

TEXAS LEGISLATIVE REPORT 1999
Laws For The Millennium

JERRY FRANK JONES
Of Counsel
IKARD & GOLDEN

400 West 15th, Suite 975
Austin, Tx 78701
512 476 2929
email: jfjones@io.com

ALL RIGHTS RESERVED 1999

©

**JERRY FRANK JONES
OF COUNSEL:
IKARD & GOLDEN, P.C.
400 West 15th, Suite 975
Austin, Tx 78701
512 476 2929
email: jfjones@io.com**

Education: Williams College, Williamstown, Mass., B.A. 1967;
University of Texas-Austin, J.D, 1971

Certification : Board Certified, Estate Planning and Probate by the State Bar of Texas.

Fellow: American College of Trust and Estate Counsel

Instructor: University of Texas, Legal Assistant Program,
Probate & Estate Planning (1989-1995)

State Bar: Real Estate, Probate & Trust Law Section: Council Member 1994-1998;
Legislative Liaison 1997- ; Treasurer 1999-2000

Author:

- "A TOPICAL GUIDE: Advanced Estate Planning and Probate Course Articles" State Bar of Texas, Annual Advanced Estate Planning and Probate Course 1992, 1997,1998 & 1999.
- "TEXAS LEGISLATIVE REPORT 1999, Laws for The Millennium," State Bar of Texas, 23rd Annual Advanced Estate Planning and Probate Course 1999.
- "TEXAS LEGISLATIVE REPORT 1997, Next to Last Stop Before The Millennium," State Bar of Texas, 21st Annual Advanced Estate Planning and Probate Course 1997.
- "TEXAS LEGISLATIVE REPORT 1997, Next to Last Stop Before The Millennium," State Bar of Texas Annual Convention, 1997 and 1998.
- "A Guide to Planning and Administering Estates & Trusts," 1996 & 1997 American Bar Association Annual Conventions (Panelist).
- "Probate Practice in Travis and Surrounding Counties," Travis County Probate and Trust Law Section, 1996.
- "What's Hot: GRATS, GRUTS, PRTS, QPRTS & FLPS," ANNUAL TAX CONFERENCE, Travis County CPA Association. 1995.
- "The 706 for Country Lawyers and Other Simple People," Travis County Probate and Trust Law Section, 1994.
- "DEATH AND TAXES: An Introduction To Taxes Concerning A Probate Attorney," prepared for the University of Texas Legal Assistant Program--1993.
- "Estate Planning for PWAs (Persons With AIDS)," State Bar of Texas, 16th Annual Advanced Estate Planning and Probate Course 1992.
- "Divorce: Effect Upon Life Insurance and Non Probate Assets," 1988, Probate & Property, magazine of the Real Property, Probate and Trust Section, American Bar Association.
- "Non - Probate Assets and Miscellaneous Items; The Difference Between Writing a Will and Planning an Estate," Travis County Probate and Estate Planning Conference - 1986.

TEXAS LEGISLATIVE REPORT 1999
Laws for the Millennium

1.	PROBATE CODE	E-1
a.	§ 3(d) (HB2066 Interstate Banking Act) Definition: Corporate Fiduciary.	E-1
b.	§ 5(b) Mandatory Assignment of Statutory Probate Judges: County Court (HB 1607)	E-2
c.	§ 5A(b) PR = Party = Appertaining or Incident (HB778)	E-2
d.	§ 5B (HB 2580) Transfer Any Proceeding.	E-2
e.	§ 5C (HB 3549) Ad Valorem Taxes.	E-2
f.	§ 10B (HB 1852) Decedent’s Medical Records.	E-3
g.	§§ 15, 17, 17A & 18 (HB 1142) Clerks’ Records	E-3
h.	§ 52 (SB1106) Affidavit of Heirship.	E-3
i.	§ 95C (HB 1176) Foreign Wills: Original Signatures	E-3
j.	§ 105A (HB2066 Interstate Banking): Appointment of foreign corporate fiduciary.	E-3
k.	§ 128B (HB 1852) Citation: Wills Probated After 4 years.	E-4
l.	§ 149A & C (HB1852) Actions in “County Courts.”	E-4
m.	*§ 149D-G (HB 1852): Release of Independent Personal Representatives	E-4
n.	§ 194(5) (HB 2066 Interstate Banking) Safekeeping Depositories.	E-4
o.	*§ 221A (HB1852) Change Resident Agent.	E-4
p.	*§ 221B (HB1852) Resignation of Resident Agent	E-4
q.	*§ 222 (HB1852) Removal of PR if No Resident Agent	E-5
r.	*§ 270 (HB1852): Homestead Debts.	E-5
s.	§ 322 (HB 1348): Child Support, Class 4 Claim.	E-5
t.	§ 389 (HB 1662): Guardianship Investment Statute Repealed.	E-5
u.	§ 404 (HB 1660) Closing Estates: Elimination of Guardianship References:	E-5
v.	§ 406 (HB 1661)Final Accounts: Elimination of Guardianship References:	E-5
2.	GUARDIANSHIP CODE	E-5
a.	§ 601(5) (HB 2066 Interstate Banking) Definition of Corporate Fiduciary.	E-5
b.	§ 606(b) (HB 1607) Mandatory Assignment of Statutory Probate Judges: County Court (HB 1607).	E-5
c.	§ 607(b) (HB 777) Guardian = Party = Appertaining or Incident.	E-5
d.	§ 608 (HB 2580) Transfer Any Proceeding.	E-6
e.	§§ 625, 627, 627A & 628 (HB 1142) Clerks’ Records.	E-6

f.	§ 633 (HB 2795) Notice to Proposed Guardian.	E-6
g.	§ 642: (HB1663) Standing.	E-6
h.	646 (HB919): Attorney Ad Litem Must be Certified.	E-6
i.	§ 647A (HB 919) Certification Requirements for Court Appointed Attorneys	E-6
j.	§ 648A(b) (HB 1663) Court Investigator’s Duties Expanded	E-6
k.	§ 665 (HB1852 & HB2165). Guardian’s Fees from Other Funds.	E-6
l.	§ 665B(a) (HB 2165) Attorneys Fees: Unsuccessful Applicants.	E-6
m.	§ 677A(e) (HB3338) Form: Designation of Guardian in Case of Later Need.	E-6
n.	§ 682: (HB 1663)Eliminates Term Requirement from Applications.	E-6
o.	§ 682A (HB 2164) Applications for Guardianship Before 18 th Birthday. . .	E-7
p.	§ 683 & 683A (HB2165) Court Initiated Guardianships.	E-7
q.	§ 694A-I (HB 1663) Modification or Restoration	E-7
r.	§ 695A (HB2166) Family Members to Replace Agencies.	E-8
s.	§§ 697 & 698 (HB 3630) Investigation of Guardianship Program Employees.	E-8
t.	§ 702 (HB 3338) New Designation of Guardian Form.	E-8
u.	§ 743(j) GOP Reports Without an Attorney.	E-8
v.	§ 868(f) (SB112) Tomorrow Fund: An Approved Investment.	E-8
w.	§ 875 (HB 2795) Notice to Proposed Temporary Guardian.	E-8
x.	§§ 886-886F (HB 3343) POWs and MIAs.	E-8
3.	PROPERTY CODE: TRUST CODE	E-8
a.	*§ 113.018 Investment Agents.	E-8
b.	§ 113.026 (HB 115) New Charitable Beneficiary	E-8
c.	*§ 113.060 (HB 1475). Delegation of Trust Investments.	E-9
d.	§ 113.1021 (HB 1373) Annuities & Life Insurance in Charitable Trusts.	E-9
e.	*§ 114.032 (HB 1475): Virtual Representation.	E-10
f.	§ 115.002 (HB 2317 & HB 2066) Trust Venue	E-10
4.	PROPERTY CODE: OTHER	E-10
a.	§ 5.011 (SB167) Notice of Annexation.	E-10
b.	§§ 41.002 & 41.005 (SB496 &SJR 22) Urban Homestead Increased to 10 acres.	E-10
c.	§ 42.002(a) (HB1805) Life Insurance Exemption	E-11
d.	§ 42.0021(a) Roth IRAs (HB 76, HB 1081 & *HB 1476)	E-11
e.	§ 142.004(a) (HB 68) Tomorrow Fund in 142 Trusts	E-11
f.	§ 142.008 (SB1388) Structured Settlements.	E-11

