

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE E. INTESTATE SUCCESSION

CHAPTER 202. DETERMINATION OF HEIRSHIP

SUBCHAPTER A. AUTHORIZATION AND PROCEDURES FOR COMMENCEMENT OF  
PROCEEDING TO DECLARE HEIRSHIP

Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

(1) the persons who are a decedent's heirs and only heirs; and

(2) the heirs' respective shares and interests under the laws of this state in the decedent's estate or, if applicable, in the trust.

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. 2.18, eff. January 1, 2014.

Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to declare heirship when:

(1) a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person's estate;

(2) there has been a will probated in this state or elsewhere or an administration in this state of a decedent's estate, but:

(A) property in this state was omitted from the will or administration; or

(B) no final disposition of property in this state has been made in the administration; or

(3) it is necessary for the trustee of a trust holding

assets for the benefit of a decedent to determine the heirs of the decedent.

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. 2.19, eff. January 1, 2014.

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 13, eff. January 1, 2014.

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent's estate;

(2) a person claiming to be a creditor or the owner of all or part of the decedent's estate;

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;

(4) a party seeking the appointment of an independent administrator under Section 401.003; or

(5) the trustee of a trust holding assets for the benefit of a decedent.

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. 2.20, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 14, eff. January 1, 2014.

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

- (1) the decedent's name and date and place of death;
- (2) the names and physical addresses where service can be had of the decedent's heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;
- (3) if the date or place of the decedent's death or the name or physical address where service can be had of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date or place of the decedent's death or the name or physical address where service can be had of the heir;
- (4) that all children born to or adopted by the decedent have been listed;
- (5) that each of the decedent's marriages has been listed with:
  - (A) the date of the marriage;
  - (B) the name of the spouse;
  - (C) the date and place of termination if the marriage was terminated; and
  - (D) other facts to show whether a spouse has had an interest in the decedent's property;
- (6) whether the decedent died testate and, if so, what disposition has been made of the will;
- (7) a general description of all property, as applicable:
  - (A) belonging to the decedent's estate that is subject to distribution under a judgment in the proceeding; or

(B) held in trust for the benefit of the decedent; and

(8) an explanation for the omission from the application of any of the information required by this section.

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. 2.21, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 9, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 12, eff. September 1, 2023.

Sec. 202.006. REQUEST FOR DETERMINATION OF NECESSITY FOR ADMINISTRATION. A person who files an application under Section 202.005 not later than the fourth anniversary of the date of the death of the decedent who is the subject of the application may request that the court determine whether there is a need for administration of the decedent's estate. The court shall hear evidence on the issue and, in the court's judgment, make a determination of the issue.

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

Sec. 202.007. AFFIDAVIT SUPPORTING APPLICATION REQUIRED.

(a) An application filed under Section 202.005 must be supported by the affidavit of each applicant.

(b) An affidavit of an applicant under Subsection (a) must state that, to the applicant's knowledge:

(1) all the allegations in the application are true; and

(2) no material fact or circumstance has been omitted from the application.

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

Sec. 202.008. REQUIRED PARTIES TO PROCEEDING TO DECLARE HEIRSHIP. Each of the following persons must be made a party to a proceeding to declare heirship:

(1) each unknown heir of the decedent who is the subject of the proceeding;

(2) each person who is named as an heir of the decedent in the application filed under Section 202.005; and

(3) each person who is, on the filing date of the application, shown as owning a share or interest in any real property described in the application by the deed records of the county in which the property is located.

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

Sec. 202.009. ATTORNEY AD LITEM. (a) The court shall appoint an attorney ad litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown.

(b) The court may expand the appointment of the attorney ad litem appointed under Subsection (a) to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the interests of the heir.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 15, eff. January 1, 2014.

#### SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP

Sec. 202.051. SERVICE OF CITATION BY QUALIFIED DELIVERY METHOD WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE. Except as provided by Section 202.054, citation in a proceeding to declare heirship must be served by a qualified delivery method on:

(1) each distributee who is 12 years of age or older and whose name and address are known or can be ascertained through

the exercise of reasonable diligence; and

(2) the parent, managing conservator, or guardian of each distributee who is younger than 12 years of age if the name and address of the parent, managing conservator, or guardian are known or can be reasonably ascertained.

