

CHAPTER 712

S.B. No. 479

AN ACT

relating to certain matters of probate: the guardianship of a person or an estate, informal probate of wills, informal distribution of estates, emergency payment of burial expenses, and protection of a decedent's personal property.

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

SECTION 1. Section 127A, Texas Probate Code, is amended to read as follows:

Sec. 127A. GUARDIANSHIP OF ~~MISSING PERSON~~ [~~MISSING ON PUBLIC SERVICE~~]. (a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.

(b) *If a person is discovered to be missing and there is good cause, as evidenced by a police or other law enforcement agency report or by testimony in open court by a peace officer, to believe that the person is a victim of violence, any person may file a written application for appointment of a temporary guardian of the estate of the missing person.*

(c) An [~~The~~] application under this section shall state:

(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;

(2) *in the case of a person reported missing under Subsection (a) of this section, the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;*

(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;

(4) the reason for the appointment and the interest of the applicant in the appointment; and

(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.

(d) [(e)] The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed \$25, for his services to be taxed as part of the costs.

(e) [(d)] The attorney appointed to represent the *interests* [interest] of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person *or of the estate* of the missing person and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.

(f) [(e)] Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person *or of the estate of the missing person*, or to contest any guardianship proceeding which he deems to be injurious to the missing person *or to the estate of the missing person*, or to commence a guardianship proceeding which he deems beneficial to the missing person *or to the estate of the missing person*.

(g) [(f)] Before appointing a guardian, the court must find:

(1) *in the case of a person reported missing under Subsection (a) of this section*, that the person has been reported missing by an executive department of the United States and still is missing;

(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person *or of the estate of the person*;

(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; [and]

(4) *in the case of a person missing under Subsection (b) of this section*, that the person applying for appointment as guardian has not been and is not presently under investigation by a police or law enforcement agency in connection with the disappearance of the missing person; and

(5) that the rights of the missing person *or the interests of the missing person's estate* will be protected by the appointment of the guardian.

(h)(1) *A temporary guardian appointed for a person missing under Subsection (b) of this section must post a bond as required for a temporary guardian of any other ward. The temporary guardian has the same authority to handle the affairs of the missing person under court supervision as a temporary guardian has for any other ward.*

(2) *A temporary guardianship under this subsection continues until the:*

(A) *death of the missing person is confirmed;*

(B) *missing person is declared legally dead under applicable statutes;*

(C) *missing person returns;*

(D) *whereabouts of the missing person is determined; or*

(E) *guardianship is no longer necessary for any other reason.*

(i) [(g)] After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person *or the interests of the missing person's estate* and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person *or the interests of the missing person's estate*. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.

(j) [(h)] The jurisdiction of the court over the guardianship is continuing. If the missing person returns *or, in the case of a temporary guardianship under Subsection (h) of this section, if any of the events listed in Subsection (h)(2) of this section occur*, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.

SECTION 2. Part 4, Chapter V, Texas Probate Code, is amended by adding Section 129A to read as follows:

Sec. 129A. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE. Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

SECTION 3. Section 157, Texas Probate Code, is amended to read as follows:

Sec. 157. WHEN SPOUSE INCOMPETENT. Whenever a husband or wife is judicially declared to be incompetent, the other spouse, in the capacity of surviving partner of the

marital partnership, thereupon acquires full power to manage, control, and dispose of the entire community estate, including the part which the incompetent spouse would legally have power to manage in the absence of such incompetency, and no administration, community or otherwise, shall be necessary *if the court finds that it is in the best interest of the incompetent spouse not to require administration of the estate and that the competent spouse is not disqualified under Section 110 of this code to serve as guardian.* Guardianship of the estate of the incompetent spouse shall not be necessary when the other spouse is competent *and the court finds that it is in the best interest of the incompetent spouse not to require a guardianship of the estate and that the competent spouse is not disqualified under Section 110 of this code to serve as guardian* unless the incompetent spouse owns separate property, and then as to such separate property only. The qualification of a guardian of the *separate* estate of an incompetent spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this *code* [Code].

SECTION 4. Subsection (a), Section 399, Texas Probate Code, is amended to read as follows:

(a) Estates of Decedents and Wards Being Administered Under Order of Court. The personal representative of the estate of a decedent or ward being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate or ward, as the case may be.

