

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY  
SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS'  
PROPERTY IN GENERAL

CHAPTER 123. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. EFFECT OF DISSOLUTION OF MARRIAGE ON WILL

Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE. (a) In this section:

(1) "Irrevocable trust" means a trust:

(A) for which the trust instrument was executed before the dissolution of a testator's marriage; and

(B) that the testator was not solely empowered by law or by the trust instrument to revoke.

(2) "Relative" means an individual related to another individual by:

(A) consanguinity, as determined under Section [573.022](#), Government Code; or

(B) affinity, as determined under Section [573.024](#), Government Code.

(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise:

(1) all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) all provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage.

(c) Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) a court order; or

(2) an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 3, eff. September 1, 2015.

Sec. 123.002. TREATMENT OF DECEDENT'S FORMER SPOUSE. A person is not a surviving spouse of a decedent if the person's marriage to the decedent has been dissolved by divorce, annulment, or a declaration that the marriage is void, unless:

(1) as the result of a subsequent marriage, the person is married to the decedent at the time of death; and

(2) the subsequent marriage is not declared void under Subchapter C.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN  
NONTESTAMENTARY TRANSFERS

Sec. 123.051. DEFINITIONS. In this subchapter:

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

(3) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.13, eff. January 1, 2014.

Sec. 123.052. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS; TREATMENT OF FORMER SPOUSE AS BENEFICIARY UNDER CERTAIN POLICIES OR PLANS. (a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced

individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) Sections [9.301](#) and [9.302](#), Family Code, govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

Added by Acts 2009, 81st Leg., R.S., Ch. [680](#), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. [1198](#)), Sec. 2.14, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. [995](#)), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. [2271](#)), Sec. 5, eff. September 1, 2017.

Sec. 123.053. EFFECT OF REVOCATION. (a) An interest

granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.15, eff. January 1, 2014.

Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.16, eff. January 1, 2014.

Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse or any relative of the former spouse who is not a relative of

the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections [123.052\(a\)](#) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. [680](#), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. [1198](#)), Sec. 2.17, eff. January 1, 2014.

Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS. (a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section [123.052\(a\)](#).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was

established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Added by Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 6, eff. September 1, 2017.

#### SUBCHAPTER C. CERTAIN MARRIAGES VOIDABLE AFTER DEATH

Sec. 123.101. PROCEEDING TO VOID MARRIAGE BASED ON MENTAL CAPACITY PENDING AT TIME OF DEATH. (a) If a proceeding under Chapter 6, Family Code, to declare a marriage void based on the lack of mental capacity of one of the parties to the marriage is pending on the date of death of one of those parties, or if a guardianship proceeding in which a court is requested under Chapter 6, Family Code, to declare a ward's or proposed ward's marriage void based on the lack of mental capacity of the ward or proposed ward is pending on the date of the ward's or proposed ward's death, the court may make the determination and declare the marriage void after the decedent's death.

(b) In making a determination described by Subsection (a), the court shall apply the standards for an annulment prescribed by Section 6.108(a), Family Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 123.102. APPLICATION TO VOID MARRIAGE AFTER DEATH. (a) Subject to Subsection (c), if a proceeding described by Section 123.101(a) is not pending on the date of a decedent's death, an interested person may file an application with the court requesting

that the court void the marriage of the decedent if:

(1) on the date of the decedent's death, the decedent was married; and

(2) that marriage commenced not earlier than three years before the date of the decedent's death.

(b) The notice applicable to a proceeding for a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, applies to a proceeding under Subsection (a).

(c) An application authorized by Subsection (a) may not be filed after the first anniversary of the date of the decedent's death.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 123.103. ACTION ON APPLICATION TO VOID MARRIAGE AFTER DEATH. (a) Except as provided by Subsection (b), in a proceeding brought under Section 123.102, the court shall declare the decedent's marriage void if the court finds that, on the date the marriage occurred, the decedent did not have the mental capacity to:

(1) consent to the marriage; and

(2) understand the nature of the marriage ceremony, if a ceremony occurred.

(b) A court that makes a finding described by Subsection (a) may not declare the decedent's marriage void if the court finds that, after the date the marriage occurred, the decedent:

(1) gained the mental capacity to recognize the marriage relationship; and

(2) did recognize the marriage relationship.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 123.104. EFFECT OF VOIDED MARRIAGE. If the court declares a decedent's marriage void in a proceeding described by Section 123.101(a) or brought under Section 123.102, the other party to the marriage is not considered the decedent's surviving spouse for purposes of any law of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN  
MULTIPLE-PARTY ACCOUNTS

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS. (a) In this section:

(1) "Beneficiary," "multiple-party account," "party," "P.O.D. account," and "P.O.D. payee" have the meanings assigned by Chapter 113.

(2) "Public retirement system" has the meaning assigned by Section 802.001, Government Code.

(3) "Relative" has the meaning assigned by Section 123.051.

(4) "Survivorship agreement" means an agreement described by Section 113.151.

(b) If a decedent established a P.O.D. account or other multiple-party account and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision or provision of a survivorship agreement with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative unless:

(1) the court decree dissolving the marriage:

(A) designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary; or

(B) reaffirms the survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse's relative;

(2) after the marriage was dissolved, the decedent:

(A) redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary; or

(B) reaffirmed the survivorship agreement in writing; or

(3) the former spouse or the former spouse's relative is designated to receive, or under the survivorship agreement would receive, the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c) If a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.

(c-1) If the provision of a survivorship agreement is not effective under Subsection (b), for purposes of determining the disposition of the decedent's interest in the account, the former spouse or former spouse's relative who would have received the decedent's interest if the provision were effective is treated as if that spouse or relative predeceased the decedent.

(d) A financial institution or other person obligated to pay an account described by Subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee or beneficiary under a designation that is not effective under Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:

(1) before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and

(2) the payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(d-1) A financial institution is not liable for payment of an account to a former spouse or the former spouse's relative as a party to the account, notwithstanding the fact that a designation or provision of a survivorship agreement in favor of that person is not effective under Subsection (b).

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. [995](#)), Sec. 5, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. [2271](#)), Sec. 7, eff. September 1, 2017.