

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND
OPENING OF ADMINISTRATION

CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 305.001. DEFINITIONS. In this chapter:

(1) "Bond" means a bond required by this chapter to be given by a person appointed to serve as a personal representative.

(2) "Declaration" means a written declaration that may be made and signed by a person appointed to serve as a personal representative.

(3) "Oath" means an oath that may be taken by a person appointed to serve as a personal representative.

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. 20, eff. September 1, 2023.

Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL REPRESENTATIVE. (a) A personal representative, other than an executor described by Subsection (b), is considered to have qualified when the representative has:

(1) taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B;

(2) filed the required bond with the clerk; and

(3) obtained the judge's approval of the bond.

(b) An executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B.

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. 36, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 21, eff. September 1, 2023.

Sec. 305.003. PERIOD FOR TAKING OATH OR MAKING AND SIGNING DECLARATION. An oath may be taken and subscribed or a declaration may be made and signed at any time before:

(1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or

(2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

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. 37, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 22, eff. September 1, 2023.

Sec. 305.004. PERIOD FOR GIVING BOND. (a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) The court shall act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, shall approve the bond.

(c) If no action has been taken by the court on the bond before the 21st day after the date the bond is filed, the person

appointed personal representative may file a motion requiring the judge of the court in which the bond was filed to specify on the record the reason or reasons for the judge's failure to act on the bond. The hearing on the motion must be held before the 11th day after the date the motion is filed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. [2912](#)), Sec. 38, eff. January 1, 2014.

SUBCHAPTER B. OATHS OR DECLARATIONS

Sec. 305.051. OATH OR DECLARATION OF EXECUTOR OR ADMINISTRATOR WITH WILL ANNEXED. (a) Before the issuance of letters testamentary or letters of administration with the will annexed, the person named as executor or appointed as administrator with the will annexed shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person named as executor or appointed as administrator with the will annexed elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe, and that I will well and truly perform all the duties of _____ (insert "executor of the will" or "administrator with the will annexed," as applicable) for the estate of _____ (insert name of testator).

(c) If the person named as executor or appointed as administrator with the will annexed elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is _____ (insert name of "executor of the will" or "administrator with the will annexed" as it appears on the order appointing the person as executor or administrator with the will annexed), my date of birth is _____ (insert date of birth of

"executor of the will" or "administrator with the will annexed," as applicable), and my address is _____ (insert street, city, state, zip code, and country of "executor of the will" or "administrator with the will annexed," as applicable). I declare under penalty of perjury that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of _____ (insert "executor of will" or "administrator with the will annexed," as applicable) for the estate of _____ (insert name of testator).

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. 24, eff. September 1, 2023.

Sec. 305.052. OATH OR DECLARATION OF ADMINISTRATOR.

(a) Before the issuance of letters of administration, the person appointed as administrator shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person appointed as administrator elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that _____ (insert name of decedent), deceased, died _____ (insert "without leaving any lawful will" or "leaving a lawful will, but the executor named in the will is dead or has failed to offer the will for probate or to accept and qualify as executor, within the period required," as applicable), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of _____ (insert name of testator).

(c) If the person appointed as administrator elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is _____ (insert name of administrator as it appears on the order appointing the person as administrator), my date of birth is _____ (insert date of birth of "administrator"), and my address is _____ (insert street, city, state, zip code, and country of "administrator"). I declare under penalty of perjury that _____ (insert name of decedent), deceased, died _____ (insert "without leaving any lawful will" or "leaving a lawful will, but the executor named in the will is dead or has failed to offer the will for probate or to accept and qualify as executor, within the period required," as applicable), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of administrator of the estate of _____ (insert name of decedent).

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. 25, eff. September 1, 2023.

Sec. 305.053. OATH OR DECLARATION OF TEMPORARY ADMINISTRATOR. (a) Before the issuance of temporary letters of administration, the person appointed as temporary administrator shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person appointed as temporary administrator elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _____ (insert name of decedent), deceased, in accordance with the law, and with the order of the court appointing me as temporary administrator.

