

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES IN
GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 351.001. APPLICABILITY OF COMMON LAW. The rights, powers, and duties of executors and administrators are governed by common law principles to the extent that those principles do not conflict with the statutes of this state.

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

Sec. 351.002. APPEAL BOND. (a) Except as provided by Subsection (b), an appeal bond is not required if an appeal is taken by an executor or administrator.

(b) An executor or administrator must give an appeal bond if the appeal personally concerns the executor or administrator.

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

Sec. 351.003. CERTAIN COSTS ADJUDGED AGAINST PERSONAL REPRESENTATIVE. If a personal representative neglects to perform a required duty or is removed for cause, the representative and the sureties on the representative's bond are liable for:

(1) the costs of removal and other additional costs incurred that are not expenditures authorized by this title; and

(2) reasonable attorney's fees incurred in:

(A) removing the representative; or

(B) obtaining compliance regarding any statutory duty the representative has neglected.

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

SUBCHAPTER B. GENERAL AUTHORITY OF PERSONAL REPRESENTATIVES

Sec. 351.051. EXERCISE OF AUTHORITY UNDER COURT ORDER. (a) A personal representative of an estate may renew or extend any obligation owed by or to the estate on application and order authorizing the renewal or extension. If a personal representative considers it in the interest of the estate, the representative may, on written application to the court and if authorized by court order:

- (1) purchase or exchange property;
- (2) take claims or property for the use and benefit of the estate in payment of a debt due or owed to the estate;
- (3) compound bad or doubtful debts due or owed to the estate;
- (4) make a compromise or settlement in relation to property or a claim in dispute or litigation;
- (5) compromise or pay in full any secured claim that has been allowed and approved as required by law against the estate by conveying to the holder of the claim the real estate or personal property securing the claim:
 - (A) in full payment, liquidation, and satisfaction of the claim; and
 - (B) in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of the claim; or
- (6) abandon the administration of burdensome or worthless estate property.

(b) Abandoned property may be foreclosed on by a mortgagee or other secured party or a trustee without further court order. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 351.052. EXERCISE OF AUTHORITY WITHOUT COURT ORDER. (a) A personal representative of an estate may, without application to or order of the court:

- (1) release a lien on payment at maturity of the debt secured by the lien;

- (2) vote stocks by limited or general proxy;
- (3) pay calls and assessments;
- (4) insure the estate against liability in appropriate cases;
- (5) insure estate property against fire, theft, and other hazards; or
- (6) pay taxes, court costs, and bond premiums.

(b) A personal representative who is under court control may apply and obtain a court order if the representative has doubts regarding the propriety of the exercise of any power listed in Subsection (a).

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

Sec. 351.053. AUTHORITY TO SERVE PENDING APPEAL OF APPOINTMENT. Pending an appeal from an order or judgment appointing an administrator or temporary administrator, the appointee shall continue to:

- (1) act as administrator or temporary administrator; and
- (2) prosecute any suit then pending in favor of the estate.

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

Sec. 351.054. AUTHORITY TO COMMENCE SUITS. (a) An executor or administrator appointed in this state may commence a suit for:

- (1) recovery of personal property, debts, or damages; or
- (2) title to or possession of land, any right attached to or arising from that land, or an injury or damage done to that land.

(b) A judgment in a suit described by Subsection (a) is conclusive, but may be set aside by any interested person for fraud or collusion on the executor's or administrator's part.

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

SUBCHAPTER C. POSSESSION AND CARE OF ESTATE PROPERTY

Sec. 351.101. DUTY OF CARE. An executor or administrator of an estate shall take care of estate property as a prudent person would take of that person's own property, and if any buildings belong to the estate, the executor or administrator shall keep those buildings in good repair, except for extraordinary casualties, unless directed by a court order not to do so.

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

Sec. 351.102. POSSESSION OF PERSONAL PROPERTY AND RECORDS.

(a) Immediately after receiving letters testamentary or of administration, the personal representative of an estate shall collect and take possession of the estate's personal property, record books, title papers, and other business papers.

(b) The personal representative shall deliver the property, books, and papers described by Subsection (a) that are in the representative's possession to the person or persons legally entitled to the property, books, and papers when:

(1) the administration of the estate is closed; or

(2) a successor personal representative receives letters testamentary or of administration.

