

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 353. EXEMPT PROPERTY AND FAMILY ALLOWANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 353.001. TREATMENT OF CERTAIN CHILDREN. For purposes of distributing exempt property and making a family allowance, a child is a child of his or her mother and a child of his or her father, as provided by Sections [201.051](#), [201.052](#), and [201.053](#). Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. [2502](#)), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EXEMPT PROPERTY; ALLOWANCE IN LIEU OF EXEMPT PROPERTY

Sec. 353.051. EXEMPT PROPERTY TO BE SET ASIDE. (a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other exempt property described by Section [42.002\(a\)](#), Property Code, for the use and benefit of the decedent's:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent's family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisement, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisement, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children

may apply to the court to have exempt property described by Subsection (a), including the homestead, set aside by filing an application and a verified affidavit listing all exempt property that the applicant claims is exempt property described by Subsection (a); and

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all the exempt property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall set aside property of the decedent's estate that the court finds is exempt.

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. 810 (H.B. [2492](#)), Sec. 2.01, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. [1198](#)), Sec. 2.46, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. [995](#)), Sec. 35, eff. September 1, 2015.

Sec. 353.052. DELIVERY OF EXEMPT PROPERTY. (a) This section only applies to exempt property described by Section [353.051](#)(a).

(a-1) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent's surviving spouse and children in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult

incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall deliver all exempt property to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall deliver the share of those children in exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children's guardian, if the children are minors; or

(3) the guardian of each of the children who is an incapacitated adult, or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(d) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall deliver exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children's guardian, if the children are minors; or

(3) the guardian of each of the children who is an incapacitated adult, or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(e) In all cases, the executor or administrator shall deliver the homestead to:

(1) the decedent's surviving spouse, if there is a surviving spouse; or

(2) the guardian of the decedent's minor children, if there is not a surviving spouse.

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. 810 (H.B. [2492](#)), Sec. 2.02, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. [995](#)), Sec. 36, eff. September 1, 2015.

Sec. 353.053. ALLOWANCE IN LIEU OF EXEMPT PROPERTY. (a) If all or any of the specific articles of exempt property described by Section 353.051(a) are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054.

(b) The allowance in lieu of a homestead may not exceed \$45,000, and the allowance in lieu of other exempt property may not exceed \$30,000, excluding the family allowance for the support of the surviving spouse, minor children, and adult incapacitated children provided by Subchapter C.

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. 810 (H.B. 2492), Sec. 2.03, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 647 (H.B. 789), Sec. 2.01, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 37, eff. September 1, 2015.

Sec. 353.054. PAYMENT OF ALLOWANCE IN LIEU OF EXEMPT PROPERTY. (a) The executor or administrator of an estate shall pay an allowance in lieu of exempt property in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire allowance to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall pay the surviving spouse one-half of the entire allowance plus the shares of the decedent's children of whom the surviving spouse is the parent. The remaining shares must be paid to:

(1) the decedent's adult children of whom the surviving spouse is not a parent and who are not incapacitated;

(2) the guardian of the children of whom the surviving spouse is not a parent and who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each child who is an incapacitated adult.

(d) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall divide the entire allowance equally among the children and pay the children's shares to:

(1) each of those children who are adults and who are not incapacitated;

(2) the guardian of each of those children who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each of those children who is an incapacitated adult.

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. 810 (H.B. 2492), Sec. 2.04, eff. January 1, 2014.

Sec. 353.055. METHOD OF PAYING ALLOWANCE IN LIEU OF EXEMPT PROPERTY. (a) An allowance in lieu of any exempt property shall be paid in the manner selected by the decedent's surviving spouse or children of legal age, or by the guardian of the decedent's minor children, or by the guardian of each adult incapacitated child or other appropriate person, as determined by the court, if there is no guardian, as follows:

(1) in money out of estate funds that come into the executor's or administrator's possession;

(2) in any of the decedent's property or a part of the property chosen by those individuals at the appraisal; or

(3) part in money described by Subdivision (1) and part in property described by Subdivision (2).

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

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. 810 (H.B. 2492), Sec. 2.05, eff. January 1, 2014.

Sec. 353.056. SALE OF PROPERTY TO RAISE FUNDS FOR ALLOWANCE IN LIEU OF EXEMPT PROPERTY. (a) On the written application of the decedent's surviving spouse and children, or of a person authorized to represent any of those children, the court shall order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the allowance provided under Section 353.053 or a portion of that amount, as necessary, if:

(1) the decedent had no property that the surviving spouse or children are willing to take for the allowance or the decedent had insufficient property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

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. 810 (H.B. 2492), Sec. 2.06, eff. January 1, 2014.

SUBCHAPTER C. FAMILY ALLOWANCE

Sec. 353.101. FAMILY ALLOWANCE. (a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the

inventory, appraisement, and list of claims is filed, the court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(b) Before the inventory, appraisement, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children or adult incapacitated children may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing:

(1) the amount necessary for the maintenance of the surviving spouse, the decedent's minor children, and the decedent's adult incapacitated children for one year after the date of the decedent's death; and

(2) the surviving spouse's separate property and any property that the decedent's minor children or adult incapacitated children have in their own right.

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(d) A family allowance may not be made for:

(1) the decedent's surviving spouse, if the surviving spouse has separate property adequate for the surviving spouse's maintenance;

(2) the decedent's minor children, if the minor children have property in their own right adequate for the children's maintenance; or

(3) any of the decedent's adult incapacitated children, if:

(A) the adult incapacitated child has property in the person's own right adequate for the person's maintenance; or

(B) at the time of the decedent's death, the decedent was not supporting the adult incapacitated child.