5.	FAMILY CODE	E-11
a.	§§ 3.006, 3.401–3.406 & 7.002 (HB 734) Enhancement from Financial Contributions.	E-11
b.	**§ 4.201 (HB734): Family Harmony Bill (aka “The Bill Formerly Known as the Transmutation Bill”).	E-13
6.	CIVIL PRACTICE & REMEDIES	E-13
a.	§ 16.004(a) (HB 2456) Limitations for Fraud & Breach of Fiduciary Duties.	E-13
b.	§ 37.005 (HB1852) DJs for Independent PRs Final Accounts.	E-14
c.	§ 64.101-.108 (HB 3343) POWs & MIAs.	E-14
d.	§ 71.012 & 71.022 (HB 3477) Certain Litigation Without Ancillary Letters.	E-14
e.	§§ 137.001.-.007,-.008,-.0010 (SB 1361) Advance Directives.	E-14
7.	FINANCE CODE. Article 1, Section 1.001, Title 3, Chapter 201 (HB 2066): Interstate Banking Bill	E-14
8.	GOVERNMENT CODE.	E-14
a.	§ 21.009, Sub.(2) (SB 1150) Brazoria County Courts at Law.	E-14
b.	§ 25.1802(a) (SB1150) Nueces County Courts at Law.	E-14
c.	§ 25.00221 (HB 1605) SPC Intra County Transfers	E-14
d.	§ 25.0003 (SB1150) Probate Jurisdiction of Statutory County Courts. . .	E-14
e.	§ 25.1034(j) (HB3854) Harris County Case Assignment.	E-15
f.	§ 25.2651 (SB1001) Multi County Statutory Probate Courts.	E-15
g.	§ 54.601 (SB 294): Probate Masters	E-15
h.	§ 81.101 (SB 764, HB 1507): Unauthorized Practice of Law.	E-15
i.	§ 466.410 (HB 1799) Lottery Prize Assignment	E-15
j.	§ 531.125 (HB 3630) Guardianship Grants	E-15
9.	HEALTH & SAFETY CODE.	E-15
a.	Chapter 166 (SB 1260) Advance Directives.	E-15
b.	§ 593.081 (SB 1623) Trust Funds For State Eleemosynary Inmates.	E-15
c.	§ 711.002(g) & (j) (HB 1571) Inscriptions on Grave Markers.	E-15
10.	INSURANCE CODE. Article 1.14-1A, § 7 (HB 823). Charitable Gift Annuities	E-16
11.	LOCAL GOVERNMENT CODE. § 118.052 (HB 2822)	E-16
12.	NON-PROFIT CORP. ACT (Art. 1396-2.31 V.A.T.S.) (HB 2066 and HB 3276) Charitable Immunity.	E-16

13.	TRANSPORTATION CODE §501.031(HB 381)	E-16
14.	TRUST COMPANY ACT. Multistate Trust Business, VATS 342a-9.001 et seq. (HB2066, 117-24).	E-16
15.	TEXAS CONSTITUTION: Article VII, § 11 b (HJR 58) Prudent Investor Standards for the Permanent University Fund.	E-17
16.	NEXT SESSION.	E-17
APPENDIX		App-E-1
Appendix 1: Affidavit of Heirship Form		App-E-1
Appendix 2: Designation of Guardian Form		App-E-3
Appendix 3: Probate Fee Schedule		App-E-5
Appendix 4: Statutory Form for Directive to Physicians		App-E-7
Appendix 5: Medical Power of Attorney Form		App-E-11
Appendix 6: Amendment to HB 734 (Enhancement)		App-E-16

TEXAS LEGISLATIVE REPORT 1999

Laws For The Millennium

Jerry Frank Jones

©

Introduction. A single asterisk (*) means it is a bill proposed by the Real Estate, Probate and Trust Law Section of the State Bar. A double asterisk (**) means it is a bill proposed by the Texas Academy of Probate Lawyers, the Family Harmony Bill and its constitutional amendment.

The Governor vetoed House Bill 1851. This bill contained the Section's guardianship changes. It was vetoed not because of those changes but because of the section involving entertainment and sports contracts with minors. The Governor thought the bill would cause exploitation of minors. The Governor also vetoed House Bill 3635 which would have expanded the jurisdiction of the Probate Court No. 1 of Travis County.

Anyone interested in the full text of any bill can go to

<http://www.capitol.state.tx.us/>

1. PROBATE CODE

a. § 3(d) (HB2066 Interstate Banking Act) Definition: Corporate Fiduciary. § 3(d) (173-14¹) now defines corporate fiduciary as financial institutions as defined by Section 201.101 (18-18) of the Finance Code that have trust powers and is doing business under the laws of this state or another state. The "another state" has been added. A financial institution under the Finance Code is a bank, savings and loan, credit union or trust company. It specifically includes not only those chartered federally and in Texas but also those chartered by another state. Note that this definition is different from the definition of "financial

¹ The Interstate Banking Act is nearly 200 pages long. The page and line numbers have been provided to ease location of the references.

institutions” under Chapter XI of the Probate Code on multi party accounts. That definition includes brokerage firms.

b. § 5(b) Mandatory Assignment of Statutory Probate Judges: County Court (HB 1607). In counties with only county courts, a litigant may insist on the appointment of a statutory probate judge if a district judge has not been appointed. The appointed judge would then have the powers held by a statutory probate judge under §§ 5A and 5B. There is a sister provision for guardianships at § 606(b). Effective immediately.

c. § 5A(b) PR = Party = Appertaining or Incident (HB778): Last session §5A was amended to give the probate court jurisdiction over all matters in which a personal representative was a party; all such actions were “appertaining to estates and incident to an estate.” This was also intended to allow transfers under § 5B. However, the phrase “for the purpose of this section” was included. This bill deletes “for the purpose of this section.” With this bill, and the amendments to §5B, statutory probate courts should now be able to transfer any matter in which a personal representative is a party. Set out below are sister provisions in the Guardianship Code. Effective September 1, 1999.

d. § 5B (HB 2580) Transfer Any Proceeding. Statutory Probate Courts (SPC) are expressly authorized to transfer to their court any proceeding in which a PR is a party. Again, there is a sister provision for guardianships (see § 608, *infra*). Effective September 1, 1999 and applies to motions filed on or after that date.

e. § 5C (HB 3549) Ad Valorem Taxes.

i. This section applies only to decedent’s estates (a)

(1) That are currently under administration,

(2) Where the estate claims an interest and

(3) Is not an independent administration.

ii. Suits to enforce the lien or impose personal liability for ad valorem taxes imposed in a county other than where the administration is occurring, must be brought under Tax Code Section 33.41 in a court of competent jurisdiction(b).

iii. If a probate proceeding has been pending for less than 4 years and the probate is in the same county where the taxes were imposed, the taxing unit may present a claim (c).

iv. If they do file a claim they cannot then file an action in another court (d).

v. If the taxing unit did not present a claim and the probate proceedings have been pending more than 4 years, it must bring the action under Tax Code Section 33.41 in a court of competent jurisdiction (e).

vi. Any action brought under (e) must include the personal representative as a party.

vii. Questions. The statute raises several questions:

(1) If these rules

do not apply to independent administrations, where are actions involving independents brought, the probate court?

(2) It does not clearly tell us where to bring an action if the taxes and the probate are in the same county and no claim was filed and four years have not elapsed.

(3) Subsection (f) requires the personal representative to be made a party (and may not have a personal judgment taken against the estate) if the action is brought under (e). It does not tell us the rules if the action is brought under (b), (c) or (d).

viii. There are amendments to the claim procedure at §317(c)

ix. Guardianship. There is also an amendment to the guardianship code waiving the requirement of presentment for delinquent claims when the guardianship is in a different county. This suggests that presentment must be made in a guardianship when the taxes arise in the same county where the guardianship is pending.

x. Effective Date. Effective September 1, 1999 and applies to all estates and all actions pending on or after that date.

f. § 10B (HB 1852) Decedent's Medical Records. Last session this section was added to allow access to a decedent's medical records when there was a will contest that put the decedent's mental capacity in issue. The records could be obtained upon presenting a certified copy of a document establishing a will contest. Now

a filed marked copy of such a document is sufficient. Effective September 1, 1999 and applies only to estates of persons dying after that date.

g. §§ 15, 17, 17A & 18 (HB 1142) Clerks' Records:

i. Clerks will now be required to keep a case file rather than "probate minutes." (§15)

ii. Rather than keep a judge's probate docket (§13), a claim docket (§14) and a probate fee book (§16), the clerk may maintain the probate information on microfilm or some form of electronic media (§17).

iii. The clerk shall keep an index (§17A).

iv. These records shall be evidence (§18).

h. § 52 (SB1106) Affidavit of Heirship. This bill provides a form for affidavits of heirship. See appendix.

i. § 95C (HB 1176) Foreign Wills: Original Signatures: Requires that the judge's and clerk's original signatures be affixed to the will and judgment. Seals or other mechanical reproduction of a judge's or clerk's signature will no longer be acceptable.

j. § 105A (HB2066 Interstate Banking): Appointment of foreign corporate fiduciary. This section has always controlled the circumstances under which a court may appoint a foreign institution as a fiduciary.

i. That authority is continued but a court may appoint only if a Texas financial institution can be appointed under the laws of the state of that foreign fiduciary.

ii. Also, the court may require the foreign fiduciary to deposit all cash and safekeep all other assets in financial institutions which have their main office or a branch office in this state.

k. § 128B (HB 1852) Citation: Wills Probated After 4 years. This is a new section. It sets out the citation requirements when a will is offered for probate more than 4 years after death. It requires citation of the heirs. Further, the citation, or waiver of citation, must state that the will cannot be admitted to probate if the proponent is at fault. Further, it specifies that if a prior will has already been admitted to probate, that the beneficiaries of that probated will must be served rather than the decedent's intestate heirs. Finally, this statute further confirms that wills can still be probated after 4 years despite the internal inconsistencies of §§89A, 89B and 89C.

l. § 149A & C (HB1852) Actions in "County Courts." §§ 149A (demands for accountings) & 149C (removal of independent executors) have had references to different courts as a result of amendments over the years. This amendment makes the reference consistent by referring to county courts as defined in §3. That section says that county courts include district courts when they are exercising jurisdiction in contested matters.