(c) If the person appointed as temporary administrator elects to make a declaration under this section, the person shall

make and sign a declaration in substantially the following form:

My name is _____ (insert name of temporary administrator as it appears on the order appointing the person as temporary administrator), my date of birth is _____ (insert date of birth of "temporary administrator"), and my address is _____ (insert street, city, state, zip code, and country of "temporary administrator"). I solemnly declare that I will well and truly perform all the duties of temporary administrator of the estate of _____ (insert name of decedent), in accordance with the law, and with the order of the court appointing me as temporary administrator.

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. 26, eff. September 1, 2023.

Sec. 305.054. ADMINISTRATION OF OATH. An oath may be taken before any person authorized to administer oaths under the laws of this state.

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

Sec. 305.055. FILING AND RECORDING OF OATH OR DECLARATION. An oath or declaration shall be:

(1) filed with the clerk of the court granting the letters testamentary or of administration, as applicable; and

(2) recorded in the judge's probate docket.

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. 8.012, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 27, eff. September 1, 2023.

SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

Sec. 305.101. BOND GENERALLY REQUIRED; EXCEPTIONS. (a) Except as otherwise provided by this title, a person to whom letters testamentary or of administration will be issued must enter into a bond before issuance of the letters.

(b) Letters testamentary shall be issued without the requirement of a bond to a person named as executor in a will probated in a court of this state if:

(1) the will directs that no bond or security be required of the person; and

(2) the court finds that the person is qualified.

(c) A bond is not required if a personal representative is a corporate fiduciary.

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

Sec. 305.102. BOND REQUIRED FROM EXECUTOR OTHERWISE EXEMPT.

(a) This section applies only to an estate for which an executor was appointed under a will, but from whom no bond was required.

(b) A person who has a debt, claim, or demand against the estate, with respect to the justice of which the person or the person's agent or attorney has made an oath, or another person interested in the estate, whether in person or as the representative of another, may file a written complaint in the court where the will is probated.

(c) On the filing of the complaint, the court shall cite the executor to appear and show cause why the executor should not be required to give a bond.

(d) On hearing the complaint, the court shall enter an order requiring the executor to give a bond not later than the 10th day after the date of the order if it appears to the court that:

(1) the executor is wasting, mismanaging, or misapplying the estate; and

(2) as a result of conduct described by Subdivision (1):

(A) a creditor may probably lose the creditor's

debt; or

(B) a person's interest in the estate may be diminished or lost.

(e) A bond required under this section must be:

(1) in an amount sufficient to protect the estate and the estate's creditors;

(2) payable to and approved by the judge; and

(3) conditioned that the executor:

(A) will well and truly administer the estate; and

(B) will not waste, mismanage, or misapply the estate.

(f) If the executor fails to give a bond required under this section on or before the 10th day after the date of the order and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the executor and appoint a competent person in the executor's place who shall administer the estate according to the will and law. Before entering into the administration of the estate, the appointed person must:

(1) take the oath required of an administrator with the will annexed under Section [305.051](#); and

(2) give a bond in the manner and amount provided by this chapter for the issuance of original letters of administration.

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

Sec. 305.103. BONDS OF JOINT PERSONAL REPRESENTATIVES. If two or more persons are appointed as personal representatives of an estate and are required by this chapter or by the court to give a bond, the court may require:

(1) a separate bond from each person; or

(2) a joint bond from all of the persons.

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

Sec. 305.104. BOND OF MARRIED PERSON. (a) A married person

appointed as a personal representative may execute a bond required by law:

- (1) jointly with the person's spouse; or
- (2) separately without the person's spouse.

(b) A bond executed by a married person binds the person's separate estate, but does not bind the person's spouse unless the spouse signed the bond.

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

Sec. 305.105. BOND OF MARRIED PERSON UNDER 18 YEARS OF AGE. Any bond required to be executed by a person who is under 18 years of age, is or has been married, and accepts and qualifies as an executor or administrator is as valid and binding for all purposes as if the person were of legal age.