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

Sec. 351.103. POSSESSION OF PROPERTY HELD IN COMMON OWNERSHIP. If an estate holds or owns any property in common or as part owner with another, the personal representative of the estate is entitled to possession of the property in common with the other part owner or owners in the same manner as other owners in common or joint owners are entitled to possession of the property.

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

Sec. 351.104. ADMINISTRATION OF PARTNERSHIP INTEREST. (a)

If a decedent was a partner in a general partnership and the partnership agreement or articles of partnership provide that, on the death of a partner, the partner's personal representative is entitled to that partner's place in the partnership, a personal representative accordingly contracting to enter the partnership under the partnership agreement or articles of partnership is, to the extent allowed by law, liable to a third person only to the extent of:

(1) the deceased partner's capital in the partnership;
and

(2) the estate's assets held by the representative.

(b) This section does not exonerate a personal representative from liability for the representative's negligence. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 351.105. HOLDING OF STOCKS, BONDS, AND OTHER PERSONAL PROPERTY IN NOMINEE'S NAME. (a) Unless otherwise provided by the will, a personal representative of an estate may cause stocks, bonds, and other personal property of the estate to be registered and held in the name of a nominee without mentioning the fiduciary relationship in any instrument or record constituting or evidencing title to that property. The representative is liable for the acts of the nominee with respect to property registered in this manner. The representative's records must at all times show the ownership of the property.

(b) Any property registered in the manner described by Subsection (a) shall be kept:

(1) in the possession and control of the personal representative at all times; and

(2) separate from the representative's individual property.

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

Sec. 351.106. DIGITAL ASSETS. A personal representative of a decedent's estate may apply for and obtain a court order, either

at the time the personal representative is appointed or at any time before the administration of the estate is closed, that:

(1) directs disclosure of the content of electronic communications of the decedent to the personal representative as provided by Section 2001.101 and that contains any court finding described by Section 2001.101(b)(3);

(2) with respect to a catalog of electronic communications sent or received by the decedent and other digital assets of the decedent, other than the content of an electronic communication, contains any court finding described by Section 2001.102(b)(4); or

(3) directs under Section 2001.231 a custodian to comply with a request to disclose digital assets under Chapter 2001.

Added by Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 22, eff. September 1, 2019.

SUBCHAPTER D. COLLECTION OF CLAIMS; RECOVERY OF PROPERTY

Sec. 351.151. ORDINARY DILIGENCE REQUIRED. (a) If there is a reasonable prospect of collecting the claims or recovering the property of an estate, the personal representative of the estate shall use ordinary diligence to:

(1) collect all claims and debts due the estate; and

(2) recover possession of all property to which the estate has claim or title.

(b) If a personal representative wilfully neglects to use the ordinary diligence required under Subsection (a), the representative and the sureties on the representative's bond are liable, on the suit of any person interested in the estate, for the use of the estate, for the amount of those claims or the value of that property lost by the neglect.

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

Sec. 351.152. CONTINGENT INTEREST FOR CERTAIN ATTORNEY'S FEES; COURT APPROVAL. (a) A personal representative may, without

court approval, convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered, not to exceed a one-third interest in the property.

(b) A personal representative, including an independent executor or independent administrator, may convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered under this subchapter in an amount that exceeds a one-third interest in the property only on the approval of the court in which the estate is being administered. The court must approve a contract or conveyance described by this subsection before an attorney performs any legal services. A contract entered into or a conveyance made in violation of this subsection is void unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to make the contract or conveyance meet the requirements of this subsection.

(c) In approving a contract or conveyance under this section, the court shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of the property recovered or sought to be recovered by the personal representative under this subchapter;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will perform the services.

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. 23, eff. September 1, 2019.

Sec. 351.153. RECOVERY OF CERTAIN EXPENSES. On proof satisfactory to the court, a personal representative of an estate

is entitled to all necessary and reasonable expenses incurred by the representative in:

(1) collecting or attempting to collect a claim or debt owed to the estate; or

(2) recovering or attempting to recover property to which the estate has a title or claim.

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

SUBCHAPTER E. OPERATION OF BUSINESS

Sec. 351.201. DEFINITION. In this subchapter, "business" includes a farm, ranch, or factory.

