

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE F. WILLS

CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS

SUBCHAPTER A. DEPOSIT OF WILL WITH COUNTY CLERK

Sec. 252.001. WILL DEPOSIT; CERTIFICATE. (a) A testator, or another person for the testator, may deposit the testator's will with the county clerk of the county of the testator's residence. Before accepting the will for deposit, the clerk may require proof satisfactory to the clerk concerning the testator's identity and residence.

(a-1) An attorney, business entity, or other person in possession of a testator's will may deposit the will with the county clerk of the county of the testator's last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is not able to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(1) the name and last known address of the testator; and

(2) if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

(b) The county clerk shall receive and keep a will deposited under this section on the payment of a \$5 fee.

(c) On the deposit of the will, the county clerk shall issue a certificate of deposit for the will.

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. 701 (H.B. 2207), Sec. 1, eff. September 1, 2017.

Sec. 252.002. SEALED WRAPPER REQUIRED. (a) A will intended

to be deposited with a county clerk shall be enclosed in a sealed wrapper.

(b) The wrapper of a will deposited under Section 252.001(a) must be endorsed with:

(1) "Will of," followed by the name, address, and signature of the testator; and

(2) the name and current address of each person who is to be notified of the deposit of the will after the testator's death.

(c) The wrapper of a will deposited under Section 252.001(a-1) must be endorsed with:

(1) "Will of," followed by the name and last known address of the testator; and

(2) if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

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. 701 (H.B. 2207), Sec. 2, eff. September 1, 2017.

Sec. 252.003. NUMBERING OF FILED WILLS AND CORRESPONDING CERTIFICATES. (a) A county clerk shall number wills deposited with the clerk in consecutive order.

(b) A certificate of deposit issued under Section 252.001(c) on receipt of a will must bear the same number as the will for which the certificate is issued.

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

Sec. 252.004. INDEX. A county clerk shall keep an index of all wills deposited with the clerk under Section 252.001.

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

SUBCHAPTER B. WILL DELIVERY DURING LIFE OF TESTATOR

Sec. 252.051. WILL DELIVERY. During the lifetime of the testator, a will deposited with a county clerk under Subchapter A may be delivered only to:

(1) the testator; or

(2) another person authorized by the testator by a sworn written order.

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

Sec. 252.052. SURRENDER OF CERTIFICATE OF DEPOSIT; EXCEPTION. (a) Except as provided by Subsection (b), on delivery of a will to the testator or a person authorized by the testator under Section 252.051, the certificate of deposit issued for the will must be surrendered by the person to whom delivery of the will is made.

(b) A county clerk may instead accept and file an affidavit by the testator stating that the certificate of deposit issued for the will has been lost, stolen, or destroyed.

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

SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

Sec. 252.101. NOTIFICATION BY COUNTY CLERK. A county clerk shall notify each person named on the endorsement of the will wrapper that the will is on deposit in the clerk's office if:

(1) an affidavit is submitted to the clerk stating that the testator has died; or

(2) the clerk receives other notice or proof of the testator's death sufficient to convince the clerk that the testator has died.

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. 701 (H.B. 2207), Sec. 3, eff.

September 1, 2017.

Sec. 252.102. WILL DELIVERY ON TESTATOR'S DEATH. On the request of one or more persons notified under Section 252.101, the county clerk shall deliver the will that is the subject of the notice to the person or persons. The clerk shall obtain a receipt for delivery of the will.

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

Sec. 252.103. INSPECTION OF WILL BY COUNTY CLERK. A county clerk shall open a will wrapper and inspect the will if:

(1) the notice required by Section 252.101 is returned as undelivered; or

(2) the clerk has accepted for deposit a will that does not specify on the will wrapper the person to whom the will is to be delivered on the testator's death.

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

Sec. 252.104. NOTICE AND DELIVERY OF WILL TO EXECUTOR. If a county clerk inspects a will under Section 252.103 and the will names an executor, the clerk shall:

(1) notify the person named as executor that the will is on deposit with the clerk; and

(2) deliver, on request, the will to the person named as executor.

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. 701 (H.B. 2207), Sec. 4, eff. September 1, 2017.

