

CHAPTER 848

H.B. No. 1987

AN ACT

relating to powers and duties of certain personal representatives.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 233, Texas Probate Code, is amended to read as follows:

Sec. 233. COLLECTION OF CLAIMS AND RECOVERY OF PROPERTY. (a) Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect.

(b) *Except as provided by Subsection (c) of this section, a personal representative [Such representatives] may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys [and incidental expenses], subject only to approval of the court in which the estate is being administered.*

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

(d) *In approving a contract or conveyance under Subsection (b) or (c) of this section for services of an attorney, the court shall consider:*

- (1) *the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;*
- (2) *the fee customarily charged in the locality for similar legal services;*

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

(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 be performing the services.*

(e) *On satisfactory proof to the court, a personal representative of an estate is entitled to all necessary and reasonable expenses incurred by the personal representative in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.*

SECTION 2. Section 236, Texas Probate Code, is amended to read as follows:

Sec. 236. SUMS ALLOWABLE FOR EDUCATION AND MAINTENANCE OF WARD. (a) Expenditures Directed by the Court. *Subject to Section 236A of this code, the [The] Court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise, the guardian shall not be allowed, for the education and maintenance of the ward, more than the net income of the estate. When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person such sums as shall be fixed by the Court, at times specified by the Court, for the education and maintenance of the ward, and, on failure to do so, shall be compelled to make such payment by order of the Court, after being duly cited.*

(b) Court Approval of Previous Expenditures. *When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for the ward under this section, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of \$5,000 for each ward during an annual accounting period.*

SECTION 3. Part 5, Chapter VII, Texas Probate Code, is amended by adding Section 236A to read as follows:

Sec. 236A. SUMS ALLOWED PARENTS FOR EDUCATION AND MAINTENANCE OF MINOR WARD. (a) *Except as provided by Subsection (b) of this section, a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward's estate for the ward's support, education, or maintenance.*

(b) *A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward's estate to support, educate, or maintain the ward if the guardian presents clear and convincing evidence to the court that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support.*

SECTION 4. The change in law made by Section 1 of this Act applies only to a contract executed or a conveyance made by the personal representative of an estate on or after the effective date of this Act. A contract executed or a conveyance made by the personal representative of an estate before the effective date of this Act is governed by the law in effect on the date the contract was executed or the conveyance was made, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 30, 1993, by a non-record vote; passed by the Senate on May 20, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.