m. *§ 149D-G (HB 1852): Release of Independent Personal Representatives. An independent personal representative may now obtain a judicial discharge. If the independent personal representative provides an accounting with a distribution of the estate, he (she or it) may seek a judicial discharge for all matters which are fully and fairly disclosed. The PR may retain a reasonable reserve. If the court determines that the reserve was not reasonable, it may order a further distribution. The court can assess fees and costs to or against any personal representative or any beneficiary. Section 37.005 of the Declaratory Judgment Act (Texas Civil Practice and Remedies Code) is also amended, *infra*. Effective September 1, 1999 and applies only to estates of persons dying after that date.

n. § 194(5) (HB 2066 Interstate Banking) Safekeeping Depositories. Only "financial institutions" with their main offices or a branch office in the State of Texas can hold safekept funds.

o. *§ 221A (HB1852) Change Resident Agent. A personal representative may change his resident agent. Effective September 1, 1999, and applies to all changes made on or after that date.

p. *§ 221B (HB1852) Resignation of Resident Agent: Currently, there is no mechanism for a resident agent to resign. This statute allows an agent to resign after giving notice to the personal representative and filing with the court. The resignation is effective upon entry of the court order. Effective September 1, 1999, and applies to all resignations made on or after that date.

q. *§ 222 (HB1852) Removal of PR if No Resident Agent: A court may remove a personal representative if a new resident agent is not appointed. Effective September 1, 1999, and applies to all motions to remove filed on or after that date.

r. *§ 270 (HB1852): Homestead Debts. While there have been several constitutional amendments and property code amendments recently regarding debts on homestead, no conforming amendments have been made to the probate code. This bill updates the probate code to reflect all of those changes. Effective September 1, 1999 and applies only to estates of persons dying after that date.

s. § 322 (HB 1348): Child Support, Class 4 Claim. "...delinquent child support and child support arrearages that have been confirmed and reduced to money judgment..." are new class 4 claims. Old class 4 claims for certain taxes, penalties and interest are now class 5 claims. Everything else moves down: Unsecured are now class 8. This applies only to estates of decedents dying on or after September 1, 1999.

t. § 389 (HB 1662): Guardianship Investment Statute Repealed. In 1993 the separate Guardianship Code was enacted. The contents of § 389 were copied to § 855 and § 389 was no longer needed. It is finally repealed.

However, the Interstate Banking Bill (HB 2066) amended § 389 to allow guardians to place funds with any state savings or savings and loan with an office in this state. They also amended § 855 so this

provision is not lost. The issue is whether or not this will confuse the repeal statute: Stay tuned and watch the codifiers work.

u. § 404 (HB 1660) Closing Estates: Elimination of Guardianship References: This section continues to have references to guardianships. This bill eliminates all of those provisions.

v. § 406 (HB 1661) Final Accounts: Elimination of Guardianship References: Ditto. Another clean up of references to guardianships.

2. GUARDIANSHIP CODE

a. § 601(5) (HB 2066 Interstate Banking) Definition of Corporate Fiduciary. See, § 3(d) supra.

b. § 606(b) (HB 1607) Mandatory Assignment of Statutory Probate Judges: County Court (HB 1607). In counties with only county courts, a litigant may insist on the appointment of a statutory probate judge if a district judge has not been appointed. The appointed judge would then have the powers held by a statutory probate judge under §§ 607 and 608. Effective immediately.

c. § 607(b) (HB 777) Guardian = Party = Appertaining or Incident.: This gives statutory probate courts jurisdiction over all matters in which a guardian is a party. This conforms to the changes to § 5A (regarding decedent's estates) last session and updates as done with §§ 5A & 5B this session. Effective September 1, 1999.

d. § 608 (HB 2580) Transfer Any Proceeding. Like the amendments to §5B, this allows a statutory probate court to transfer to its court any proceeding in which a guardian is party if the guardianship is pending in its court. Effective September 1, 1999 and applies to all motions to transfer filed on or after that date.

e. §§ 625, 627, 627A & 628 (HB 1142) Clerks' Records. See Probate Code Sections 15, 17, 17A and 18.

f. § 633 (HB 2795) Notice to Proposed Guardian. If the applicant is not the proposed guardian, the guardian must be named in the application and served with process. This is in response to the Department of Human Services being frequently named guardian without any prior notice.

g. § 642: (HB1663) Standing. A person may not bring or contest a modification or restoration proceeding if they have an adverse interest. The legislative history states that a guardian does not have an adverse interest, merely because they are a guardian. Something else must be shown, such as the guardian has an adverse action pending or is making some claim against the ward.

h. 646 (HB919): Attorney Ad Litem Must be Certified. See 647A infra.

i. § 647A (HB 919) Certification Requirements for Court Appointed Attorneys: To be appointed by a court in a guardianship, an attorney must be certified by the State Bar. That certification is obtained by completing a 3 hour course provided by the State Bar of Texas. The

first certification expires after 2 years. If the attorney has been certified for the immediately preceding 4 years, then the subsequent certifications are good for 4 years.

j. § 648A(b) (HB 1663) Court Investigator's Duties Expanded: This adds to the duties of the court investigator those duties "required by this code."

k. § 665 (HB1852 & HB2165). Guardian's Fees from Other Funds. Currently a court can order guardian's compensation for persons serving solely as guardian of the person from the ward's estate. Now the court may authorize those payments from other sources. This would include county funds if budgeted as well as the new grants established under Government Code § 531.125 (HB 3630).

l. § 665B(a) (HB 2165) Attorneys Fees: Unsuccessful Applicants. Now a court may authorize attorneys fees for guardianship applicants who were not successful. Those fees can be paid from the ward's estate or, if his estate is not sufficient, from county funds if any have been so budgeted.

m. § 677A(e) (HB3338) Form: Designation of Guardian in Case of Later Need. The form is amended to expressly allow the waiver of bond for guardian of the person of the declarant's children. See appendix.

n. § 682: (HB 1663) Eliminates Term Requirement from Applications. This section sets out the requirements for an application for guardianship. Subsection 9 has always required that the "requested term,

if known...” be included. That requirement is eliminated.

o. § 682A (HB 2164)

Applications for Guardianship Before 18th Birthday. An application can be filed for a minor who will need a guardianship after becoming an adult. The application can be for a guardianship of the person or of the estate, or both. The application shall not be made more than 60 days before the child’s 18th birthday. This statute refers to applications but it may mean that a guardian can be appointed before the 18th birthday.

**p. § 683 & 683A (HB2165)
Court Initiated Guardianships.**

i. To establish probable cause for a court to appoint an ad litem or court investigator it must have an information letter from an interested person or a physician’s statement.

ii. If the court creates a guardianship it may compensate the guardian ad litem from the ward’s estate. If the estate is unable to pay it may compensate from county funds.

iii. The information the letter may contain is set out in § 683A.

q. § 694A-I (HB 1663)

Modification or Restoration: This bill expands the provisions regarding restoration or modification of a guardianship. The highlights:

i. A ward may initiate the process by an informal letter.

ii. Anyone has standing to bring the action or contest it, except as set out in 642, supra.

iii. Except for good cause, a subsequent action may not be filed for 1 year.

iv. Application requirements, set out in 694B, are similar to those for a guardianship including listing names and addresses of the ward’s spouse, children and siblings, or next of kin, if the ward is over 60 years of age.

v. The court shall appoint an attorney ad litem. That ad litem shall only represent the ward in that restoration or modification proceeding.

vi. It has the unusual provision that at the hearing the court shall only hear “relevant” evidence.

vii. The applicant has the burden of proof which is a preponderance of the evidence. Interestingly, this is true even if the it is the guardian seeking additional powers (further restrictions on the ward’s rights).

viii. No modification or restoration shall occur unless a doctor’s certificate is also provided. It must be within 120 days of filing the application or after the application but before the date of the hearing.

ix. The ward may retain private counsel. That lawyer will be reimbursed from the ward’s estate if the court concludes that the attorney “had a

good-faith belief that the ward had the capacity to retain the attorney's services."

x. These changes apply to all applications "in which a final determination on the application has not been made" by September 1, 1999.

r. **§ 695A (HB2166) Family Members to Replace Agencies.** If a guardianship program or a governmental agency which is serving as guardian learns of a family member of friend who is willing and able to serve, they shall bring this to the attention of the court. If the court determines that such a person's appointment is in the best interest of the ward, the court shall cause an application for appointment to be filed.

s. **§§ 697 & 698 (HB 3630) Investigation of Guardianship Program Employees.** These sections require the clerk to submit the names of the private professional guardianship programs to the Health and Human Services Commission. The clerk is also responsible for obtaining the FBI criminal history of all employees who have direct contact with the wards.

t. **§ 702 (HB 3338) New Designation of Guardian Form.** Parents have always been able to designate a guardian in a will. Now they can also do it through a written Declaration. There is also a new form, see the appendix.

u. **§ 743(j) GOP Reports Without an Attorney.** This bill makes clear that a guardian of the person may file his report without the assistance of an attorney.

v. **§ 868(f) (SB112) Tomorrow Fund: An Approved Investment.** The Texas Tomorrow Fund is an approved and listed investment for 867 trustees if the trustee determines it is in the beneficiary's best interest.

w. **§ 875 (HB 2795) Notice to Proposed Temporary Guardian.** If the proposed temporary guardian is not the applicant, he (she or it) must be given notice. This provision was included at the specific request of the Department of Human Resources. If they are going to be appointed, they want to know in advance.

x. **§§ 886-886F (HB 3343) POWs and MIAs.** The receivership for POWs and MIAs is moved to the Civil Practice and Remedies Code.