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

Sec. 351.202. ORDER REQUIRING PERSONAL REPRESENTATIVE TO OPERATE BUSINESS. (a) A court, after notice to all interested persons and a hearing, may order the personal representative of an estate to operate a business that is part of the estate and may grant the representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (b), if:

(1) the disposition of the business has not been specifically directed by the decedent's will;

(2) it is not necessary to sell the business at once for the payment of debts or for any other lawful purpose; and

(3) the court determines that the operation of the business by the representative is in the best interest of the estate.

(b) In determining which powers to grant a personal representative in an order entered under Subsection (a), the court shall consider:

(1) the condition of the estate and the business;

(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with

respect to the estate;

(3) the effect of the order on the speedy settlement of the estate; and

(4) the best interests of the estate.

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

Sec. 351.203. POWERS OF PERSONAL REPRESENTATIVE REGARDING BUSINESS. (a) A personal representative granted authority to operate a business in an order entered under Section 351.202(a) has the powers granted under Section 351.052, regardless of whether the order specifies that the representative has those powers, unless the order specifically provides that the representative does not have one or more of the powers listed in Section 351.052.

(b) In addition to the powers granted to the personal representative under Section 351.052, subject to any specific limitation on those powers in accordance with Subsection (a), an order entered under Section 351.202(a) may grant the representative one or more of the following powers:

(1) the power to hire, pay, and terminate the employment of employees of the business;

(2) the power to incur debt on behalf of the business, including debt secured by liens against assets of the business or estate, if permitted or directed by the order;

(3) the power to purchase and sell property in the ordinary course of the operation of the business, including the power to purchase and sell real property if the court finds that the principal purpose of the business is the purchasing and selling of real property and the order states that finding;

(4) the power to enter into a lease or contract, the term of which may extend beyond the settlement of the estate, but only to the extent that granting the power appears to be consistent with the speedy settlement of the estate; and

(5) any other power the court finds necessary with respect to the operation of the business.

(c) If the order entered under Section 351.202(a) gives the personal representative the power to purchase, sell, lease, or

otherwise encumber property:

(1) the purchase, sale, lease, or encumbrance is governed by the terms of the order; and

(2) the representative is not required to comply with any other provision of this title regarding the purchase, sale, lease, or encumbrance, including any provision requiring citation or notice.

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

Sec. 351.204. FIDUCIARY DUTIES OF PERSONAL REPRESENTATIVE REGARDING BUSINESS. (a) A personal representative who operates a business under an order entered under Section 351.202(a) has the same fiduciary duties as a representative who does not operate a business that is part of an estate.

(b) In operating a business under an order entered under Section 351.202(a), a personal representative shall consider:

(1) the condition of the estate and the business;

(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;

(3) the effect of the order on the speedy settlement of the estate; and

(4) the best interests of the estate.

(c) A personal representative who operates a business under an order entered under Section 351.202(a) shall report to the court with respect to the operation and condition of the business as part of the accounts required by Chapters 359 and 362, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

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

Sec. 351.205. REAL PROPERTY OF BUSINESS; NOTICE. (a) A personal representative shall file a notice in the real property records of the county in which the real property is located before

purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under Section 351.202(a).

(b) The notice filed under Subsection (a) must:

(1) state:

(A) the decedent's name;

(B) the county of the court in which the decedent's estate is pending;

(C) the cause number assigned to the pending estate; and

(D) that one or more orders have been entered under Section 351.202(a); and

(2) include a description of the property that is the subject of the purchase, sale, lease, or other encumbrance.

(c) For purposes of determining a personal representative's authority with respect to a purchase, sale, lease, or other encumbrance of real property of a business that is part of an estate, a third party who deals in good faith with the representative with respect to the transaction may rely on the notice filed under Subsection (a) and an order entered under Section 351.202(a) and filed as part of the estate records maintained by the clerk of the court in which the estate is pending. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. AUTHORITY TO ENGAGE IN CERTAIN BORROWING

Sec. 351.251. MORTGAGE OR PLEDGE OF ESTATE PROPERTY AUTHORIZED IN CERTAIN CIRCUMSTANCES. Under order of the court, a personal representative of an estate may mortgage or pledge by deed of trust or otherwise as security for an indebtedness any property of the estate as necessary for:

(1) the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes on the transfer of an estate or due from a decedent or the estate, regardless of whether those taxes are assessed by a state, a political subdivision of a state, the federal government, or a foreign country;

(2) the payment of expenses of administration, including amounts necessary for operation of a business, farm, or ranch owned by the estate;

(3) the payment of claims allowed and approved, or established by suit, against the estate; or

(4) the renewal and extension of an existing lien.

