

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE F. WILLS

CHAPTER 254. CERTAIN PROVISIONS IN, AND CONTRACTS RELATING TO,
WILLS

Sec. 254.001. DEVISES TO TRUSTEES. (a) A testator may validly devise property in a will to the trustee of a trust established or to be established:

(1) during the testator's lifetime by the testator, the testator and another person, or another person, including a funded or unfunded life insurance trust in which the settlor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise to the trustee, regardless of the existence, size, or character of the corpus of the trust, if:

(A) the trust is identified in the testator's will; and

(B) the terms of the trust are in:

(i) a written instrument, other than a will, executed before, with, or after the execution of the testator's will; or

(ii) another person's will if that person predeceased the testator.

(b) A devise under Subsection (a) is not invalid because the trust:

(1) is amendable or revocable; or

(2) was amended after the execution of the will or the testator's death.

(c) Unless the testator's will provides otherwise, property devised to a trust described by Subsection (a) is not held under a testamentary trust of the testator. The property:

(1) becomes part of the trust to which the property is devised; and

(2) must be administered and disposed of according to the provisions of the instrument establishing the trust, including

any amendment to the instrument made before or after the testator's death.

(d) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

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

Sec. 254.002. BEQUESTS TO CERTAIN SUBSCRIBING WITNESSES.

(a) Except as provided by Subsection (c), if a devisee under a will is also a subscribing witness to the will and the will cannot be otherwise established:

(1) the bequest is void; and

(2) the subscribing witness shall be allowed and compelled to appear and give the witness's testimony in the same manner as if the bequest to the witness had not been made.

(b) Notwithstanding Subsection (a), if the subscribing witness described by that subsection would have been entitled to a share of the testator's estate had the testator died intestate, the witness is entitled to as much of that share as does not exceed the value of the bequest to the witness under the will.

(c) If the testimony of a subscribing witness described by Subsection (a) proving the will is corroborated by at least one disinterested and credible person who testifies that the subscribing witness's testimony is true and correct:

(1) the bequest to the subscribing witness is not void under Subsection (a); and

(2) the subscribing witness is not regarded as an incompetent or noncredible witness under Subchapters B and C, Chapter 251.

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

Sec. 254.003. DEVICES TO CERTAIN ATTORNEYS AND OTHER PERSONS. (a) A devise of property in a will is void if the devise is made to:

(1) an attorney who prepares or supervises the

preparation of the will;

(2) a parent, descendant of a parent, or employee of the attorney described by Subdivision (1); or

(3) the spouse of a person described by Subdivision (1) or (2).

(b) This section does not apply to:

(1) a devise made to a person who:

(A) is the testator's spouse;

(B) is an ascendant or descendant of the testator; or

(C) is related within the third degree by consanguinity or affinity to the testator; or

(2) a bona fide purchaser for value from a devisee in a will.

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

Sec. 254.004. CONTRACTS CONCERNING WILLS OR DEVISES; JOINT OR RECIPROCAL WILLS. (a) A contract executed or entered into on or after September 1, 1979, to make a will or devise, or not to revoke a will or devise, may be established only by:

(1) a written agreement that is binding and enforceable; or

(2) a will stating:

(A) that a contract exists; and

(B) the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not constitute by itself sufficient evidence of the existence of a contract.

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

Sec. 254.005. FORFEITURE CLAUSE. (a) A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the

person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.26, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 351 (H.B. 2380), Sec. 2.01, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 17, eff. September 1, 2015.

Sec. 254.006. DESIGNATION OF ADMINISTRATOR. (a) A testator may grant in a will to an executor named in the will or to another person identified by name, office, or function the authority to designate one or more persons to serve as administrator of the testator's estate.

(b) To be effective, a designation of an administrator of a testator's estate as authorized by a will under Subsection (a) must be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths.

(c) Unless the will provides otherwise, a person designated to serve as administrator of a testator's estate as provided by Subsection (a) may serve only if:

- (1) each executor named in the testator's will:
 - (A) is deceased;
 - (B) is disqualified to serve as executor; or
 - (C) indicates by affidavit filed with the county clerk of the county in which the application for letters testamentary is filed or, if an application has not been filed, a

county described by Section 33.001(a)(1) or (2) the executor's inability or unwillingness to serve as executor;

(2) the designation is effective as provided by Subsection (b); and

(3) the person is not disqualified from serving under Section 304.003.

(d) Unless the will or designation provides otherwise, a person designated as administrator of a testator's estate as provided by this section has the same rights, powers, and duties as an executor named in the will, including the right to serve as an independent administrator with the power to sell property without the need for consent of the distributees under Section 401.002 or 401.006.

Added by Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 8, eff. September 1, 2019.