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

Sec. 305.106. GENERAL FORMALITIES. A bond required under Section 305.101(a) must:

- (1) be conditioned as required by law;
- (2) be payable to the judge and the judge's successors in office;
- (3) bear the written approval of the judge in the judge's official capacity; and
- (4) be executed and approved in accordance with this chapter.

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

Sec. 305.107. SUBSCRIPTION OF BOND BY PRINCIPALS AND SURETIES. A bond required under Section 305.101 shall be subscribed by both principals and sureties.

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

Sec. 305.108. FORM OF BOND. The following form, or a form

with the same substance, may be used for the bond of a personal representative:

The State of Texas

County of _____

Know all persons by these presents that we, _____ (insert name of each principal), as principal, and _____ (insert name of each surety), as sureties, are held and firmly bound unto the judge of _____ (insert reference to appropriate judge), and that judge's successors in office, in the sum of _____ dollars, conditioned that the above bound principal or principals, appointed as _____ (insert "executor of the will," "administrator with the will annexed of the estate," "administrator of the estate," or "temporary administrator of the estate," as applicable) of _____ (insert name of decedent), deceased, shall well and truly perform all of the duties required of the principal or principals by law under that appointment.

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. 26, eff. September 1, 2017.

Sec. 305.109. FILING OF BOND. A bond required under Section [305.101](#) shall be filed with the clerk after the court approves the bond.

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

Sec. 305.110. FAILURE TO GIVE BOND. Another person may be appointed as personal representative to replace a personal representative who at any time fails to give a bond as required by the court in the period prescribed by this chapter.

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

Sec. 305.111. BOND NOT VOID ON FIRST RECOVERY. A personal representative's bond does not become void on the first recovery

but may be put in suit and prosecuted from time to time until the entire amount of the bond has been recovered.

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

SUBCHAPTER D. AMOUNT OF BOND AND ASSOCIATED DEPOSITS

Sec. 305.151. GENERAL STANDARD REGARDING AMOUNT OF BOND.

(a) The judge shall set the amount of a bond, in an amount considered sufficient to protect the estate and the estate's creditors, as provided by this chapter.

(b) Notwithstanding Subsection (a) or other provisions generally applicable to bonds of personal representatives, if the person to whom letters testamentary or of administration are granted is entitled to all of the decedent's estate after payment of debts, a bond shall be in an amount sufficient to protect creditors only.

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

Sec. 305.152. EVIDENTIARY HEARING ON AMOUNT OF BOND. Before setting the amount of a bond, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;

(2) the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm, or ranch owned by the estate, and expenses of administration for one year;

(3) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the estate and the aggregate amount of any installments or periodic payments to be collected;

(4) the estimated value of certificates of stock, bonds, notes, or other securities of the estate and the name of the depository, if any, in which those assets are deposited;

(5) the face value of life insurance or other policies

payable to the person on whose estate administration is sought or to the estate;

(6) the estimated value of other personal property owned by the estate; and

(7) the estimated amount of debts due and owing by the estate.

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

Sec. 305.153. SPECIFIC BOND AMOUNT. (a) Except as otherwise provided by this section, the judge shall set the bond in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the estate; and

(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:

(A) interest and dividends;

(B) collectible claims;

(C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from federal social security payments; and

(D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or

(2) voluntarily deposited by the personal representative or the sureties on the representative's bond, as provided by Sections 305.155 and 305.156.

(c) A bond required to be given by a temporary administrator shall be in the amount that the judge directs.

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

Sec. 305.154. AGREEMENT REGARDING DEPOSIT OF ESTATE ASSETS.

(a) A personal representative may agree with the surety or sureties

on a bond, either corporate or personal, for the deposit of any cash and other estate assets in a depository described by Subsection (c), if the deposit is otherwise proper, in a manner that prevents the withdrawal of the cash or other assets without:

- (1) the written consent of the surety or sureties; or
- (2) a court order entered after notice to the surety or sureties as directed by the court.

(b) The court may require the action described by Subsection (a) if the court considers that action to be in the best interest of the estate.

