ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

SUBCHAPTER A. RESIGNATION OF PERSONAL REPRESENTATIVE

Sec. 361.001. RESIGNATION APPLICATION. A personal representative who wishes to resign the representative's trust shall file a written application with the court clerk, accompanied by a complete and verified exhibit and final account showing the true condition of the estate entrusted to the representative's care.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.002. IMMEDIATE APPOINTMENT OF SUCCESSOR; DISCHARGE AND RELEASE. (a) If the necessity exists, the court may immediately accept the resignation of a personal representative and appoint a successor representative.

(b) The court may not discharge a person whose resignation is accepted under Subsection (a), or release the person or the sureties on the person's bond, until a final order has been issued or judgment has been rendered on the final account required under Section 361.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.003. HEARING DATE; CITATION. (a) When an application to resign as personal representative is filed under Section 361.001, supported by the exhibit and final account required under that section, the court clerk shall bring the application to the judge's attention and the judge shall set a date for a hearing on the matter.

(b) After a hearing is set under Subsection (a), the clerk shall issue a citation to all interested persons, showing:

(1) that an application that complies with Section 361.001 has been filed; and

(2) the time and place set for the hearing at which the interested persons may appear and contest the exhibit and final account supporting the application.

(c) Unless the court directs that the citation under Subsection (b) be published, the citation must be posted.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.004. HEARING. (a) At the time set for the hearing under Section 361.003, unless the court continues the hearing, and if the court finds that the citation required under that section has been properly issued and served, the court shall:

(1) examine the exhibit and final account required by Section 361.001;

(2) hear all evidence for and against the exhibit and final account; and

(3) if necessary, restate and audit and settle the exhibit and final account.

(b) If the court is satisfied that the matters entrusted to the personal representative applying to resign have been handled and accounted for in accordance with the law, the court shall:

(1) enter an order approving the exhibit and final account; and

(2) require that any estate property remaining in the applicant's possession be delivered to the persons entitled by law to receive the property.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.005. REQUIREMENTS FOR DISCHARGE. (a) A personal representative applying to resign may not be discharged until:

(1) the resignation application has been heard;

(2) the exhibit and final account required under Section 361.001 have been examined, settled, and approved; and

(3) the applicant has satisfied the court that the

applicant has:

(A) delivered any estate property remaining in the applicant's possession; or

(B) complied with all lawful orders of the court with relation to the applicant's trust as representative.

(b) When a personal representative applying to resign has fully complied with the orders of the court, the court shall enter an order:

(1) accepting the resignation; and

(2) discharging the applicant, and, if the applicant is under bond, the applicant's sureties.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF PERSONAL REPRESENTATIVE

Sec. 361.051. REMOVAL WITHOUT NOTICE. The court, on the court's own motion or on the motion of any interested person, and without notice, may remove a personal representative appointed under this title who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, before the 91st day after the date the representative qualifies, an inventory of the estate property and a list of claims that have come to the representative's knowledge, unless that deadline is extended by court order;

(3) if required, fails to give a new bond within the time prescribed;

(4) is absent from the state for a consecutive period of three or more months without the court's permission, or moves out of state;

(5) cannot be served with notices or other processes because:

(A) the representative's whereabouts are unknown;

(B) the representative is eluding service; or

(C) the representative is a nonresident of this

state who does not have a resident agent to accept service of process in any probate proceeding or other action relating to the estate; or

(6) subject to Section 361.054(a), has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.052. REMOVAL WITH NOTICE. (a) The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

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

(5) the representative:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the representative's trust; or

(6) the representative, as executor or administrator, fails to make a final settlement by the third anniversary of the date letters testamentary or of administration are granted, unless that period is extended by the court on a showing of sufficient cause supported by oath.

(b) If a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004, the court, on the court's own motion, may remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by a qualified delivery method to:

(1) the representative's last known address; and

(2) the last known address of the representative's attorney of record.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 1(a), eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 34, eff. September 1, 2023.

Sec. 361.053. REMOVAL ORDER. An order removing a personal representative must:

(1) state the cause of the removal;

(2) require that, if the removed representative has been personally served with citation, any letters testamentary or of administration issued to the removed representative be surrendered, and that, regardless of whether the letters have been delivered, all the letters be canceled of record; and

(3) require the removed representative to deliver any estate property in the representative's possession to the persons entitled to the property or to the person who has been appointed and has qualified as successor representative.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.054. REMOVAL AND REINSTATEMENT OF PERSONAL REPRESENTATIVE UNDER CERTAIN CIRCUMSTANCES. (a) The court may remove a personal representative under Section 361.051(6) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 10th day after the date the court

signs the order of removal, a personal representative who is removed under Section 361.051(6) may file an application with the court for a hearing to determine whether the representative should be reinstated.

(c) On the filing of an application under Subsection (b), the court clerk shall issue to the applicant and to the successor representative of the decedent's estate a notice stating:

(1) that an application for reinstatement has been filed;

(2) the name of the decedent from whose estate the applicant was removed as personal representative; and

(3) the name of the applicant for reinstatement.

(d) The notice required by Subsection (c) must cite all persons interested in the estate to appear at the time and place stated in the notice if the persons wish to contest the application.