3. PROPERTY CODE: TRUST CODE

a. ***§ 113.018 Investment Agents.** Adds investment agents to the list of authorized agents that a trustee may employ. This is a conforming statute to the delegation statute (§ 113.060), infra.

b. **§ 113.026 (HB 115) New Charitable Beneficiary:** A trustee may designate a new charitable beneficiary upon default of the original: Thus avoiding a court proceeding to select a new charity. The new beneficiary shall be similar in purpose to the original charity. If the settlor is living and capable of participating the trustee shall consult with the settlor. Their decision, or disagreement, shall be reported to the Attorney General. If he does not agree with their decision he may bring an action. If they have not agreed he shall bring an action.

Effective immediately upon enactment but only applies to trusts created on or after the effective date.

**c. *§ 113.060 (HB 1475).
Delegation of Trust Investments.**
Traditionally the investment duty was nondelegable. Now a trustee may delegate. First the statute says the trustee may simply delegate but will be liable for the conduct of the investment agent, just like any other agent. Or, if the trustee complies with the terms of the statute, the trustee will avoid liability for the errors or omissions of the investment agent. The requirements include:

- i. Notice to the beneficiaries at least 30 days before the trustee enters into the contract.
- ii. The trustee must exercise the care of a prudent man in selecting the investment agent and establishing the scope and terms of the delegation.
- iii. The trustee must investigate the credentials including
 - experience
 - performance history
 - financial stability
 - professional licenses
 - bonds or insurance
- iv. The investment agent must be subject to Texas court jurisdiction.
- v. The delegation agreement must include
 - the investment agent agrees to be subject to the trustee's investment standards under §113.056, and

--the agent assumes liability for failing to follow that standard

vi. Finally, the trustee must periodically review the investment decisions of the agent.

Effective September 1, 1999.

**d. § 113.1021 (HB 1373)
Annuities & Life Insurance in Charitable Trusts.** In charitable trusts, increases in the value of life insurance (before death) and annuities (before annuitization) are allocated to trust income. However, such increases are not subject to distributions until the trustee receives cash. This makes NIMCRUTs (net income makeup charitable remainder unitrusts) (also known as spigot trusts) much more attractive to donors. For a discussion of NIMCRUTs and their uses see "Estate Planning for the Large Estate," Kathryn Henkel, 1997 Advanced Estate Planning and Probate Course, Section I.

i. This bill means that when the annuity is cashed the non charitable beneficiary (typically the donor) can receive the make up distributions: The trustee can make up the shortfalls from earlier years. Best of all the trustee by making withdrawals from the annuity can control when and how much is distributed to the beneficiary.

ii. This bill is suppose to be limited to charitable trusts. However, the restriction is only set out in the heading of the statute. It is unknown whether it would apply to a trust that has an incidental charitable beneficiary, such as an intervivos trust which is the primary testamentary

document and has a small bequest to a charity

iii. It applies to all existing charitable trusts. This bill applies to all allocations of principal and income after the September 1, 1999 effective date.

iv. This is a default rule, so to avoid it, it must be specifically negated.

e. *§ 114.032 (HB 1475): Virtual Representation. This bill extends the litigation concept of virtual representation to out of court releases and other contractual agreements. If there is no conflict and if a minor or unborn or ascertained beneficiary's interests are adequately represented, the contract will be binding on them even though they did not sign the agreement. This does not apply to agreements which modify or terminate a trust. Effective September 1, 1999.

f. § 115.002 (HB 2317 & HB 2066) Trust Venue: This changes the venue rules regarding trusts. Currently venue for an individual trustee is in the county of the trustee's residence. For a corporate trustee it is in the county of the corporation's principal office. With this amendment, the statute is a clear mandatory statute.

Now an action can be brought:

- i. For an individual trustee:
- (1) In the county of the trustee's residence; or
 - (2) Any "situs of administration" of the trust for the past 4

years.

ii. For multiple trustees or a corporate trustee any "situs of administration" of the trust for the last 4 years; or

iii. An action against a corporate trustee may be brought in the county of its principal office.

"Situs of administration" means the office primarily responsible for dealing with the settlor and the beneficiaries.

For just and reasonable cause the court may transfer the proceeding. Reasonable cause includes but is not limited to: Location of records and convenience of the parties and witnesses. Effective September 1, 1999.

4. PROPERTY CODE: OTHER

a. § 5.011 (SB167) Notice of Annexation. This statute requires notice by sellers of the possibility of annexation. This does not apply, inter alia, to transfers

i. By a fiduciary in the course of administration;

ii. By one co-owner to another co-owner, or

iii. By a family member to a lineal descendant.

b. §§ 41.002 & 41.005 (SB496 & SJR 22) Urban Homestead Increased to 10 acres. The urban homestead is increased from 1 acre to 10 acres in one or more contiguous lots. In addition the statute

spells out the factors to consider in determining if property is urban or rural.

c. § 42.002(a) (HB1805) Life Insurance Exemption: Life insurance is exempt from creditors under this section and under §21.22 of the Insurance Code. This Property Code provision has a \$30,000/\$60,000 (individual/family) limitation and the Insurance Code has no limitation. As a result of this apparent conflict some bankruptcy courts have held that the cash value of a life insurance policy counts toward the \$30,000/\$60,000 limitation. By eliminating this reference, the unlimited provision of the Insurance Code will control.

This does not repeal the life insurance exemption.

d. § 42.0021(a) Roth IRAs (HB 76, HB 1081 & *HB 1476): With this bill, Roth IRAs are exempt as well as traditional IRAs. The effective date says the exemption applies to all contributions made before, on or after the date of the act.

e. § 142.004(a) (HB 68) Tomorrow Fund in 142 Trusts: Tomorrow Fund will be an approved investment for Section 142 trusts.

f. § 142.008 (SB1388) Structured Settlements. This bill sets out the permissive provisions for a structured settlement

5. FAMILY CODE

a. §§ 3.006, 3.401–3.406 & 7.002 (HB 734) Enhancement from Financial Contributions.: HB734 passed the House as the Family Harmony Bill, see *infra* at §4.201. There was an amendment on the Senate floor which did not effect the provisions of converting from separate to community but added certain provisions regarding the measure of reimbursement upon dissolution when one estate makes financial contributions to another (community cash in used to build an apartment house on husband’s separate property lots).

i. The statute is phrased in terms of the community estate making contributions to separate property. However, in § 3.404 the same principals are extended to all contributions between the various estates: His separate, her separate, their community.

ii. The amendment was not the House Bill 2142 language originally filed. It was substantially changed.

iii. First and foremost it has none of the provisions on the measure of reimbursement for community time, toil and labor contributed to separate property. As a result *Jensen v. Jensen*, 665 S.W.2d 107 (Tex. 1984) still controls.

iv. Second, the amendment does not use the ownership language in the original bill. The amendment continues to provide that enhancement in value as a result of community financial contributions creates “an equitable interest

of the community in the separate property.” This is the language, in addition to the Jensen provisions, in the original bill that was so troubling to estate planners.

However, the amendment clearly states that such “equitable interest” does not create an ownership interest but rather gives rise to a “claim...which matures on the termination of the marriage.

v. The amendment also provides that enhancement is the measure when community contributions discharge debt on separate property.

vi. The section on debt retirement actually provides a formula. There is no formula for straight financial contributions. How that formula works, or better said, how it is applied and how it is ultimately construed, may be the biggest change.

vii. The formula says the “equitable interest is calculated by multiplying the “net enhanced value” (not defined) by the “sum (sic) created by dividing

“(1) the total amount of the payments made by the community estate to reduce the principal of the debt on the separate property; by

“(2) the sum of

“(A) the amount computed under Subdivision (1);

“(B) the total amount of the payments made by the separate estate to reduce the principal on the debt; and,

“(C) the total amount of any additional amount spent by the separate estate to acquire the interest in the property.”

viii. It applies these

principals to all contributions between estates (his separate, her separate, their community).

ix. It authorizes a court to impose an equitable lien. Unfortunately, it says a court “shall impose an equitable lien...” Hopefully that mandatory language will not create any unanticipated mischief.

x. The amendment affirms the inception of title doctrine.

xi. Finally, it eliminates offsets for “use and enjoyment during the marriage.” For example there shall be no offset for living in the home. However, it is not clear if it also applies to income generated by the property. It is assumed that this language was carefully selected and used to deal with the frequent problem of the courts holding that living in the house is an offset.

xii. Except for the precise formula and the offset issue, this statute purports to be a codification of existing law, especially see Anderson v. Gilliland, 684 S.W.2d 673 (Tex. 1985) and Penick v. Penick, 763 S.W.2d 194 (Tex. 1988)..

xiii. The amendment says it is effective September 1, 1999. Then it goes on to say it applies to suits for dissolution pending on September 1, 1999 or filed on or after that date.

xiv. A copy of the amendment is in the appendix.

b. *§ 4.201 (HB734): Family Harmony Bill (aka “The Bill Formerly Known as the Transmutation Bill”). If the enabling Constitutional Amendment (HJR 36), passes, Texans will for the first time be able to change separate property to community.

i. All other community property states can already do this. Currently separate property can only be converted to community by co-mingling.

ii. Texans may want to do this for a variety of reasons including

(1) Maximizing Use of the Unified Credit. If the non wealthy spouse dies first, his or her unified credit is lost.