(c) Cash and assets must be deposited under this section in a financial institution, as defined by Section [201.101](#), Finance Code, that:

- (1) has its main office or a branch office in this state; and
- (2) is qualified to act as a depository in this state under the laws of this state or the United States.

(d) An agreement under this section may not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. [2502](#)), Sec. 1, eff. January 1, 2014.

Sec. 305.155. DEPOSIT OF ESTATE ASSETS ON TERMS PRESCRIBED BY COURT. (a) Cash, securities, or other personal assets of an estate or to which the estate is entitled may or, if considered by the court to be in the best interest of the estate, shall, be deposited in one or more depositories described by Section [305.154](#)(c) on terms prescribed by the court.

(b) The court in which the proceedings are pending may authorize or require additional estate assets currently on hand or that accrue during the pendency of the proceedings to be deposited as provided by Subsection (a) on:

- (1) the court's own motion; or
- (2) the written application of the personal representative or any other person interested in the estate.

(c) The amount of the bond required to be given by the

personal representative shall be reduced in proportion to the amount of the cash and the value of the securities or other assets deposited under this section.

(d) Cash, securities, or other assets deposited under this section may be withdrawn in whole or in part from the depository only in accordance with a court order, and the amount of the personal representative's bond shall be increased in proportion to the amount of the cash and the value of the securities or other assets authorized to be withdrawn.

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

Sec. 305.156. DEPOSITS OF PERSONAL REPRESENTATIVE. (a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, a personal representative may deposit the representative's own cash or securities acceptable to the court with a depository described by Subsection (b), if the deposit is otherwise proper.

(b) Cash or securities must be deposited under this section in:

- (1) a depository described by Section 305.154(c); or
- (2) any other corporate depository approved by the court.

(c) A deposit may be in an amount or value equal to the amount of the bond required or in a lesser amount or value, in which case the amount of the bond is reduced by the amount or value of the deposit.

(d) The amount of cash or securities on deposit may be increased or decreased, by court order from time to time, as the interest of the estate requires.

(e) A deposit of cash or securities made instead of a surety or sureties on a bond may be withdrawn or released only on order of a court having jurisdiction.

(f) A creditor has the same rights against a personal representative and deposits made under this section as are provided for recovery against sureties on a bond.

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

eff. January 1, 2014.

Sec. 305.157. RECEIPT FOR DEPOSITS OF PERSONAL REPRESENTATIVE. (a) A depository that receives a deposit made under Section 305.156 instead of a surety or sureties on a bond shall issue a receipt for the deposit that:

(1) shows the amount of cash deposited or the amount and description of the securities deposited, as applicable; and

(2) states that the depository agrees to disburse or deliver the cash or securities only on receipt of a certified copy of an order of the court in which the proceedings are pending.

(b) A receipt issued by a depository under Subsection (a) shall be attached to the personal representative's bond and be delivered to and filed by the county clerk after approval by the judge.

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

Sec. 305.158. BOND REQUIRED INSTEAD OF DEPOSITS BY PERSONAL REPRESENTATIVE. (a) The court may on its own motion or on the written application by the personal representative or any other person interested in the estate:

(1) require that an adequate bond be given instead of a deposit under Section 305.156; or

(2) authorize withdrawal of a deposit made under Section 305.156 and substitution of a bond with sureties.

(b) Not later than the 20th day after the date of entry of the court's motion or the date the personal representative is personally served with notice of the filing of an application by another person interested in the estate, the representative shall file a sworn statement showing the condition of the estate.

(c) A personal representative who fails to comply with Subsection (b) is subject to removal as in other cases.

(d) The personal representative's deposit under Section 305.156 may not be released or withdrawn until the court has:

(1) been satisfied as to the condition of the estate;

(2) determined the amount of the bond; and

(3) received and approved the bond.

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

Sec. 305.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF ADMINISTRATION. (a) Any deposit of assets of the personal representative, the estate, or a surety that remains at the time an estate is closed shall be released by court order and paid to the person or persons entitled to the deposit.

(b) Except as provided by Subsection (c), a writ of attachment or garnishment does not lie against a deposit described by Subsection (a).

