ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE F. WILLS

CHAPTER 256. PROBATE OF WILLS GENERALLY

SUBCHAPTER A. EFFECTIVENESS OF WILL; PERIOD FOR PROBATE

Sec. 256.001. WILL NOT EFFECTIVE UNTIL PROBATED. Except as provided by Subtitle K with respect to foreign wills, a will is not effective to prove title to, or the right to possession of, any property disposed of by the will until the will is admitted to probate.

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

Sec. 256.002. PROBATE BEFORE DEATH VOID. The probate of a will of a living person is void.

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

Sec. 256.003. PERIOD FOR ADMITTING WILL TO PROBATE; PROTECTION FOR CERTAIN PURCHASERS. (a) Except as provided by Section 501.001 with respect to a foreign will, a will may not be admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for probate on or before the fourth anniversary of the testator's death.

(b) Except as provided by Section 501.006 with respect to a foreign will, letters testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death unless it is shown that the application for probate was filed on or before the fourth anniversary of the testator's death.

(c) A person who for value, in good faith, and without knowledge of the existence of a will purchases property from a decedent's heirs after the fourth anniversary of the decedent's death shall be held to have good title to the interest that the heir

or heirs would have had in the absence of a will, as against the claim of any devisee under any will that is subsequently offered for probate.

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. 20, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 23, eff. September 1, 2017.

SUBCHAPTER B. APPLICATION REQUIREMENTS

Sec. 256.051. ELIGIBLE APPLICANTS FOR PROBATE OF WILL.

(a) An executor named in a will, an administrator designated as authorized under Section 254.006, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b), or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

(1) in the applicant's possession or not;

(2) lost;

(3) destroyed; or

(4) outside of this state.

(b) An application for the probate of a will may be combined with an application for the appointment of an executor or administrator. A person interested in either the probate or the appointment may apply for both.

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. 21, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 11, eff. September 1, 2019.

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF WILL.

(a) An application for the probate of a will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(1-a) the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(2-a) the last three numbers of the testator's driver's license number and social security number;

(3) the fact, date, and place of the testator's death;

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;

(6) the date of the will;

(7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued;

(8) the name of each subscribing witness to the will, if any;

(9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;

(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and

(12) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must

state the reason the matter is not stated and averred.

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. 2.30(a), eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 21, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 22, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 22, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1039 (H.B. 1814), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 12, eff. September 1, 2019.

Sec. 256.053. FILING OF WILL WITH APPLICATION FOR PROBATE GENERALLY REQUIRED. (a) An applicant for the probate of a will shall file the will with the application if the will is in the applicant's control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk's custody:

(1) by a court order under Section 256.202; or

(2) by a court order issued under Subchapter C, Chapter 33, in which case the clerk shall deliver the will directly to the clerk of the court to which the probate proceeding is transferred.

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. 23, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 24, eff. January 1, 2014.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 13,

eff. September 1, 2019.

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, as far as known; and

(3) the name and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A) each devisee;

(B) each person who would inherit as an heir of the testator in the absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

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. 25, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 23, eff. September 1, 2015.

SUBCHAPTER C. PROCEDURES FOR SECOND APPLICATION

Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an application for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:

(1) hear both applications together; and

(2) determine:

(A) if both applications are for the probate of a

will, which will should be admitted to probate, if either, or whether the decedent died intestate; or

(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

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. 2.31, eff. January 1, 2014.

Sec. 256.102. PROCEDURE ON FILING OF SECOND APPLICATION FOR PROBATE AFTER FIRST WILL HAS BEEN ADMITTED. If, after a decedent's will has been admitted to probate, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall determine:

(1) whether the former probate should be set aside; and

(2) if the former probate is to be set aside, whether:

(A) the other will should be admitted to probate; or

(B) the decedent died intestate.

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

Sec. 256.103. PROCEDURE WHEN APPLICATION FOR PROBATE IS FILED AFTER LETTERS OF ADMINISTRATION HAVE BEEN GRANTED. (a) A lawful will of a decedent that is discovered after letters of administration have been granted on the decedent's estate may be proved in the manner provided for the proof of wills.

(b) The court shall allow an executor named in a will described by Subsection (a) who is not disqualified to qualify and accept as executor. The court shall revoke the previously granted letters of administration.

(c) If an executor is not named in a will described by

Subsection (a), or if the executor named is disqualified or dead, renounces the executorship, fails or is unable to accept and qualify before the 21st day after the date of the probate of the will, or fails to present the will for probate before the 31st day after the discovery of the will, the court, as in other cases, shall grant an administration with the will annexed of the testator's estate.

(d) An act performed by the first administrator before the executor described by Subsection (b) or the administrator with the will annexed described by Subsection (c) qualifies is as valid as if no will had been discovered.