(2) Maximizing Step up in Basis. If separate property is converted to community, both halves enjoy a step up in basis on the death of the first spouse. This allows the property to be sold with little or no capital gains tax.

(3) Avoids Tracing. In many harmonious families, tracing of separate property is an unnecessary expense. Conversion to community can eliminate that process.

iii. There was opposition to this bill. There was concern that people would convert their separate property to community and have regrets upon divorce. That is a legitimate concern and one that needs to be carefully considered before entering into any such arrangement. However, converting to community is much less draconian than the existing alternative: A gift of separate property to the other spouse. That makes it the separate property of the other spouse. That separate property

which is not available to the divorce court when trying to make a fair and just division. The donor spouse has no chance of recovering it on divorce

iv. Currently we can convert community to separate. Again, such separate property is not available for division on divorce. In addition, the spouses, even if they agree, cannot (without Family Harmony) convert it back to community.

v. Transmutation to community is not as final as partitions and exchanges of community into separate.

vi. There was also concern that any conversion to community property exposed the property to an increased range of debts. However, if the property is maintained as the sole management community of the contributing spouse, the increase in range of liabilities is limited to tort claims.

vii. Effective January 1, 2000 if the constitutional amendment passes.

6. CIVIL PRACTICE & REMEDIES

a. § 16.004(a) (HB 2456) Limitations for Fraud & Breach of Fiduciary Duties. This statute clarifies existing law and declares that actions for fraud and breach of fiduciary duties have 4 year statutes of limitations. According to the legislative history this does not change the current discovery rule. The statute says it is clarifying existing law: That means it applies to all existing actions and lawsuits. It is effective immediately. Finally, it states that

it is not intended to effect the current two year statute for breaches of the duty of good faith and fair dealing in insurance contracts. The bill says it is clarification of existing law and does not state its effective date. Presumably it is effective immediately.

b. § 37.005 (HB1852) DJs for Independent PRs Final Accounts. This section has been expanded to clearly cover independent executors and administrators. In addition, it specifically authorizes a court to declare the legal rights of independent executors or administrators regarding settlement of accounts and fiduciary fees. Effective September 1, 1999 and applies only to estates of persons dying after that date.

c. § 64.101-108 (HB 3343) POWs & MIAs. The receivership provisions for POWs and MIAs that were in the Probate Code are now in the Civil Practice and Remedies Code.

d. § 71.012 & 71.022 (HB 3477) Certain Litigation Without Ancillary Letters. If a foreign PR complies with Probate Code § 95, then he does not have to obtain ancillary letters under Probate Code § 105 to pursue a wrongful death or survival action.

e. §§ 137.001.-.007,-.008,-.0010 (SB 1361) Advance Directives. If a physician is unwilling to comply with a directive, he must use reasonable efforts to transfer the patient. A physician may use treatment contrary to an advance directive if those instructions have not reduced the severity of the behavior.

7. FINANCE CODE. Article 1, Section 1.001, Title 3, Chapter 201 (HB 2066): Interstate Banking Bill. This contains the same venue provisions found in HB 2317 amending the trust code. It makes several changes to the probate code regarding foreign corporate executors and administrators which have been set out above. Finally, it adds a new Chapter 9 to the Texas Trust Company Act, infra.

8. GOVERNMENT CODE.

a. § 21.009, Sub.(2) (SB 1150) Brazoria County Courts at Law. The reference to Brazoria County Courts at Law being statutory probate courts was repealed.

b. § 25.1802(a) (SB1150) Nueces County Courts at Law. Also, the statutory probate court jurisdiction of Nueces County Courts at Law was repealed.

c. § 25.00221 (HB 1605) SPC Intra County Transfers: Transfers of actions by a statutory probate court to another statutory probate court or to another court having jurisdiction. The statute is limited to courts within the same county.

d. § 25.0003 (SB1150) Probate Jurisdiction of Statutory County Courts. Statutory county courts do not have statutory probate court jurisdiction.

e. **§ 25.1034(j) (HB3854) Harris County Case Assignment.** In Harris County, the clerk is to now assign and docket “at random” matter and proceedings in the Probate Courts as follows:

- i. No. 1 30%
- ii. No. 2 30%
- iii. No. 3 20%
- iv. No. 4 20%

f. **§ 25.2651 (SB1001) Multi County Statutory Probate Courts.** This statute will allow counties to establish multi county statutory probate courts.

g. **§ 54.601 (SB 294): Probate Masters.** This bill will allow statutory probate judges, with the consent and funding of the county commissioners, to appoint masters. This bill does not apply to Dallas or Harris Counties.

h. **§ 81.101 (SB 764, HB 1507): Unauthorized Practice of Law.** This bill is a response to an injunction entered against Quicken by a federal court in Dallas. In that case Judge Barefoot Sanders said that Quicken’s Family Lawyer program was the unauthorized practice of law. This bill says producing and selling such a program is not the unauthorized practice of law. However, it goes on to say, in less than crisp language, that this does not authorize anyone (for example bankers, real estate agents or insurance salesmen) to use any programs or forms to practice law. It appears to be merely some acknowledgment of people’s right to act pro se. Note that this statute does not deal with the liability of Quicken or any other provider, it merely says they are not practicing law. In addition, this probably does not finally resolve the question. See Nolo Press, _____ (Tex.

1999) for questions about who controls the practice of law: The Texas Supreme Court or the Texas Legislature.

i. **§ 466.410 (HB 1799) Lottery Prize Assignment.** This bill allows the assignment of lottery prizes. However, if there is an IRS ruling or court determination that such provision causes an immediate income tax for those who do not assign their lottery prize, the right of assignment shall cease. This bill also makes unclaimed lottery prizes available for indigent health care.

j. **§ 531.125 (HB 3630) Guardianship Grants.** Grants will now be available to pay guardians when there are no other funds available.

9. HEALTH & SAFETY CODE.

a. **Chapter 166 (SB 1260) Advance Directives.** This bill brings health care, living wills and out of hospital do not resuscitate provisions into one statute. Further, it provides one form that handles health care decisions, living will and out of hospital do not resuscitate orders. See appendix 4.

b. **§ 593.081 (SB 1623) Trust Funds For State Eleemosynary Inmates.** Currently trust funds of persons in state facilities is limited to \$50,000. This statute raises that amount to \$250,000.

c. **§ 711.002(g) & (j) (HB 1571) Inscriptions on Grave Markers.** Texans can now provide in advance what is to be placed on their grave markers. There is now also a presumption that a married

woman wants her grave marker to reflect the last name she used.

10. INSURANCE CODE. Article 1.14-1A, § 7 (HB 823). Charitable Gift

Annuities are not subject to the requirements applied to insurance companies in the issuance of annuities. Further, charitable gift annuities are not subject to the deceptive trade practices act (Business and Commerce Code, §§ 15.05.17.46 and 17.50(a)(3)).

11. LOCAL GOVERNMENT CODE.

§ 118.052 (HB 2822): This bill eliminates the \$3 for the first page and \$2 fee structure for probate filings. The bill is attached as an exhibit. Instead there is now

- a. \$45 fee for original filings (including the "additional, special fee" of \$5).
- b. \$25 for annual and final accountings
- c. \$10 for annual and final reports of guardians of the person.
- d. \$25 for applications for sale of real or personal property.
- e. \$2 for claims
- f. \$40 for adverse actions

There are a few hitches left, if you file your inventory after 120 days there is a charge of \$25. There continues to be a \$3.00 charge for approving and recording the bond and \$2.00 for administering the oath. Nevertheless, this should greatly simplify filing calculations.

12. Non-Profit Corp. Act (Art. 1396-2.31 V.A.T.S.) (HB 2066 and HB 3276) Charitable Immunity. These bills state that a charity is immune from any suit claiming that a charity who is acting as a trustee is engaging in the trust business contrary to the Texas Trust Company Act. Also, it provides for interlocutory appeals if the defense of immunity is not granted.

13. TRANSPORTATION CODE

§501.031(HB 381): Allows registration of motor vehicles to be held in right of survivorship form.

14. TRUST COMPANY ACT. Multistate Trust Business, VATS 342a-9.001 et seq. (HB2066, 117-24).

- a. 9.005(b)(123-10): A trust may apply the laws of another state if
 - i. The instrument does not provide otherwise,
 - ii. The trust, or its subject matter bears a reasonable relationship to this state and to another state,
 - iii. The "trust institution" and its "affected client" may agree on the laws of "the other state."
- b. 9.005(c): However, Trust Code §§ 113.052 (restrictions on loans by or to a trustee) and 113.053 (purchases or sales by a trustee) will still apply.