(c) A writ of attachment or garnishment may lie against a deposit described by Subsection (a) as to a claim of a creditor of the estate being administered or a person interested in the estate, including a distributee or ward, to the extent the court has ordered distribution.

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

Sec. 305.160. INCREASED OR ADDITIONAL BONDS IN CERTAIN CIRCUMSTANCES. The provisions of this subchapter regarding the deposit of cash and securities govern, to the extent the provisions may be applicable, the court orders to be entered when:

(1) one of the following circumstances occurs:

(A) estate property has been authorized to be sold or rented;

(B) money has been borrowed on estate property;
or

(C) real property, or an interest in real property, has been authorized to be leased for mineral development or subjected to unitization; and

(2) the general bond has been found to be insufficient.

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

SUBCHAPTER E. BOND SURETIES

Sec. 305.201. PERSONAL OR AUTHORIZED CORPORATE SURETIES.

(a) The surety or sureties on a bond may be personal or authorized corporate sureties.

(b) A bond with sureties who are individuals must have at least two sureties, each of whom must:

(1) execute an affidavit in the manner provided by this subchapter; and

(2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as provided by law.

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

Sec. 305.202. SURETIES FOR CERTAIN BONDS. (a) If

the amount of a bond exceeds \$50,000, the court may require that the bond be signed by:

(1) at least two authorized corporate sureties; or

(2) one authorized corporate surety and at least two good and sufficient personal sureties.

(b) The estate shall pay the cost of a bond with corporate sureties.

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

Sec. 305.203. AFFIDAVIT OF PERSONAL SURETY. (a) Before a

judge may consider a bond with personal sureties, each person offered as surety must execute an affidavit stating the amount by which the person's assets that are reachable by creditors exceeds the person's liabilities, and each affidavit must be presented to the judge for consideration.

(b) The total worth of the personal sureties on a bond must equal at least twice the amount of the bond.

(c) An affidavit presented to and approved by the judge under this section shall be attached to and form part of the bond. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 305.204. LIEN ON REAL PROPERTY OWNED BY PERSONAL SURETIES. (a) If a judge finds that the estimated value of personal property of the estate that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on real property owned by each of the sureties, the judge shall enter an order requiring each surety to:

(1) designate real property that:

(A) is owned by the surety and located in this state;

(B) is subject to execution; and

(C) has a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond; and

(2) give an adequate legal description of the real property designated under Subdivision (1).

(b) The surety shall incorporate the information required in the order under Subsection (a) in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(c) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(d) Before letters testamentary or of administration are issued to the personal representative whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:

(1) a sufficient description of the real property located in that county;

(2) the names of the principal and sureties on the bond;

(3) the amount of the bond; and

(4) the name of the estate and court in which the bond is given.

(e) Each county clerk who receives a statement required by Subsection (d) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the liens described in the statements.

(f) The recording and indexing required by Subsection (e) constitutes constructive notice to all persons regarding the existence of the lien on real property located in the county, effective as of the date of the indexing.

(g) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:

(1) an authorized corporate surety; or

(2) an authorized corporate surety and at least two personal sureties.

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

Sec. 305.205. SUBORDINATION OF LIEN ON REAL PROPERTY OWNED BY PERSONAL SURETIES. (a) A personal surety required to create a lien on specific real property under Section 305.204 who wishes to lease the real property for mineral development may file a written application in the court in which the proceedings are pending requesting subordination of the lien to the proposed lease.

(b) The judge may enter an order granting the application.

(c) A certified copy of the order, filed and recorded in the deed records of the proper county, is sufficient to subordinate the lien to the rights of a lessee under the proposed lease.

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

Sec. 305.206. RELEASE OF LIEN ON REAL PROPERTY OWNED BY PERSONAL SURETIES. (a) A personal surety who has given a lien under Section 305.204 may apply to the court to have the lien

released.

(b) The court shall order the lien released if:

(1) the court is satisfied that the bond is sufficient without the lien; or

(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.

(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

(d) A certified copy of the court's order releasing the lien and describing the property that was subject to the lien has the effect of cancelling the lien if the order is filed with the county clerk of the county in which the property is located and recorded in the deed records of that county.