(2) Any changes in the property of the estate or ward which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(7) *A statement that, during the period covered by the account, all tax returns due have been filed and that all taxes due and owing have been paid and a complete account of the amount of the taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.*

(8) *If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.*

SECTION 5. Subsection (a), Section 404, Texas Probate Code, is amended to read as follows:

(a) Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(1) when all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration;

(2) when a minor ward dies, or becomes an adult by becoming eighteen years of age, or by removal of disabilities of minority according to the law of this state, or by marriage, or *when the necessity for guardianship no longer exists for other reasons*;

(3) when an incompetent ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community;

(4) when a ward entitled to funds from a governmental source dies, or when the court finds that the necessity for the guardianship of that person has ended;

(5) when the estate of a ward becomes exhausted; [or]

(6) when the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome; or

(7) *when:*

(A) *a guardianship of the estate does not exist;*

(B) *a natural parent of the ward requests the settlement and closing of the guardianship; and*

(C) *the court finds it is in the best interest of the ward to settle and close the guardianship.*

SECTION 6. Section 405, Texas Probate Code, is amended to read as follows:

Sec. 405. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF DECEDENTS AND PERSONS AND ESTATES OF WARDS. When administration of the estate of a decedent, or guardianship of person or estate, or of the person and estate of a ward, is to be settled and closed, the personal representative of such estate or of such ward shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration or guardianship, as the case may be, concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate or of the ward, as the case may be, including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

(a) As to Estates of Decedents.

1. The property belonging to the estate which has come into the hands of the executor or administrator.

2. The disposition that has been made of such property.

3. The debts that have been paid.

4. The debts and expenses, if any, still owing by the estate.

5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.

7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

8. *The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.*

9. *If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.*

(b) As to Estates of Wards.

1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.

2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. *The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.*
5. *If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account of taxes paid, a description of the delinquency and the reasons for the delinquency.*
6. The property of the estate remaining in the hands of such guardian, if any.
7. [5.] Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

SECTION 7. The Texas Probate Code is amended by adding Chapter XII to read as follows:

CHAPTER XII. INFORMAL PROBATE

PART 1. INFORMAL PROBATE WITH AND WITHOUT ISSUANCE OF LETTERS

Sec. 501. TIME TO FILE APPLICATION FOR INFORMAL PROBATE. (a) *An applicant may file an application for the informal probate of a will with the court clerk not earlier than the 30th day after the date of the testator's death.*

(b) *A will may not be admitted for informal probate after the fourth anniversary of the date of the testator's death unless the applicant shows that the applicant was not aware of the will's existence and did not cause the failure to timely file the will for probate.*

Sec. 502. ELIGIBLE APPLICANTS FOR INFORMAL PROBATE; VENUE. (a) *An executor, alternate, devisee, or legatee named in a will may make an application for the informal probate of the will.*

(b) *The applicant may file the application in the county in which the testator was domiciled on the date of death or in the county in which the estate assets are located.*

Sec. 503. REQUIREMENTS FOR INFORMAL PROBATE. (a) *An applicant may file a will for informal probate with the court clerk:*

(1) *if:*

(A) *all of the estate's known debts have been satisfied;*

(B) *all existing and outstanding debts are secured on real or personal property through certificates of title or by Uniform Commercial Code filings; or*

(C) *the applicant notifies all creditors of the estate by certified or registered mail of the filing; and*

(2) *if:*

(A) *an application has not been filed and is not pending under Section 81, 82, 89, or 145 of this code; and*

(B) *the applicant files an affidavit of a disinterested witness that contains the proof of facts required to probate a will under Sections 88(a) and (b) of this code.*

(b) *The applicant submits personally to the jurisdiction of the probate court in any proceeding for relief relating to the informal probate proceeding and distribution of assets and to the suit in the probate court for any actions taken while administering estate assets, including a civil action for perjury or fraud relating to the application.*

Sec. 504. CONTENTS OF APPLICATION. (a) *An application for informal probate of a will must be under oath and must establish:*

(1) *that 30 days have elapsed after the date of the testator's death;*

(2) *that all debts of the estate have been satisfied or are properly secured or all creditors have received notice of the application's filing;*

(3) that the total gross fair market value of the estate, including real and personal property but not including homestead or exempt property, did not exceed \$50,000 on the date the application was prepared;

(4) that the court has venue;

(5) to the applicant's knowledge and belief, that the will being offered for informal probate has never been revoked; and

(6) to the applicant's knowledge and belief, that no person named in the will has objected to the offer of the will for informal probate.

(b) The application must contain the social security number and present address of the applicant and the social security number and last known address of the testator.

Sec. 505. NOTICE. (a) Before filing an application for informal probate, the applicant shall give notice of the intent to file the application by certified or registered mail to all persons named in the will whose addresses are known or are reasonably ascertainable and to the decedent's surviving spouse and children and shall provide those persons a copy of the will.

(b) If a distributee named in the will is a minor or incompetent, the applicant shall notify the natural guardian of the minor or the guardian of the person of the incompetent distributee.

