(part)	362.004	(b)	113.152
(part)	358.253	405A	362.007	(c)	113.153
(part)	358.254	406	362.051	(d)	113.155
372	RN 358.254	407	362.005	439A (a)	113.051
373 (a)	360.001	408 (a)	362.006	(b)	113.052
(b)	360.001	(b)	362.011	(c)	113.053
(c)	360.002	(c)	362.012	(d)	113.053
374	360.051	(d)	362.013	440 (part)	113.156
375	360.052	409	362.009	(part)	113.157
377	360.101	410	362.010	441	113.158
378	360.102	412	362.008	442 (part)	113.251
378A (a)	124.052	414	362.052	(part)	113.252
(b)	124.051	427 (part)	551.001	(part)	113.253
378B (a)	310.003	(part)	551.002	443	113.201
(b)	310.004	(part)	551.003	444 (part)	113.003
(c)	310.004	(part)	551.004	(part)	113.005
(d)	310.004	428	551.005	(part)	113.202
(g)	310.005	429	551.101	445 (part)	113.203
(h) (part)	310.001	430	551.006	(part)	113.207
(part)	310.006	431	551.102	446	113.204
(i)	310.002	432	551.103	447	113.205
379	360.251	433 (a)(part)	551.051	448	113.209
380 (a)	360.151	(part)	551.052	449	113.210
(b)	360.152	(b) (part)	551.052	450 (a)(part)	111.051
(c)	360.153	(part)	551.055	(part)	111.052
(d)	360.154	(c) (part)	551.052	(b)	111.053
(e)	360.155	(part)	551.053	(c)	111.051
(f)	360.156	(d)	551.054	451	112.051
(g)	360.157	436 (1)	113.001	452	112.052
381 (a)	360.201	(2)	113.001	453	112.151

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454	112.152	506	506	660	660
455	112.054	601	601	661	661
456 (a)(part)	112.053	602	602	662	662
(part)	112.101	603	603	663	663
(b)	112.102	604	604	665	665
(c)	112.103	605	605	665A	665A
(d)	112.101	606	606	665B (as amended by Ch. 314, 81 <sup>st</sup> Leg.)	665B
457	112.104	607	607	665B (as amended by Ch. 930, 81 <sup>st</sup> Leg.)	665B
458 (part)	112.053	608	608	665C	665C
(part)	112.105	609	609	666	666
459	112.106	610	610	667	667
460 (a)	112.203	611	611	668	668
(b)	112.204	612	612	669	669
(c)	112.206	613	613	671	671
(d)	112.205	614	614	672	672
(e)	112.207	615	615	673	673
(f) (part)	112.201	616	616	674	674
(part)	112.202	617	617	675	675
(g)	112.208	618	618	676	676
461 (part)	112.251	621	621	677	677
(part)	112.252	622	622	677A	677A
(part)	112.253	623	623	677B	677B
462	112.002	624	624	678	678
471	123.051	625	625	679	679
472 (a)	123.052	626	626	679A	679A
(b)	123.053	627	627	680	680
473 (a)	123.054	627A	627A	681	681
(b)	123.055	628	628	682	682
481	481	629	629	682A	682A
482	482	630	630	683	683
483	483	631	631	683A	683A
484	484	632	632	684	684
485	485	633	633	685	685
485A	485A	634	634	686	686
486	486	635	635	687	687
487	487	636	636	689	689
487A	487A	641	641	690	690
488	488	642	642	692	692
489	489	643	643	693	693
489B	489B	644	644	694	694
490	490	645	645	694A	694A
491	491	645A	645A	694B	694B
492	492	646	646	694C	694C
493	493	647	647	694D	694D
494	494	647A	647A	694E	694E
495	495	648	648	694F	694F
496	496	648A	648A	694G	694G
497	497	649	649	694H	694H
498	498	650	650	694I	694I
499	499	651	651	694J	694J
500	500	653	653	694K	694K
501	501	654	654	694L	694L
502	502	655	655	695	695
503	503	656	656	695A	695A
504	504	657	657		
505	505	659	659		

**2011 Texas “Probate and Trust” Legislative Preview**

<b>Probate Code §</b>	<b>Estates Code §</b>	<b>Probate Code §</b>	<b>Estates Code §</b>	<b>Probate Code §</b>	<b>Estates Code §</b>
696	696	747	747	800	800
696A	696A	748	748	801	801
696B	696B	749	749	802	802
697	697	750	750	803	803
697A	697A	751	751	804	804
697B	697B	752	752	805	805
698	698	753	753	806	806
699	699	754	754	807	807
700	700	755	755	808	808
701	701	756	756	809	809
702	702	757	757	811	811
702A	702A	758	758	812	812
703	703	759	759	813	813
704	704	760	760	814	814
705	705	760A	760A	815	815
706	706	760B	760B	816	816
707	707	761	761	817	817
708	708	762	762	818	818
708A	708A	763	763	819	819
709	709	764	764	820	820
710	710	765	765	821	821
711	711	767	767	823	823
712	712	768	768	824	824
713	713	769	769	824A	824A
714	714	770	770	825	825
715	715	770A	770A	826	826
716	716	771	771	827	827
717	717	772	772	828	828
718	718	773	773	829	829
719	719	774	774	830	830
720	720	775	775	831	831
721	721	776	776	832	832
722	722	776A	776A	833	833
723	723	777	777	834	834
724	724	778	778	835	835
725	725	779	779	836	836
726	726	780	780	837	837
727	727	781	781	839	839
728	728	782	782	840	840
729	729	783	783	841	841
730	730	784	784	842	842
731	731	785	785	843	843
732	732	786	786	844	844
733	733	787	787	845	845
734	734	788	788	846	846
735	735	789	789	847	847
736	736	790	790	848	848
737	737	791	791	849	849
738	738	792	792	850	850
739	739	793	793	851	851
741	741	794	794	852	852
742	742	795	795	853	853
743	743	796	796	854	854
744	744	797	797	855	855
745	745	798	798	855A	855A
746	746	799	799	855B	855B

**Proposed Statutory Changes Affecting Probate, Guardianships, Trusts, Powers of Attorneys, Etc.**

<b>Probate Code §</b>	<b>Estates Code §</b>
857	857
858	858
860	860
861	861
862	862
863	863
865	865
865A	865A
866	866
867	867
867A	867A
868	868
868A	868A
868B	868B
869	869
869A	869A
869B	869B
869C	869C
870	870
871	871
872	872
873	873
874	874
875	875
876	876
877	877
878	878
879	879
881	881
881A	881A
882	882
883	883
883A	883A
883B	883B
883C	883C
883D	883D
884	884
884A	884A
885	885
887	887
889	889
889A	889A
890	890
890A	890A
891	891
892	892
893	893
894	894
901	901
902	902
903	903
904	904
905	905



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