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

Sec. 305.207. DEPOSITS BY PERSONAL SURETY. Instead of executing an affidavit under Section 305.203 or creating a lien under Section 305.204 when required, a personal surety may deposit the surety's own cash or securities instead of pledging real property as security. The deposit:

(1) must be made in the same manner a personal representative deposits the representative's own cash or securities; and

(2) is subject, to the extent applicable, to the provisions governing the same type of deposits made by personal representatives.

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

SUBCHAPTER F. NEW BONDS

Sec. 305.251. GROUNDS FOR REQUIRING NEW BOND. (a) A

personal representative may be required to give a new bond if:

- (1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;
- (2) in the court's opinion:
 - (A) the sureties on a bond are insufficient; or
 - (B) a bond is defective;
- (3) the amount of a bond is insufficient;
- (4) a surety on a bond petitions the court to be discharged from future liability on the bond; or
- (5) a bond and the record of the bond have been lost or destroyed.

(b) Any person interested in the estate may have the personal representative cited to appear and show cause why the representative should not be required to give a new bond by filing a written application with the county clerk of the county in which the probate proceedings are pending. The application must allege that:

- (1) the bond is insufficient or defective; or
- (2) the bond and the record of the bond have been lost or destroyed.

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. 8.013, eff. January 1, 2014.

Sec. 305.252. COURT ORDER OR CITATION ON NEW BOND. (a) When a judge becomes aware that a bond is in any respect insufficient or that a bond and the record of the bond have been lost or destroyed, the judge shall:

- (1) without delay and without notice enter an order requiring the personal representative to give a new bond; or
- (2) without delay have the representative cited to show cause why the representative should not be required to give a new bond.

(b) An order entered under Subsection (a)(1) must state:

- (1) the reasons for requiring a new bond;

(2) the amount of the new bond; and

(3) the period within which the new bond must be given, which may not be earlier than the 10th day after the date of the order.

(c) A personal representative who opposes an order entered under Subsection (a)(1) may demand a hearing on the order. The hearing must be held before the expiration of the period within which the new bond must be given.

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

Sec. 305.253. SHOW CAUSE HEARING ON NEW BOND REQUIREMENT.

(a) On the return of a citation ordering a personal representative to show cause why the representative should not be required to give a new bond, the judge shall, on the date specified for the hearing of the matter, inquire into the sufficiency of the reasons for requiring a new bond.

(b) If the judge is satisfied that a new bond should be required, the judge shall enter an order requiring a new bond. The order must state:

(1) the amount of the new bond; and

(2) the period within which the new bond must be given, which may not be later than the 20th day after the date of the order.
Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 305.254. EFFECT OF ORDER REQUIRING NEW BOND. (a) An order requiring a personal representative to give a new bond has the effect of suspending the representative's powers.

(b) After the order is entered, the personal representative may not pay out any of the estate's money or take any other official action, except to preserve estate property, until the new bond is given and approved.

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

Sec. 305.255. NEW BOND IN DECREASED AMOUNT. (a) A personal

representative required to give a bond may at any time file with the clerk a written application requesting that the court reduce the amount of the bond.

(b) On the filing of an application under Subsection (a), the clerk shall promptly issue and have notice posted to all interested persons and the sureties on the bond. The notice must inform the interested persons and sureties of:

- (1) the fact that the application has been filed;
- (2) the nature of the application; and
- (3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the estate; and

(2) the judge approves an accounting filed at the time of the application.

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

Sec. 305.256. REQUEST BY SURETY FOR NEW BOND. (a) A surety on a bond may at any time file with the clerk a petition requesting that the court in which the proceedings are pending:

(1) require the personal representative to give a new bond; and

(2) discharge the petitioner from all liability for the future acts of the representative.

(b) On the filing of a petition under Subsection (a), the personal representative shall be cited to appear and give a new bond.

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

Sec. 305.257. DISCHARGE OF FORMER SURETIES ON EXECUTION OF NEW BOND. When a new bond has been given and approved, the court shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond.

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