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

SUBCHAPTER D. REQUIRED PROOF FOR PROBATE OF WILL

Sec. 256.151. GENERAL PROOF REQUIREMENTS. An applicant for the probate of a will must prove to the court's satisfaction that:

(1) the testator is dead;

(2) four years have not elapsed since the date of the testator's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

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

Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF WILL. (a) An applicant for the probate of a will must prove the following to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate:

(1) the testator did not revoke the will; and

(2) if the will is not self-proved, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will, was of sound mind and:

(i) was 18 years of age or older;

(ii) was or had been married; or

(iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, that is self-proved in accordance with the law of another state or foreign country where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or the time of the testator's death, is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b), a will is considered self-proved without further evidence of the law of any state or foreign country if:

(1) the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and

(2) the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if

under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

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. 2.32, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 26, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 24, eff. September 1, 2015.

Sec. 256.153. PROOF OF EXECUTION OF ATTESTED WILL. (a) An attested will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.

(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.

(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with

Section 51.203 or the Texas Rules of Civil Procedure;

(2) if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:

(A) one or more of the attesting witnesses; or

(B) the testator, if the testator signed the will; or

(3) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) sworn testimony or affidavit taken in open court; or

(B) written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure; or

(2) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1).

(e) A witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) may testify by referring to a

certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

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. 27, eff. January 1, 2014.

Sec. 256.154. PROOF OF EXECUTION OF HOLOGRAPHIC WILL. (a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator's handwriting. The evidence may be by:

(1) sworn testimony or affidavit taken in open court; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

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. 28, eff. January 1, 2014.

Sec. 256.155. PROCEDURES FOR DEPOSITIONS WHEN NO CONTEST IS FILED. (a) This section, rather than Sections 256.153(c) and (d) and 256.154 regarding the taking of depositions, applies if no contest has been filed with respect to an application for the probate of a will.

(b) Depositions for the purpose of establishing a will may be taken in the manner provided by Section 51.203 for the taking of

depositions when there is no opposing party or attorney of record on whom notice and copies of interrogatories may be served.

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. 29, eff. January 1, 2014.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see H.B. 3421 and S.B. 1448, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 256.156. PROOF OF WILL NOT PRODUCED IN COURT. (a) A will that cannot be produced in court must be proved in the same manner as provided in Section 256.153 for an attested will or Section 256.154 for a holographic will, as applicable. The same amount and character of testimony is required to prove the will not produced in court as is required to prove a will produced in court.

(b) In addition to the proof required by Subsection (a):

(1) the cause of the nonproduction of a will not produced in court must be proved, which must be sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and

(2) the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

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. 30, eff. January 1, 2014.

Sec. 256.157. TESTIMONY REGARDING PROBATE TO BE COMMITTED TO WRITING. (a) Except as provided by Subsection (b), all testimony taken in open court on the hearing of an application to probate a will must be:

(1) committed to writing at the time the testimony is taken;

(2) subscribed and sworn to in open court by the witness; and

(3) filed by the clerk.

(b) In a contested case, the court, on the agreement of the parties or, if there is no agreement, on the court's own motion, may waive the requirements of Subsection (a).

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

SUBCHAPTER E. ADMISSION OF WILL TO, AND PROCEDURES FOLLOWING, PROBATE

Sec. 256.201. ADMISSION OF WILL TO PROBATE. If the court is satisfied on the completion of hearing an application for the probate of a will that the will should be admitted to probate, the court shall enter an order admitting the will to probate. Certified copies of the will and the order admitting the will to probate, or of the record of the will and order, and the record of testimony, may be:

(1) recorded in other counties; and

(2) used in evidence, as the originals may be used, on the trial of the same matter in any other court when taken to that court by appeal or otherwise.

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

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see H.B. 3421 and S.B. 1448, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 256.202. CUSTODY OF PROBATED WILL. An original will and the probate of the will shall be deposited in the office of the county clerk of the county in which the will was probated. The will and probate of the will shall remain in that office except during a time the will and the probate of the will are removed for inspection

to another place on an order of the court where the will was probated. If that court orders the original will to be removed to another place for inspection:

(1) the person removing the will shall give a receipt for the will;

(2) the court clerk shall make and retain a copy of the will; and

(3) the will shall be delivered back to the office of the county clerk of the county in which the will was probated after the inspection is completed.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 14, eff. September 1, 2019.

Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S CUSTODY. If for any reason a will is not in the court's custody, the court shall find the contents of the will by written order. Certified copies of the contents as established by the order may be:

(1) recorded in other counties; and

(2) used in evidence, as certified copies of wills in the custody of the court may be used.

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. 31, eff. January 1, 2014.

Sec. 256.204. PERIOD FOR CONTEST. (a) After a will is admitted to probate, an interested person may commence a suit to contest the validity thereof not later than the second anniversary of the date the will was admitted to probate, except that an interested person may commence a suit to cancel a will for forgery or other fraud not later than the second anniversary of the date the forgery or fraud was discovered.

(b) Notwithstanding Subsection (a), an incapacitated person may commence the contest under that subsection on or before the second anniversary of the date the person's disabilities are removed.

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