

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

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

CHAPTER 308. NOTICE TO BENEFICIARIES AND CLAIMANTS

SUBCHAPTER A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF
WILL

Sec. 308.001. DEFINITION. In this subchapter, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent's will, to be determined for purposes of this subchapter with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

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. 2.34, eff. January 1, 2014.

Sec. 308.0015. APPLICATION. This subchapter does not apply to the probate of a will as a muniment of title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.35, eff. January 1, 2014.

Sec. 308.002. REQUIRED NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL. (a) Except as provided by Subsection (c), not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the

decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Section 308.003 to each beneficiary named in the will whose identity and address are known to the representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the representative shall give the notice as soon as possible after becoming aware of that information.

(b) Notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, the representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(b-1) The personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(c) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with

respect to the decedent's estate before the will was admitted to probate;

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(d) The notice required by this section must be sent by registered or certified mail, return receipt requested.

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. 2.36, eff. January 1, 2014.

Sec. 308.003. CONTENTS OF NOTICE. The notice required by Section 308.002 must include:

(1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

(2) the decedent's name;

(3) a statement that the decedent's will has been admitted to probate;

(4) a statement that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will;

(5) the personal representative's name and contact information; and

(6) either:

(A) a copy of the will that was admitted to probate and of the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

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. 2.37, eff. January 1, 2014.

Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name of the beneficiary and of the person to whom the notice was given;

(2) the name of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4);

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

(b) The affidavit or certificate required by Subsection (a) may be included with any pleading or other document filed with the court clerk, including the inventory, appraisement, and list of claims, an affidavit in lieu of the inventory, appraisement, and

list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed 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 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.38, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 31, eff. September 1, 2015.

SUBCHAPTER B. NOTICE TO CLAIMANTS

Sec. 308.051. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL. (a) Within one month after receiving letters testamentary or of administration, a personal representative of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law by:

(1) having the notice published in a newspaper of general circulation in the county in which the letters were issued; and

(2) if the decedent remitted or should have remitted taxes administered by the comptroller, sending the notice to the comptroller by certified or registered mail.

(b) Notice provided under Subsection (a) must include:

(1) the date the letters testamentary or of administration were issued to the personal representative;

(2) the address to which a claim may be presented; and

(3) an instruction of the representative's choice that the claim be addressed in care of:

(A) the representative;

(B) the representative's attorney; or

(C) "Representative, Estate of _____"

(naming the estate).

(c) If there is no newspaper of general circulation in the county in which the letters testamentary or of administration were issued, the notice must be posted and the return made and filed as otherwise required by this title.

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. 27, eff. September 1, 2017.

Sec. 308.052. PROOF OF PUBLICATION. A copy of the published notice required by Section 308.051(a)(1), together with the publisher's affidavit, sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this title for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

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

Sec. 308.053. REQUIRED NOTICE TO SECURED CREDITOR. (a) Within two months after receiving letters testamentary or of administration, a personal representative of an estate shall give notice of the issuance of the letters to each person the representative knows to have a claim for money against the estate that is secured by estate property.

(b) Within a reasonable period after a personal representative obtains actual knowledge of the existence of a person who has a secured claim for money against the estate and to whom notice was not previously given, the representative shall give notice to the person of the issuance of the letters testamentary or of administration.

(c) Notice provided under this section must be:

(1) sent by certified or registered mail, return receipt requested; and

(2) addressed to the record holder of the claim at the record holder's last known post office address.

(d) The following shall be filed with the clerk of the court in which the letters testamentary or of administration were issued:

(1) a copy of each notice and of each return receipt; and

(2) the personal representative's affidavit stating:

(A) that the notice was mailed as required by law; and

(B) the name of the person to whom the notice was mailed, if that name is not shown on the notice or receipt.

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

Sec. 308.054. PERMISSIVE NOTICE TO UNSECURED CREDITOR. (a) At any time before an estate administration is closed, a personal representative may give notice by certified or registered mail, return receipt requested, to an unsecured creditor who has a claim for money against the estate.

(b) Notice given under Subsection (a) must:

(1) expressly state that the creditor must present the claim before the 121st day after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation; and

(2) include:

(A) the date the letters testamentary or of administration held by the personal representative were issued to the representative;

(B) the address to which the claim may be presented; and

(C) an instruction of the representative's choice that the claim be addressed in care of:

(i) the representative;

(ii) the representative's attorney; or

(iii) "Representative, Estate of _____"

(naming the estate).

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. 39, eff. January 1, 2014.

Sec. 308.055. ONE NOTICE SUFFICIENT. A personal representative is not required to give a notice required by Section 308.051 or 308.053 if another person also appointed as personal representative of the estate or a former personal representative of the estate has given that notice.

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

Sec. 308.056. LIABILITY FOR FAILURE TO GIVE REQUIRED NOTICE. A personal representative who fails to give a notice required by Section 308.051 or 308.053, or to cause the notice to be given, and the sureties on the representative's bond are liable for any damage a person suffers due to that neglect, unless it appears that the person otherwise had notice.

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