15. TEXAS CONSTITUTION: Article VII, § 11 b (HJR 58) Prudent Investor Standards for the Permanent University Fund. This constitutional amendment says the Permanent University Fund shall be managed as follows:

- i. The prudent investor standard shall be used in determining investments.
- ii. All investments shall be taken into consideration not single investments.
- iii. Available funds shall be based on total return on all investments.
- iv. The amount of distributions for the available fund shall be consistent with
 - (1) A stable and predictable stream of annual distributions,
 - (2) Maintaining the purchasing power of the fund and its annual distributions, and
 - (3) The annual distributions to the available fund shall not exceed 7% of the fair market value of the permanent university fund investment assets.

16. NEXT SESSION. Without predicting what will pass, it is assumed that legislation in the following areas will be filed.

- New Constitution
- Prudent Investor
- Uniform Principal & Income Act
- Alaskan Trust
- Abolish rule against perpetuities.
- Grantor trust safe from creditors

APPENDIX

Appendix 1: Affidavit of Heirship Form

2-12 SECTION 2. Chapter III, Texas Probate Code, is amended by
2-13 adding Section 52A to read as follows:
2-14 Sec. 52A. FORM OF AFFIDAVIT OF FACTS CONCERNING IDENTITY OF
2-15 HEIRS. An affidavit of facts concerning the identity of heirs of a
2-16 decedent may be in substantially the following form:
2-17 AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS
2-18 Before me, the undersigned authority, on this day personally
2-19 appeared _____ ("Affiant") (insert name of affiant) who,
2-20 being first duly sworn, upon his/her oath states:
2-21 1. My name is _____ (insert name of affiant), and I
2-22 live at _____ (insert address of affiant's residence). I
2-23 am personally familiar with the family and marital history of
2-24 _____ ("Decedent") (insert name of decedent), and I have
2-25 personal knowledge of the facts stated in this affidavit.
2-26 2. I knew decedent from _____ (insert date) until
2-27 _____ (insert date). Decedent died on _____ (insert
3-1 date of death). Decedent's place of death was _____ (insert
3-2 place of death). At the time of decedent's death, decedent's
3-3 residence was _____ (insert address of decedent's residence).
3-4 3. Decedent's marital history was as
3-5 follows: _____ (insert marital history and, if decedent's spouse
3-6 is deceased, insert date and place of spouse's death).
3-7 4. Decedent had the following children: _____ (insert
3-8 name, birth date, name of other parent, and current address of
3-9 child or date of death of child and descendants of deceased child,
3-10 as applicable, for each child).
3-11 5. Decedent did not have or adopt any other children and did
3-12 not take any other children into decedent's home or raise any other
3-13 children, except: _____ (insert name of child or names of
3-14 children, or state "none").
3-15 6. (Include if decedent was not survived by descendants.)
3-16 Decedent's mother was: _____ (insert name, birth date, and
3-17 current address or date of death of mother, as applicable).
3-18 7. (Include if decedent was not survived by descendants.)
3-19 Decedent's father was: _____ (insert name, birth date, and
3-20 current address or date of death of father, as applicable).
3-21 8. (Include if decedent was not survived by descendants or
3-22 by both mother and father.) Decedent had the following
3-23 siblings: _____ (insert name, birth date, and current address

3-24 or date of death of each sibling and parents of each sibling and
3-25 descendants of each deceased sibling, as applicable, or state
3-26 "none").

3-27 9. (Optional.) The following persons have knowledge
4-1 regarding the decedent, the identity of decedent's children, if
4-2 any, parents, or siblings, if any: _____ (insert names of
4-3 persons with knowledge, or state "none").

4-4 10. Decedent died without leaving a written will. (Modify
4-5 statement if decedent left a written will.)

4-6 11. There has been no administration of decedent's estate.
4-7 (Modify statement if there has been administration of decedent's
4-8 estate.)

4-9 12. Decedent left no debts that are unpaid, except:
4-10 _____ (insert list of debts, or state "none").

4-11 13. There are no unpaid estate or inheritance taxes, except:
4-12 _____ (insert list of unpaid taxes, or state "none").

4-13 14. To the best of my knowledge, decedent owned an interest
4-14 in the following real property: _____ (insert list of
4-15 real property in which decedent owned an interest, or state
4-16 "none").

4-17 15. (Optional.) The following were the heirs of decedent:
4-18 _____ (insert names of heirs).

4-19 16. (Insert additional information as appropriate, such as
4-20 size of the decedent's estate.)

4-21 Signed this ____ day of _____, _____.

4-22 _____
4-23 (signature of affiant)

4-24 State of _____
4-25 County of _____

4-26 Sworn to and subscribed to before me on _____ (date) by
4-27 _____ (insert name of affiant).

5-1 _____
5-2 (signature of notarial officer)

5-3 (Seal, if any, of notary) _____
5-4 (printed name)

5-5 My commission expires: _____

Appendix 2: Designation of Guardian Form

DECLARATION OF APPOINTMENT OF GUARDIAN FOR
MY CHILDREN IN THE EVENT OF MY DEATH

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this _____ day of _____, 19__.

Declarant

Witness

Witness

Appendix 3: Probate Fee Schedule

A BILL TO BE ENTITLED

AN ACT

relating to the fees charged by a county clerk for probate filings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 118.052, Local Government Code, is amended to read as follows:
Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) CIVIL COURT ACTIONS

(A) Filing of Original Action (Sec. 118.053):

- (i) Garnishment after judgment \$15.00
- (ii) All others \$40.00

(B) Filing of Action Other than Original

(Sec.118.054) \$30.00

(C) Services Rendered After Judgment in Original Action (Sec. 118.0545):

- (i) Abstract of judgment \$ 5.00
- (ii) Execution, order of sale, writ, or other
process \$ 5.00

(2) PROBATE COURT ACTIONS

(A) Probate Original Action (Sec. 118.055):

- (i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment title \$40.00 [~~\$35.00~~]
- (ii) Community survivors \$40.00 [~~\$20.00~~]
- (iii) Small estates \$40.00 [~~\$10.00~~]
- (iv) Declarations [Affidavits] of heirship..... \$40.00 [~~\$10.00~~]
- (v) Mental health or chemical dependency services \$40.00
- (vi) Additional, special fee (Sec. 118.064)..... \$ 5.00 [~~\$ 3.00~~]

(B) Services in Pending Probate Action (Sec. 118.056):

- (i) Filing an inventory and appraisal after the 120th day after the date of the initial filing of the action \$25.00
- (ii) Approving and recording bond \$ 3.00
- (iii) Administering oath \$ 2.00
- (iv) Filing annual or final account of estate..... \$25.00
- (v) Filing application for sale of real or personal property \$25.00
- (vi) Filing annual or final report of guardian of a person \$10.00

(C) Adverse Probate Action (Sec. 118.057)..... \$40.00 [~~\$35.00~~]

- (D) Claim Against Estate (Sec. 118.058) \$ 2.00
- (3) OTHER FEES
 - (A) Issuing Document (Sec. 118.059):
 - original document and one copy \$ 4.00
 - each additional set of an original and one copy..... \$ 4.00
 - (B) Certified Papers (Sec. 118.060):
 - for the clerk's certificate \$ 5.00
 - plus a fee per page or part of a page of \$ 1.00
 - (C) Noncertified Papers (Sec. 118.0605):
 - for each page or part of a page \$ 1.00
 - (D) Letters Testamentary, Letter of Guardianship,
Letter of Administration, or Abstract of Judgment
(Sec. 118.061) \$ 2.00
 - (E) Safekeeping of Wills (Sec. 118.062) \$ 5.00
 - same as
 - (F) Mail Service of Process (Sec. 118.063) sheriff
 - (G) Records Management and Preservation Fee \$ 5.00

SECTION 2. Section 118.056, Local Government Code, is amended to read as follows:

Sec. 118.056. SERVICES IN PENDING PROBATE ACTION. [(a) The fees for "Services in Pending Probate Action" under Section 118.052(2) are for services in an action in an open probate docket rendered after the filing of an order approving the inventory and appraisal or after the 90th day after the date of the initial filing of the action, whichever occurs first.]

[(b) The fee for filing a document also applies to each page or part of a page for the filing of a document or exhibit filed by a movant after the filing of an original answer or response, after the filing of an order approving the inventory and appraisal, or after the 90th day after the date of the initial filing of the action, whichever occurs first, and before the filing of an adverse action, contest, suit, or pleading seeking affirmative relief.]

[(c)] Each fee under Section 118.052(2)(B) shall be paid in cash at the time of the filing or the rendering of the service and is in addition to other fees prescribed by Section 118.052.

SECTION 3. This Act takes effect September 1, 1999.

SECTION 4. 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.

* * * * *

Appendix 4: Statutory Form for Directive to Physicians

**STATUTORY FORM FOR DIRECTIVE TO PHYSICIANS
§166.033 Health and Safety Code
As revised by SB 1260, 76th Regular Legislative Session**

(Note: As of 6/1/99 SB 1260 had not yet been signed into law by the Governor.)