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

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 13, eff. September 1, 2023.

Sec. 202.052. SERVICE OF CITATION BY PUBLICATION. If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation must be served on the person or entity by publication in the county in which the proceeding to declare heirship is commenced and in the county of the last residence of the decedent who is the subject of the proceeding, if that residence was in a county other than the county in which the proceeding is commenced. To determine whether a decedent has any other heirs, citation must be served on unknown heirs by publication in the manner provided by this section.

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. 844 (H.B. 2271), Sec. 10, eff. September 1, 2017.

Sec. 202.053. REQUIRED POSTING OF CITATION. Except in a proceeding in which citation is served by publication as provided by Section 202.052, citation in a proceeding to declare heirship must be posted in:

(1) the county in which the proceeding is commenced; and

(2) the county of the last residence of the decedent who is the subject of the proceeding.

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

Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED.

(a) The court may require that service of citation in a proceeding to declare heirship be made by personal service on some or all of those named as distributees in the application filed under Section [202.005](#).

(b) If a distributee to be cited under Subsection (a) is absent from or is not a resident of this state, any disinterested person competent to make an oath that the citation was served may serve the citation.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. [626](#)), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. [615](#)), Sec. 6, eff. September 1, 2021.

Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT REQUIRED. A party to a proceeding to declare heirship who executed the application filed under Section [202.005](#), entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. [995](#)), Sec. 10, eff. September 1, 2015.

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) A distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee.

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age may waive citation required by this subchapter to be served on the distributee.

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

eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 16, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 11, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 14, eff. September 1, 2023.

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) A person who files an application under Section 202.005 shall file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) if service of citation is waived under Section 202.056:

(i) the name of each person who waived citation under that section; and

(ii) if citation is waived under Section 202.056(b)(1), the name of the distributee and the representative capacity of the person who waived citation required to be served on the distributee.

(b) The court may not enter an order in the proceeding to declare heirship under Subchapter E until the affidavit or certificate required by Subsection (a) is filed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 17, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 11, eff. September 1, 2017.



SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

Sec. 202.101. REQUIRED TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP UNDER CERTAIN CIRCUMSTANCES. If, after a proceeding to declare heirship is commenced, an administration of the estate of the decedent who is the subject of the proceeding is granted in this state or the decedent's will is admitted to probate in this state, the court in which the proceeding to declare heirship is pending shall, by an order entered of record in the proceeding, transfer the proceeding to the court in which the administration was granted or the will was probated.

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

Sec. 202.102. TRANSFER OF RECORDS. The clerk of the court from which a proceeding to declare heirship is transferred under Section 202.101 shall, on entry of the order under that section, send to the clerk of the court named in the order a certified transcript of all pleadings, entries in the judge's probate docket, and orders of the court in the proceeding. The clerk of the court to which the proceeding is transferred shall:

(1) file the transcript;

(2) record the transcript in the judge's probate docket of that court; and

(3) docket the proceeding.

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. 91 (S.B. 1303), Sec. 8.007, eff. January 1, 2014.

Sec. 202.103. PROCEDURES APPLICABLE TO TRANSFERRED PROCEEDING TO DECLARE HEIRSHIP; CONSOLIDATION WITH OTHER PROCEEDING. A proceeding to declare heirship that is transferred under Section 202.101 shall proceed as though the proceeding was originally filed in the court to which the proceeding is

transferred. The court may consolidate the proceeding with the other proceeding pending in that court.

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

#### SUBCHAPTER D. EVIDENCE RELATING TO DETERMINATION OF HEIRSHIP

##### Sec. 202.151. EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP.

(a) The court may require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively.

(b) Except as provided by Subsection (c), in a proceeding to declare heirship, testimony regarding a decedent's heirs and family history must be taken:

(1) from two disinterested and credible witnesses in open court;

(2) by deposition in accordance with Section 51.203;

(3) by a recorded statement of facts contained in:

(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or

(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B); or

(4) in accordance with the Texas Rules of Civil Procedure.