(c) The applicant shall file the return receipts or original returned notices with the application.

(d) Notice is not required under this section to a person who joins in the application for informal probate or to a person who waives notice if the person's sworn waiver of notice is filed with the application or is filed before the court considers the application.

Sec. 506. FILING OF WILL OR AFFIDAVIT; INVENTORY. (a) The applicant must file the will. The will remains in the custody of the court clerk unless removed by order of a proper court.

(b) The applicant shall prepare a sworn, full, and complete inventory of all assets required to be included in the testator's estate. The applicant shall list all assets at the assets' fair market value at or about the time the application was prepared without reduction for any outstanding secured debts. If the valuation of an asset is questioned, the court may, on its own motion or on request of an interested person, appoint an appraiser for the asset and order that the applicant deposit the cost of the appraisal in advance with the court clerk. The applicant shall file the inventory with the application. The inventory must:

(1) contain the information required by Sections 250 and 251 of this code; and

(2) if the testator is survived by a spouse, identify the community assets and list the assets' one-half community value.

(c) The court clerk may not present the application to the judge of the court before the 11th day after the date the application is filed. The court shall determine, in its discretion, whether the application meets the requirements for an application for informal probate and may admit the will for informal probate.

(d) If the court determines that the will is not admissible for informal probate, the denial is not a final adjudication of the validity of the will and does not preclude a subsequent application for probate of the will in a formal probate proceeding.

Sec. 507. LIMITED LETTERS TESTAMENTARY. (a) An executor, alternate, devisee, or legatee named in a will may request in an application for the informal probate of the will that the clerk of the probate court issue limited letters testamentary to the applicant for the purpose of transferring title to the assets or interests in the assets of the testator's estate, including any increases to the assets that accrued after the date of the testator's death and that are specifically identified and described in the inventory included in the application or any subsequently filed amended or supplemental inventory.

(b) The letters or a certified copy of the inventory attached to the letters must identify the assets subject to transfer under the letters.

(c) A transfer or an attempt to transfer title to assets of the estate not identified in the letters, including any increases to the assets that may have accrued after the date of the testator's death, is void.

(d) Limited letters are valid for one year after the date of the application's approval.

(e) The judge of the court that issued the original letters may order the issuance of additional letters. The order for additional letters must contain the date that those letters expire. Additional letters are not renewable.

Sec. 508. **REVIEW OF APPLICATION FOR INFORMAL PROBATE.** (a) The court in which an application for informal probate has been filed shall determine whether:

- (1) the application is complete;
- (2) the applicant has acknowledged that all statements of fact contained in the application are true and correct;
- (3) the applicant is an executor, alternate, devisee, or legatee named in the will;
- (4) venue is correct;
- (5) an original, duly executed will is filed with the application;
- (6) copies of required notices or waivers by persons named in the will and the surviving spouse, children, and creditors are attached to the application;
- (7) an objection has not been made to the request for informal probate by any creditor or person named in the will;
- (8) the time for applying for an informal probate has not expired;
- (9) the application contains the required information; and
- (10) an appraiser is necessary to determine the value of any asset.

(b) The court shall deny the application if:

- (1) a personal representative has been appointed in another county;
- (2) except as provided by Subsection (d) of this section, this or another will of the decedent has been the subject of a previous probate order in this state; or
- (3) the court, in its discretion, determines formal probate is necessary.

(c) The court may probate a will that is a self-proved will under Section 59 of this code without further proof. If the will is not self-proving under Section 59 of this code, the court may, in the absence of an objection, presume compliance with Section 59 of this code if the will is filed with a sworn statement or affidavit of a witness to the execution of the will.

(d) A court may informally probate at any time a will that has been probated by the court of another state on the written application of a representative, devisee, or legatee named in the will. The applicant shall file an authenticated copy of the will and foreign proceedings in place of the original will.

Sec. 509. **EFFECT OF INFORMAL PROBATE.** (a) A person who makes a payment or transfers property under the terms of a will admitted to informal probate or under limited letters is released from liability or responsibility to the same extent as if the payment or transfer had been made to the personal representative of an estate. The person is not required to see the application for informal probate or to inquire into the truth of any statement contained in the application for informal probate. The devisee of an asset is liable to a personal representative, a creditor of the testator, or any person having a superior right or claim of possession or ownership to the asset.

(b) A representative or beneficiary under an informally probated will who acquires property under the will may be liable to the extent of the value of the property actually acquired to a person or creditor of the estate with a superior right or claim to the property for damages caused by the transfer of the property to the representative or beneficiary under the terms of the will.