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

Sec. 351.252. APPLICATION; ORDER. (a) If necessary to borrow money for a purpose described by Section 351.251 or to create or extend a lien on estate property as security, the personal representative of the estate shall file a sworn application for that authority with the court. The application must state fully and in detail the circumstances that the representative believes make the granting of the authority necessary.

(b) On the filing of an application under Subsection (a), the clerk shall issue and have posted a citation to all interested persons, stating the nature of the application and requiring any interested person who chooses to do so to appear and show cause, if any, why the application should not be granted.

(c) If satisfied by the evidence adduced at the hearing on an application filed under Subsection (a) that it is in the interest of the estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect that sets out the terms of the authority granted under the order.

(d) If a new lien is created on estate property, the court may require, for the protection of the estate and the creditors, that the personal representative's general bond be increased or an additional bond given, as for the sale of real property belonging to the estate.

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

Sec. 351.253. TERM OF LOAN OR LIEN EXTENSION. Except as otherwise provided by this section, the term of a loan or lien renewal authorized under Section 351.252 may not exceed a period of

three years from the date original letters testamentary or of administration are granted to the personal representative of the affected estate. The court may authorize an extension of a lien renewed under Section 351.252 for not more than one additional year without further citation or notice.

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

SUBCHAPTER G. PAYMENT OF INCOME OF CERTAIN ESTATES DURING
ADMINISTRATION

Sec. 351.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the estate of a decedent that is being administered under the direction, control, and orders of a court in the exercise of the court's probate jurisdiction.

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

Sec. 351.302. APPLICATION AND ORDER FOR PAYMENT OF CERTAIN ESTATE INCOME. (a) On the application of the executor or administrator of an estate or of any interested party, and after notice of the application has been given by posting, the court may order and direct the executor or administrator to pay, or credit to the account of, those persons who the court finds will own the estate assets when administration on the estate is completed, and in the same proportions, that part of the annual net income received by or accruing to the estate that the court finds can conveniently be paid to those owners without prejudice to the rights of creditors, legatees, or other interested parties, if:

(1) it appears from evidence introduced at a hearing on the application, and the court finds, that the reasonable market value of the estate assets on hand at that time, excluding the annual income from the estate assets, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies; and

(2) no estate creditor or legatee has appeared and objected.

(b) Except as otherwise provided by this title, nothing in this subchapter authorizes the court to order paid over to the owners of the estate any part of the principal of the estate. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 351.303. TREATMENT OF CERTAIN AMOUNTS RECEIVED FROM MINERAL LEASE. For the purposes of this subchapter, bonuses, rentals, and royalties received for or from an oil, gas, or other mineral lease shall be treated as income rather than as principal. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER H. CERTAIN ADMINISTERED ESTATES

Sec. 351.351. APPLICABILITY. This subchapter does not apply to:

(1) the appointment of an independent executor or administrator under Section 401.002 or 401.003(a); or

(2) the appointment of a successor independent administrator under Section 404.005.

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. 161 (S.B. 1093), Sec. 6.012, eff. January 1, 2014.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 7, eff. September 1, 2021.

Sec. 351.352. ENSURING COMPLIANCE WITH LAW. A county or probate court shall use reasonable diligence to see that personal representatives of estates administered under court orders and other officers of the court perform the duty enjoined on them by law applicable to those estates.

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

eff. January 1, 2014.

Sec. 351.353. ANNUAL EXAMINATION OF CERTAIN ESTATES; BOND OF PERSONAL REPRESENTATIVE. For each estate administered under orders of a county or probate court, the judge shall, if the judge considers it necessary, annually examine the condition of the estate and the solvency of the bond of the estate's personal representative. If the judge finds the representative's bond is not sufficient to protect the estate, the judge shall require the representative to execute a new bond in accordance with law. In each case, the judge, as provided by law, shall notify the representative and the sureties on the representative's bond.

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

Sec. 351.354. JUDGE'S LIABILITY. A judge is liable on the judge's bond to those damaged if damage or loss results to an estate administered under orders of a county or probate court from the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter.

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

Sec. 351.355. IDENTIFYING INFORMATION. (a) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, decedent, or personal representative, including a social security number, in addition to identifying information the applicant or fiduciary is required to produce under this title.

(b) The court shall maintain any information required under this section, and the information may not be filed with the clerk.

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