Sec. 252.105. NOTICE AND DELIVERY OF WILL TO DEVISEES.
(a) If a county clerk inspects a will under Section 252.103, the clerk shall notify the devisees named in the will that the will is on deposit with the clerk if:

- (1) the will does not name an executor;
- (2) the person named as executor in the will:
 - (A) has died; or
 - (B) fails to take the will before the 31st day after the date the notice required by Section 252.104 is mailed to the person; or
- (3) the notice mailed to the person named as executor is returned as undelivered.

(b) On request, the county clerk shall deliver the will to any or all of the devisees notified under Subsection (a).

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. 701 (H.B. 2207), Sec. 5, eff. September 1, 2017.

SUBCHAPTER D. LEGAL EFFECT OF WILL DEPOSIT

Sec. 252.151. DEPOSIT HAS NO LEGAL SIGNIFICANCE. The provisions of Subchapter A providing for the deposit of a will with a county clerk are solely for the purpose of providing a safe and convenient repository for a will. For purposes of probate, a will deposited as provided by Subchapter A may not be treated differently than a will that has not been deposited.

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. 701 (H.B. 2207), Sec. 6, eff. September 1, 2017.

Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER WILL. A will that is not deposited as provided by Subchapter A shall be admitted to probate on proof that the will is the last will of the testator, notwithstanding the fact that the testator has a prior will that has been deposited in accordance with Subchapter A.

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. 19, eff. September 1, 2017.

Sec. 252.153. WILL DEPOSIT DOES NOT CONSTITUTE NOTICE. The deposit of a will as provided by Subchapter A does not constitute notice, constructive or otherwise, to any person as to the existence or the contents of the will.

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

SUBCHAPTER E. DUTY AND LIABILITY OF CUSTODIAN OF ESTATE PAPERS

Sec. 252.201. WILL DELIVERY. (a) On receiving notice of a testator's death, the person who has custody of the testator's will shall deliver the will to the clerk of the court that has jurisdiction of the testator's estate.

(b) The clerk of the court shall handle the will in the same manner prescribed by Subchapter A for a will deposited under Section [252.001](#) other than collection of a fee under Section [252.001\(b\)](#).

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. 701 (H.B. [2207](#)), Sec. 7, eff. September 1, 2017.

Sec. 252.2015. NOTICE AND DELIVERY OF WILL TO EXECUTOR OR DEVISEES. (a) On the deposit of a will under Section [252.201](#) that names an executor, the clerk of the court shall:

(1) notify the person named as executor in the manner prescribed by Section [252.104](#); and

(2) deliver, on request, the will to the person named as executor.

(b) On the deposit of a will under Section [252.201](#), the clerk of the court shall notify the devisees named in the will in the manner prescribed by Section [252.105\(a\)](#) if:

- (1) the will does not name an executor;
- (2) the person named as executor in the will:
 - (A) has died; or
 - (B) fails to take the will before the 31st day after the date the notice required by Subsection (a) is mailed to the person; or
- (3) the notice mailed to the person named as executor is returned as undelivered.

(c) On request, the clerk of the court shall deliver the will to any or all of the devisees notified under Subsection (b).

Added by Acts 2017, 85th Leg., R.S., Ch. 701 (H.B. [2207](#)), Sec. 8, eff. September 1, 2017.

Sec. 252.202. PERSONAL SERVICE ON CUSTODIAN OF ESTATE PAPERS. On a sworn written complaint that a person has custody of the last will of a testator or any papers belonging to the estate of a testator or intestate, the judge of the court that has jurisdiction of the estate shall have the person cited by personal service to appear and show cause why the person should not deliver:

- (1) the will to the court for probate; or
- (2) the papers to the executor or administrator.

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

Sec. 252.203. ARREST; CONFINEMENT. On the return of a citation served under Section [252.202](#), if the judge is satisfied that the person served with the citation had custody of the will or papers at the time the complaint under that section was filed and the person does not deliver the will or papers or show good cause why the will or papers have not been delivered, the judge may have the person arrested and confined until the person delivers the will or papers.

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

Sec. 252.204. DAMAGES. (a) A person who refuses to deliver a will or papers described by Section [252.202](#) is liable to any

person aggrieved by the refusal for all damages sustained as a result of the refusal.

(b) Damages may be recovered under this section in any court of competent jurisdiction.

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