(e) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the personal representative applying for reinstatement did not engage in the conduct that directly led to the applicant's removal, the court shall:

(1) set aside any order appointing a successor representative; and

(2) enter an order reinstating the applicant as personal representative of the estate.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. APPOINTMENT OF SUCCESSOR REPRESENTATIVE

Sec. 361.101. REQUIREMENTS FOR REVOCATION OF LETTERS. Except as otherwise expressly provided by this title, the court may revoke letters testamentary or of administration and grant other

letters only:

(1) on application; and

(2) after personal service of citation on the person, if living, whose letters are sought to be revoked, requiring the person to appear and show cause why the application should not be granted.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.102. APPOINTMENT BECAUSE OF DEATH, RESIGNATION, OR REMOVAL. (a) If a person appointed as personal representative fails to qualify or, after qualifying, dies, resigns, or is removed, the court may, on application, appoint a successor representative if the appointment of a successor is necessary. The appointment may be made before a final accounting is filed or before any action on a final accounting is taken. In the event of death, the legal representatives of the deceased personal representative shall account for, pay, and deliver all estate property that was entrusted to the deceased personal representative's care to the persons legally entitled to receive the property, at the time and in the manner ordered by the court.

(b) The court may appoint a successor representative under this section without citation or notice if the court finds that the immediate appointment of a successor representative is necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.103. APPOINTMENT BECAUSE OF EXISTENCE OF PRIOR RIGHT. If letters testamentary or of administration have been granted to a person and another person applies for letters, the court shall revoke the initial letters and grant letters to the second applicant if the second applicant:

(1) is qualified;

(2) has a prior right to the letters; and

(3) has not waived the prior right to the letters.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.104. APPOINTMENT WHEN NAMED EXECUTOR BECOMES AN ADULT. (a) A person named as executor in a will who was not an adult when the will was probated is entitled to have letters testamentary or of administration that were granted to another person revoked and appropriate letters granted to the named executor on proof that the named executor has become an adult and is not otherwise disqualified.

(b) This subsection applies only if a will names two or more persons as executor. A person named as an executor in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters if:

(1) letters have been issued only to the named executors in the will who were adults when the will was probated; and

(2) the person is not otherwise disqualified from receiving letters.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.105. APPOINTMENT OF FORMERLY SICK OR ABSENT EXECUTOR. (a) This section applies only to a person named as executor in a will who was sick or absent from the state when the testator died or the will was proved and, as a result, could not:

(1) present the will for probate before the 31st day after the date of the testator's death; or

(2) accept and qualify as executor before the 21st day after the date the will is probated.

(b) A person to whom this section applies may accept and qualify as executor before the 61st day after the date the person returns to the state or recovers from illness if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as executor under Subsection (b) and letters testamentary or of administration have been issued to another person, the court shall revoke the other person's letters.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1,

eff. January 1, 2014.

Sec. 361.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT OF ADMINISTRATION. If, after letters of administration have been issued, it is discovered that the decedent left a lawful will, the court shall revoke the letters of administration and issue proper letters to any persons entitled to the letters.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. PROCEDURES AFTER DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVE

Sec. 361.151. PAYMENT TO ESTATE WHILE OFFICE OF PERSONAL REPRESENTATIVE IS VACANT. (a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to an estate while the office of personal representative of the estate is vacant to the court clerk for the credit of the estate.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) If the court clerk accepts payment or tender under this section, the court clerk shall issue a receipt for the payment or tender.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.152. FURTHER ADMINISTRATION WITH OR WITHOUT NOTICE OR WILL ANNEXED. (a) If an estate is unrepresented as a result of the death, removal, or resignation of the estate's personal representative, and on application by a qualified person interested in the estate, the court shall grant further administration of the estate if necessary, and with the will annexed if there is a will.

(b) An appointment under Subsection (a) shall be made on notice and after a hearing, as in the case of an original appointment, except that, if the court finds that the immediate appointment of a successor representative is necessary, the court

may appoint the successor on application but without citation or notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.153. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR REPRESENTATIVE. (a) If a personal representative of an estate not administered succeeds another personal representative, the successor representative has all rights, powers, and duties of the predecessor, other than those rights and powers conferred on the predecessor by will that are different from those conferred by this title on personal representatives generally. Subject to that exception, the successor representative shall administer the estate as if the successor's administration were a continuation of the former administration.

(b) A successor representative shall account for all the estate property that came into the predecessor's possession, and is entitled to any order or remedy that the court has the power to give to enforce the delivery of the estate property and the liability of the predecessor's sureties for any portion of the estate property that is not delivered. The successor is not required to account for any portion of the estate property that the successor failed to recover after due diligence.

(c) In addition to the powers granted under Subsections (a) and (b), a successor representative may:

(1) make himself or herself, and may be made, a party to a suit prosecuted by or against the successor's predecessors;

(2) settle with the predecessor, and receive and give a receipt for any portion of the estate property that remains in the predecessor's possession; or

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1,

eff. January 1, 2014.

Sec. 361.154. SUCCESSOR EXECUTOR ALSO SUCCEEDS TO PRIOR RIGHTS AND DUTIES. An executor who accepts appointment and qualifies after letters of administration have been granted on the estate shall, in the manner prescribed by Section 361.153, succeed to the previous administrator, and shall administer the estate as if the executor's administration were a continuation of the former administration, subject to any legal directions of the testator with respect to the estate that are contained in the will.
Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) An appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, shall make and return to the court an inventory, appraisement, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisement, and list of claims, in the manner provided for an original appointee, and shall also return additional inventories, appraisements, and lists of claims and additional affidavits in the manner provided for an original appointee.

(b) Except as otherwise provided by this subsection, an appointee who files an inventory, appraisement, and list of claims under Subsection (a) shall set out in the inventory the appointee's appraisement of the fair market value of each item in the inventory on the date of the appointee's qualification. If an inventory, appraisement, and list of claims has not been filed by any former personal representative, the appointee shall set out the inventory as provided by Sections 309.051 and 309.052.

(c) On the application of any person interested in the estate, the court shall, in an order appointing a successor representative of an estate, appoint appraisers as in an original

appointment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.51, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.52, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 46, eff. January 1, 2014.