- 12-4 Sec. 166.033 [~~672.004~~]. FORM OF WRITTEN DIRECTIVE. A
12-5 written directive may be in the following form:
12-6 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES
12-7 Instructions for completing this document:
12-8 This is an important legal document known as an Advance
12-9 Directive. It is designed to help you communicate your wishes
12-10 about medical treatment at some time in the future when you are
12-11 unable to make your wishes known because of illness or injury.
12-12 These wishes are usually based on personal values. In particular,
12-13 you may want to consider what burdens or hardships of treatment you
12-14 would be willing to accept for a particular amount of benefit
12-15 obtained if you were seriously ill.
12-16 You are encouraged to discuss your values and wishes with
12-17 your family or chosen spokesperson, as well as your physician.
12-18 Your physician, other health care provider, or medical institution
12-19 may provide you with various resources to assist you in completing
12-20 your advance directive. Brief definitions are listed below and may
12-21 aid you in your discussions and advance planning. Initial the
12-22 treatment choices that best reflect your personal preferences.
12-23 Provide a copy of your directive to your physician, usual hospital,
12-24 and family or spokesperson. Consider a periodic review of this
12-25 document. By periodic review, you can best assure that the
12-26 directive reflects your preferences.
13-1 In addition to this advance directive, Texas law provides for
13-2 two other types of directives that can be important during a
13-3 serious illness. These are the Medical Power of Attorney and the
13-4 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss
13-5 these with your physician, family, hospital representative, or
13-6 other advisers. You may also wish to complete a directive related
13-7 to the donation of organs and tissues.
13-8 DIRECTIVE
13-9 I, _____, recognize that the best health care is
13-10 based upon a partnership of trust and communication with my

13-11 physician. My physician and I will make health care decisions
13-12 together as long as I am of sound mind and able to make my wishes
13-13 known. If there comes a time that I am unable to make medical
13-14 decisions about myself because of illness or injury, I direct that
13-15 the following treatment preferences be honored:

13-16 If, in the judgment of my physician, I am suffering with a
13-17 terminal condition from which I am expected to die within six
13-18 months, even with available life-sustaining treatment provided in
13-19 accordance with prevailing standards of medical care:

13-20 I request that all treatments other than those needed to keep
13-21 me comfortable be discontinued or withheld and my physician
13-22 allow me to die as gently as possible; OR

13-23 I request that I be kept alive in this terminal condition
13-24 using available life-sustaining treatment. (THIS SELECTION
13-25 DOES NOT APPLY TO HOSPICE CARE.)

13-26 If, in the judgment of my physician, I am suffering with an
14-1 irreversible condition so that I cannot care for myself or make
14-2 decisions for myself and am expected to die without life-sustaining
14-3 treatment provided in accordance with prevailing standards of care:

14-4 I request that all treatments other than those needed to keep
14-5 me comfortable be discontinued or withheld and my physician
14-6 allow me to die as gently as possible; OR

14-7 I request that I be kept alive in this irreversible condition
14-8 using available life-sustaining treatment. (THIS SELECTION
14-9 DOES NOT APPLY TO HOSPICE CARE.)

14-10 Additional requests: (After discussion with your physician,
14-11 you may wish to consider listing particular treatments in this
14-12 space that you do or do not want in specific circumstances, such as
14-13 artificial nutrition and fluids, intravenous antibiotics, etc. Be
14-14 sure to state whether you do or do not want the particular
14-15 treatment.)

14-16 _____

14-17 _____

14-18 _____

14-19 After signing this directive, if my representative or I elect
14-20 hospice care, I understand and agree that only those treatments
14-21 needed to keep me comfortable would be provided and I would not be
14-22 given available life-sustaining treatments.

14-23 If I do not have a Medical Power of Attorney, and I am unable
14-24 to make my wishes known, I designate the following person(s) to
14-25 make treatment decisions with my physician compatible with my
14-26 personal values:

15-1 1. _____
15-2 2. _____
15-3 (If a Medical Power of Attorney has been executed, then an agent
15-4 already has been named and you should not list additional names in
15-5 this document.)
15-6 If the above persons are not available, or if I have not
15-7 designated a spokesperson, I understand that a spokesperson will be
15-8 chosen for me following standards specified in the laws of Texas.
15-9 If, in the judgment of my physician, my death is imminent within
15-10 minutes to hours, even with the use of all available medical
15-11 treatment provided within the prevailing standard of care, I
15-12 acknowledge that all treatments may be withheld or removed except
15-13 those needed to maintain my comfort. I understand that under Texas
15-14 law this directive has no effect if I have been diagnosed as
15-15 pregnant. This directive will remain in effect until I revoke it.
15-16 No other person may do so.
15-17 Signed _____ Date _____
15-18 City, County, State of Residence _____
15-19 Two competent adult witnesses must sign below, acknowledging
15-20 the signature of the declarant. The witness designated as Witness
15-21 1 may not be a person designated to make a treatment decision for
15-22 the patient and may not be related to the patient by blood or
15-23 marriage. This witness may not be entitled to any part of the
15-24 estate and may not have a claim against the estate of the patient.
15-25 This witness may not be the attending physician or an employee of
15-26 the attending physician. If this witness is an employee of a
16-1 health care facility in which the patient is being cared for, this
16-2 witness may not be involved in providing direct patient care to the
16-3 patient. This witness may not be an officer, director, partner, or
16-4 business office employee of a health care facility in which the
16-5 patient is being cared for or of any parent organization of the
16-6 health care facility.
16-7 Witness 1 _____ Witness 2 _____
16-8 Definitions:
16-9 "Artificial nutrition and hydration" means the provision of
16-10 nutrients or fluids by a tube inserted in a vein, under the skin in
16-11 the subcutaneous tissues, or in the stomach (gastrointestinal
16-12 tract).
16-13 "Irreversible condition" means a condition, injury, or
16-14 illness:
16-15 (1) that may be treated, but is never cured or
16-16 eliminated;
16-17 (2) that leaves a person unable to care for or make

16-18 decisions for the person's own self; and
16-19 (3) that, without life-sustaining treatment provided
16-20 in accordance with the prevailing standard of medical care, is
16-21 fatal.

16-22 Explanation: Many serious illnesses such as cancer, failure
16-23 of major organs (kidney, heart, liver, or lung), and serious brain
16-24 disease such as Alzheimer's dementia may be considered irreversible
16-25 early on. There is no cure, but the patient may be kept alive for
16-26 prolonged periods of time if the patient receives life-sustaining
17-1 treatments. Late in the course of the same illness, the disease
17-2 may be considered terminal when, even with treatment, the patient
17-3 is expected to die. You may wish to consider which burdens of
17-4 treatment you would be willing to accept in an effort to achieve a
17-5 particular outcome. This is a very personal decision that you may
17-6 wish to discuss with your physician, family, or other important
17-7 persons in your life.

17-8 "Life-sustaining treatment" means treatment that, based on
17-9 reasonable medical judgment, sustains the life of a patient and
17-10 without which the patient will die. The term includes both
17-11 life-sustaining medications and artificial life support such as
17-12 mechanical breathing machines, kidney dialysis treatment, and
17-13 artificial hydration and nutrition. The term does not include the
17-14 administration of pain management medication, the performance of a
17-15 medical procedure necessary to provide comfort care, or any other
17-16 medical care provided to alleviate a patient's pain.

17-17 "Terminal condition" means an incurable condition caused by
17-18 injury, disease, or illness that according to reasonable medical
17-19 judgment will produce death within six months, even with available
17-20 life-sustaining treatment provided in accordance with the
17-21 prevailing standard of medical care.

17-22 Explanation: Many serious illnesses may be considered
17-23 irreversible early in the course of the illness, but they may not
17-24 be considered terminal until the disease is fairly advanced. In
17-25 thinking about terminal illness and its treatment, you again may
17-26 wish to consider the relative benefits and burdens of treatment and
18-1 discuss your wishes with your physician, family, or other important
18-2 persons in your life.

Appendix 5: Medical Power of Attorney Form

MEDICAL POWER OF ATTORNEY

**§§166.163-166.164 Health and Safety Code
As revised by SB 1260, 76th Regular Legislative Session**

(Note: As of 6/1/99 SB 1260 had not yet been signed into law by the Governor.)

67-11 Sec. 166.163 [~~135.015~~]. FORM OF DISCLOSURE STATEMENT. The
67-12 disclosure statement must be in substantially the following form:
67-13 INFORMATION CONCERNING THE MEDICAL [~~DURABLE~~]
67-14 POWER OF ATTORNEY [~~FOR HEALTH CARE~~]
67-15 THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS
DOCUMENT,
67-16 YOU SHOULD KNOW THESE IMPORTANT FACTS:
67-17 Except to the extent you state otherwise, this document gives
67-18 the person you name as your agent the authority to make any and all
67-19 health care decisions for you in accordance with your wishes,
67-20 including your religious and moral beliefs, when you are no longer
67-21 capable of making them yourself. Because "health care" means any
67-22 treatment, service, or procedure to maintain, diagnose, or treat
67-23 your physical or mental condition, your agent has the power to make
67-24 a broad range of health care decisions for you. Your agent may
67-25 consent, refuse to consent, or withdraw consent to medical
67-26 treatment and may make decisions about withdrawing or withholding
68-1 life-sustaining treatment. Your agent may not consent to voluntary
68-2 inpatient mental health services, convulsive treatment,
68-3 psychosurgery, or abortion. A physician must comply with your
68-4 agent's instructions or allow you to be transferred to another
68-5 physician.
68-6 Your agent's authority begins when your doctor certifies that
68-7 you lack the competence [~~capacity~~] to make health care decisions.
68-8 Your agent is obligated to follow your instructions when
68-9 making decisions on your behalf. Unless you state otherwise, your
68-10 agent has the same authority to make decisions about your health
68-11 care as you would have had.
68-12 It is important that you discuss this document with your
68-13 physician or other health care provider before you sign it to make
68-14 sure that you understand the nature and range of decisions that may
68-15 be made on your behalf. If you do not have a physician, you should

68-16 talk with someone else who is knowledgeable about these issues and
68-17 can answer your questions. You do not need a lawyer's assistance
68-18 to complete this document, but if there is anything in this
68-19 document that you do not understand, you should ask a lawyer to
68-20 explain it to you.

