

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE I. INDEPENDENT ADMINISTRATION

CHAPTER 402. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Unless this title specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 402.003. DIGITAL ASSETS. The court, either at the time the independent executor of an estate is appointed or at any time before the administration of the estate is closed, may enter an order that:

(1) directs disclosure of the content of electronic communications of the decedent to the independent executor 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. 41, eff. September 1, 2019.

SUBCHAPTER B. POWER OF SALE

Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. In this subchapter, "independent executor" does not include an independent administrator.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 402.052. POWER OF SALE OF ESTATE PROPERTY GENERALLY. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 402.053. PROTECTION OF PERSON PURCHASING ESTATE PROPERTY. (a) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the

independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will;

(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) This subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale. Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 402.054. NO LIMITATION ON OTHER ACTION. This subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. [1198](#)), Sec. 2.53, eff. January 1, 2014.