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. 810 (H.B. 2492), Sec. 2.07, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.47, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 44, eff. January 1, 2014.

Sec. 353.102. AMOUNT AND METHOD OF PAYMENT OF FAMILY ALLOWANCE. (a) The amount of the family allowance must be sufficient for the maintenance of the decedent's surviving spouse, minor children, and adult incapacitated children for one year from the date of the decedent's death.

(b) The allowance must be fixed with regard to the facts or circumstances then existing and the facts and circumstances anticipated to exist during the first year after the decedent's death.

(c) The allowance may be paid in a lump sum or in installments, as ordered by the court.

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. 810 (H.B. 2492), Sec. 2.08, eff. January 1, 2014.

Sec. 353.103. ORDER FIXING FAMILY ALLOWANCE. When a family allowance has been fixed, the court shall enter an order that:

- (1) states the amount of the allowance;
- (2) provides how the allowance shall be payable; and
- (3) directs the executor or administrator to pay the allowance in accordance with law.

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

Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE. The family

allowance made for the support of the decedent's surviving spouse, minor children, and adult incapacitated children shall be paid in preference to all other debts of or charges against the estate, other than Class 1 claims.

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. 810 (H.B. 2492), Sec. 2.09, eff. January 1, 2014.

Sec. 353.105. PAYMENT OF FAMILY ALLOWANCE. (a) The executor or administrator of an estate shall apportion and pay the family allowance in accordance with this section.

(b) If there is a surviving spouse and there are no minor children or adult incapacitated children of the decedent, the executor or administrator shall pay the entire family allowance to the surviving spouse.

(c) If there is a surviving spouse and all of the minor children and adult incapacitated children of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire family allowance to the surviving spouse for use by the surviving spouse, the decedent's minor children, and adult incapacitated children.

(d) If there is a surviving spouse and some or all of the minor children or adult incapacitated children of the decedent are not also children of the surviving spouse, the executor or administrator shall pay:

(1) the portion of the entire family allowance necessary for the support of those minor children to the guardian of those children; and

(2) the portion of the entire family allowance necessary for the support of each of those adult incapacitated children to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(e) If there is no surviving spouse and there are minor children or adult incapacitated children of the decedent, the

executor or administrator shall pay the family allowance:

(1) for the minor children, to the guardian of those children; and

(2) for each adult incapacitated child, to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

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. 810 (H.B. 2492), Sec. 2.10, eff. January 1, 2014.

Sec. 353.106. SURVIVING SPOUSE, MINOR CHILDREN, OR ADULT INCAPACITATED CHILDREN MAY TAKE PERSONAL PROPERTY FOR FAMILY ALLOWANCE. (a) A decedent's surviving spouse, the guardian of the decedent's minor children, or the guardian of an adult incapacitated child of the decedent or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, as applicable, is entitled to take, at the property's appraised value as shown by the appraisement, any of the estate's personal property in full or partial payment of the family allowance.

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

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. 810 (H.B. 2492), Sec. 2.11, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.12, eff. January 1, 2014.

Sec. 353.107. SALE OF ESTATE PROPERTY TO RAISE FUNDS FOR FAMILY ALLOWANCE. (a) The court shall, as soon as the inventory, appraisement, and list of claims are returned and approved or the

affidavit in lieu of the inventory, appraisement, and list of claims is filed, order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, if:

(1) the decedent had no personal property that the surviving spouse, the guardian of the decedent's minor children, or the guardian of the decedent's adult incapacitated child or other appropriate person acting on behalf of the adult incapacitated child is willing to take for the family allowance, or the decedent had insufficient personal property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the family allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the family allowance.

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. 810 (H.B. 2492), Sec. 2.13, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.48, eff. January 1, 2014.

SUBCHAPTER D. LIENS ON AND DISPOSITION OF EXEMPT PROPERTY AND PROPERTY TAKEN AS ALLOWANCE

Sec. 353.151. LIENS. (a) This section applies to all estates, whether solvent or insolvent.

(b) If property on which there is a valid subsisting lien or encumbrance is set aside as exempt for the surviving spouse or children or is appropriated to make an allowance in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by the lien shall, if necessary, be either paid or continued against the property.

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

Sec. 353.152. DISTRIBUTION OF EXEMPT PROPERTY OF SOLVENT ESTATE. If on final settlement of an estate it appears that the estate is solvent, the exempt property, other than the homestead or any allowance made in lieu of the homestead, is subject to partition and distribution among the heirs of the decedent and the distributees in the same manner as other estate property.

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

Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. If on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. The distributees are entitled to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property. The property and allowances set aside or paid to the decedent's surviving spouse or children, and any remaining exempt property held by the executor or administrator, may not be taken for any of the estate debts except as provided by Section 353.155.

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. 38, eff. September 1, 2015.

Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY. In determining whether an estate is solvent or insolvent, the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, the family allowance under Subchapter C, and any remaining exempt property held by the executor or administrator may not be estimated or considered as estate assets.

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. 38, eff. September 1, 2015.

Sec. 353.155. EXEMPT PROPERTY LIABLE FOR CERTAIN DEBTS. The exempt property, other than the homestead or any allowance made in lieu of the homestead:

(1) is liable for the payment of Class 1 claims; and

(2) is not liable for any estate debts other than the claims described by Subdivision (1).

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