(c) If a person who is entitled to property of the estate, including the representative, a creditor, a beneficiary, or a guardian, makes a written demand by certified or registered mail containing a certified copy of the probated will and order admitting the will or limited letters to a person in possession of estate property and the person refuses or fails to deliver

or transfer the property before the 31st day after the date of the demand, the person who is entitled to the property may file a show cause action in the court that probated the will to recover the property. The person entitled to the property may recover the fair market value of the property, reasonable damages for the loss of use of the property, reasonable attorney fees, and costs of court.

(d) If a beneficiary under a will is a minor or an incompetent without a guardian of the minor's or incompetent's estate, all cash, stocks, bonds, or personal property that can be converted to cash to which the beneficiary is entitled may not be distributed to the natural guardian or guardian of the person. The representative of the estate shall convert the assets to cash and deposit the cash in the court registry until a legal guardian of an estate is appointed or shall deposit the cash as provided by Section 144 of this code for the benefit of the ward.

Sec. 510. TIME TO CONTEST VALIDITY OF WILL. (a) Except as provided by Subsection (b) or (c) of this section, an interested person may file suit to contest the validity of a will admitted to informal probate not later than two years after the date the will was admitted.

(b) An interested person may institute suit to contest the validity of a will admitted to informal probate for forgery or other fraud not later than two years after the date the forgery or fraud is discovered.

(c) A minor or incompetent person may file suit to contest the validity of a will admitted to informal probate not later than two years after the date the disabilities of the minor or incompetent are removed.

PART 2. EMERGENCY INTERVENTION PROCEEDINGS; FUNERAL AND BURIAL EXPENSES

Sec. 520. TIME TO FILE EMERGENCY APPLICATION. An applicant may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for the payment of funeral and burial expenses or the protection and storage of personal property owned by the decedent that was located in rented accommodations on the date of the decedent's death with the clerk of the court in the county of domicile of the decedent not earlier than the third day after the date of the decedent's death and not later than the 90th day after the date of the decedent's death.

Sec. 521. ELIGIBLE APPLICANTS FOR EMERGENCY INTERVENTION. A person qualified to serve as an administrator under Section 77 of this code may file an emergency intervention application.

Sec. 522. REQUIREMENTS FOR EMERGENCY INTERVENTION APPLICATION. (a) An application for emergency intervention must be sworn and must contain:

- (1) the name, address, social security number, and interest of the applicant;
- (2) the facts showing an immediate necessity for the issuance of an emergency intervention order by the court;
- (3) the date of the decedent's death, place of death, decedent's residential address, and the name and address of the funeral home holding the decedent's remains;
- (4) any known or ascertainable heirs and devisees of the decedent and the reason:
 - (A) the heirs and devisees cannot be contacted; or
 - (B) the heirs and devisees have refused to assist in the decedent's burial or protection of the decedent's personal property;
- (5) a description of funeral and burial procedures necessary and a detailed and itemized description of the cost of the funeral and burial procedures;
- (6) the name, location, and identification of property or persons in possession of the decedent's property; and
- (7) the name and address of the owner or manager of the decedent's rented premises and whether access to the premises is necessary.

(b) If emergency intervention is necessary for funeral and burial, the application shall state whether any written instructions from the decedent relating to a funeral or burial exist. The applicant shall attach the instructions to the application or file the instructions before the funeral or burial and fully comply with the instructions. If written instructions do not exist, the applicant shall provide for the funeral and burial of the decedent unless the applicant obtains the court's permission to cremate the decedent's remains.

Sec. 523. **ORDERS OF EMERGENCY INTERVENTION.** (a) If the court determines on review of the application that emergency intervention is necessary, the court may order funds of the decedent held by an employer, individual, or financial institution to be paid directly to a funeral home only for funeral and burial expenses not to exceed \$5,000 as ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

(b) The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the 90th day after the date the order was issued or the date a personal representative is qualified, whichever occurs first.

(c) A person who is furnished with a certified copy of an emergency intervention order within the period described by Subsection (b) of this section is not personally liable for the person's actions that are taken in accordance with and in reliance on the order.

Sec. 524. **TERMINATION.** All power and authority of an applicant under an emergency intervention order cease to be effective or enforceable on the 90th day after the date the order was issued or on the date a personal representative is qualified, whichever occurs first.

SECTION 8. The change in law made by this Act applies only to the estate of a person who dies on or after the effective date of this Act. An estate of a person who dies before the effective date of this Act is covered by the law in effect on the date of the person's death, and the former law continues in effect for that purpose.

SECTION 9. This Act takes effect September 1, 1993.

SECTION 10. 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 the Senate on April 14, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 29, 1993, by a viva-voce vote; passed the House, with amendment, on May 26, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.