(c) If it is shown to the court's satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, the testimony of that witness must be taken:

(1) in open court;

(2) by deposition in accordance with Section 51.203;

(3) by a recorded statement of facts contained in:

(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or

(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B); or

(4) in accordance with the Texas Rules of Civil

Procedure.

(d) Notwithstanding any other law, a person interested in an estate solely because the person is a creditor or has a claim against the estate may serve as a witness under this section if the person is otherwise a credible witness.

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. 91 (S.B. 1303), Sec. 8.008, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 18, eff. January 1, 2014.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 6, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 15, eff. September 1, 2023.

#### SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE HEIRSHIP

Sec. 202.201. REQUIRED STATEMENTS IN JUDGMENT. (a) The judgment in a proceeding to declare heirship must state:

(1) the names of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs' respective shares and interests in the decedent's property.

(b) If the proof in a proceeding to declare heirship is in any respect deficient, the judgment in the proceeding must state that.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 12, eff. September 1, 2015.

Sec. 202.202. FINALITY AND APPEAL OF JUDGMENT. (a) The judgment in a proceeding to declare heirship is a final judgment.

(b) At the request of an interested person, the judgment in

a proceeding to declare heirship may be appealed or reviewed within the same time limits and in the same manner as other judgments in probate matters.

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

Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT PROPERLY SERVED. If an heir of a decedent who is the subject of a proceeding to declare heirship is not served with citation by a qualified delivery method or personal service in the proceeding, the heir may:

(1) have the judgment in the proceeding corrected by bill of review:

(A) at any time, but not later than the fourth anniversary of the date of the judgment; or

(B) after the passage of any length of time, on proof of actual fraud; and

(2) recover the heir's just share of the property or the value of that share from:

(A) the heirs named in the judgment; and

(B) those who claim under the heirs named in the judgment and who are not bona fide purchasers for value.

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

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 16, eff. September 1, 2023.

Sec. 202.204. LIMITATION OF LIABILITY OF CERTAIN PERSONS ACTING IN ACCORDANCE WITH JUDGMENT. (a) The judgment in a proceeding to declare heirship is conclusive in a suit between an heir omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted heir, regardless of whether the judgment is subsequently modified, set aside, or nullified.

(b) A person is not liable to another person for the following actions performed in good faith after a judgment is

entered in a proceeding to declare heirship:

(1) delivering the property of the decedent who was the subject of the proceeding to the persons named as heirs in the judgment; or

(2) engaging in any other transaction with the persons named as heirs in the judgment.

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

Sec. 202.205. EFFECT OF CERTAIN JUDGMENTS ON LIABILITY TO CREDITORS. (a) A judgment in a proceeding to declare heirship stating that there is no necessity for administration of the estate of the decedent who is the subject of the proceeding constitutes authorization for a person who owes money to the estate, has custody of estate property, acts as registrar or transfer agent of an evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with an heir named in the judgment to take the following actions without liability to a creditor of the estate or other person:

(1) to pay, deliver, or transfer the property or the evidence of property rights to an heir named in the judgment; or

(2) to purchase property from an heir named in the judgment.

(b) An heir named in a judgment in a proceeding to declare heirship is entitled to enforce the heir's right to payment, delivery, or transfer described by Subsection (a) by suit.

(c) Except as provided by this section, this chapter does not affect the rights or remedies of the creditors of a decedent who is the subject of a proceeding to declare heirship.

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

Sec. 202.206. FILING AND RECORDING OF JUDGMENT. (a) A certified copy of the judgment in a proceeding to declare heirship may be:

(1) filed for record in the office of the county clerk of the county in which any real property described in the judgment

is located;

(2) recorded in the deed records of that county; and

(3) indexed in the name of the decedent who was the subject of the proceeding as grantor and in the names of the heirs named in the judgment as grantees.

(b) On the filing of a judgment in accordance with Subsection (a), the judgment constitutes constructive notice of the facts stated in the judgment.

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