68-21 The person you appoint as agent should be someone you know
68-22 and trust. The person must be 18 years of age or older or a person
68-23 under 18 years of age who has had the disabilities of minority
68-24 removed. If you appoint your health or residential care provider
68-25 (e.g., your physician or an employee of a home health agency,
68-26 hospital, nursing home, or residential care home, other than a
69-1 relative), that person has to choose between acting as your agent
69-2 or as your health or residential care provider; the law does not
69-3 permit a person to do both at the same time.

69-4 You should inform the person you appoint that you want the
69-5 person to be your health care agent. You should discuss this
69-6 document with your agent and your physician and give each a signed
69-7 copy. You should indicate on the document itself the people and
69-8 institutions who have signed copies. Your agent is not liable for
69-9 health care decisions made in good faith on your behalf.

69-10 Even after you have signed this document, you have the right
69-11 to make health care decisions for yourself as long as you are able
69-12 to do so and treatment cannot be given to you or stopped over your
69-13 objection. You have the right to revoke the authority granted to
69-14 your agent by informing your agent or your health or residential
69-15 care provider orally or in writing or by your execution of a
69-16 subsequent medical ~~[durable]~~ power of attorney ~~[for health care]~~.
69-17 Unless you state otherwise, your appointment of a spouse dissolves
69-18 on divorce.

69-19 This document may not be changed or modified. If you want to
69-20 make changes in the document, you must make an entirely new one.

69-21 You may wish to designate an alternate agent in the event
69-22 that your agent is unwilling, unable, or ineligible to act as your
69-23 agent. Any alternate agent you designate has the same authority to
69-24 make health care decisions for you.

69-25 THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE
69-26 PRESENCE OF TWO COMPETENT ADULT ~~[OR MORE QUALIFIED]~~
WITNESSES. THE

70-1 FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- 70-2 (1) the person you have designated as your agent;
70-3 (2) a person related to you by blood or marriage ~~[your~~
70-4 ~~health or residential care provider or an employee of your health~~
70-5 ~~or residential care provider];~~

70-6 (3) a person entitled to any part of your estate after
70-7 your death under a will or codicil executed by you or by operation
70-8 of law [your spouse];
70-9 (4) your attending physician [lawful heirs or
70-10 beneficiaries named in your will or a deed]; [or]
70-11 (5) an employee of your attending physician;
70-12 (6) an employee of a health care facility in which you
70-13 are a patient if the employee is providing direct patient care to
70-14 you or is an officer, director, partner, or business office
70-15 employee of the health care facility or of any parent organization
70-16 of the health care facility; or
70-17 (7) a person who, at the time this power of attorney
70-18 is executed, has a claim against any part of your estate after your
70-19 death [creditors or persons who have a claim against you].

70-20 Sec. 166.164 [~~135.016~~]. FORM OF MEDICAL [~~DURABLE~~] POWER OF
70-21 ATTORNEY. The medical [~~durable~~] power of attorney [~~for health~~
70-22 ~~care~~] must be in substantially the following form:

71-1 MEDICAL [~~DURABLE~~] POWER OF ATTORNEY [~~FOR HEALTH CARE~~]
71-2 DESIGNATION OF HEALTH CARE AGENT.

71-3 I, _____ (insert your name) appoint:

71-4 Name: _____

71-5 Address: _____

71-6 Phone _____

71-7 as my agent to make any and all health care decisions for me,

71-8 except to the extent I state otherwise in this document. This

71-9 medical [~~durable~~] power of attorney [~~for health care~~] takes effect

71-10 if I become unable to make my own health care decisions and this

71-11 fact is certified in writing by my physician.

71-12 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE
AS

71-13 FOLLOWS: _____

71-14 _____

71-15 DESIGNATION OF ALTERNATE AGENT.

71-16 (You are not required to designate an alternate agent but you

71-17 may do so. An alternate agent may make the same health care

71-18 decisions as the designated agent if the designated agent is unable

71-19 or unwilling to act as your agent. If the agent designated is your

71-20 spouse, the designation is automatically revoked by law if your

71-21 marriage is dissolved.)

71-22 If the person designated as my agent is unable or unwilling

71-23 to make health care decisions for me, I designate the following

71-24 persons to serve as my agent to make health care decisions for me

71-25 as authorized by this document, who serve in the following order:

72-1 A. First Alternate Agent

72-2 Name: _____

72-3 Address: _____

72-4 Phone _____

72-5 B. Second Alternate Agent

72-6 Name: _____

72-7 Address: _____

72-8 Phone _____

72-9 The original of this document is kept at:

72-10 _____

72-11 _____

72-12 _____

72-13 The following individuals or institutions have signed copies:

72-14 Name: _____

72-15 Address: _____

72-16 _____

72-17 Name: _____

72-18 Address: _____

72-19 _____

72-20 DURATION.

72-21 I understand that this power of attorney exists indefinitely
72-22 from the date I execute this document unless I establish a shorter
72-23 time or revoke the power of attorney. If I am unable to make
72-24 health care decisions for myself when this power of attorney
72-25 expires, the authority I have granted my agent continues to exist
72-26 until the time I become able to make health care decisions for
73-1 myself.

73-2 (IF APPLICABLE) This power of attorney ends on the following
73-3 date: _____

73-4 PRIOR DESIGNATIONS REVOKED.

73-5 I revoke any prior medical [~~health care~~] [durable] power of attorney [~~for~~
73-6 ~~health care~~].

73-7 ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

73-8 I have been provided with a disclosure statement explaining
73-9 the effect of this document. I have read and understand that
73-10 information contained in the disclosure statement.

73-11 (YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

73-12 I sign my name to this medical [~~health care~~] [durable] power of attorney
73-13 [~~for health care~~] on _____ day of _____ (month, year)
73-14 [~~19~~] at

73-15 _____

73-16 (City and State)

73-17

73-18

(Signature)

73-19

73-20

(Print Name)

73-21 STATEMENT OF FIRST WITNESS [~~WITNESSES~~].

73-22

73-23

73-24

73-25

73-26

74-1

74-2

74-3

74-4

74-5

74-6

74-7

74-8

74-9

74-10

74-11

74-12

74-13

74-14

74-15

74-16

74-17

74-18

74-19

74-20

74-21

74-22

74-23

74-24

75-1

75-2

75-3

75-4

~~[I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that] I am not the person appointed as agent by this document, [and that] I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility [a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility.]~~

~~[I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law].~~

[Witness] Signature: _____
Print Name: _____ Date: _____
Address: _____

SIGNATURE OF SECOND WITNESS.

[Witness] Signature: _____
Print Name: _____ Date: _____
Address: _____

Appendix 6: Amendment to HB 734 (Enhancement)

Amend HB 734 as follows:

(1) Add the following appropriately numbered sections and renumber the sections of the bill as appropriate:

SECTION _____. Subchapter A, Chapter 3, Family Code, is amended by adding Section 3.006 to read as follows: Sec. 3.006. PROPORTIONAL OWNERSHIP OF PROPERTY BY MARITAL ESTATES.

(a) If the community estate of the spouses and the separate estate of a spouse have an ownership interest in property, the respective ownership interests of the marital estates are determined by the rule of inception of title.

(b) An equitable interest created by Subchapter E:

(1) does not create an ownership interest in a spouse's separate property; and

(2) creates a claim against the spouse who owns the property that matures on termination of the marriage.

SECTION _____. Chapter 3, Family Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. EQUITABLE INTEREST OF COMMUNITY ESTATE IN ENHANCED VALUE OF SEPARATE PROPERTY Sec. 3.401. ENHANCEMENT IN VALUE DUE TO FINANCIAL CONTRIBUTION OF COMMUNITY PROPERTY.

(a) The enhancement in value during a marriage of separate property owned by a spouse due to a financial contribution made with community property creates an equitable interest of the community estate in the separate property.

(b) The equitable interest created under this section is measured by the net amount of the enhancement in value of the separate property during the marriage due to the financial contribution made with community property.

Sec. 3.402. USE OF COMMUNITY PROPERTY TO DISCHARGE DEBT ON SEPARATE PROPERTY.

(a) The use of community property to discharge all or part of a debt on separate property owned by a spouse during a marriage creates an equitable interest of the community estate in the separate property.

(b) The equitable interest created under Subsection (a) in the enhanced value of separate property due to financial contributions made with community property is computed by multiplying the net enhanced value of the separate property by the sum created by dividing:

(1) the total amount of the payments made by the community estate to reduce the principal of the debt on the separate property; by

(2) the sum of:

(A) the amount computed under Subdivision (1);

(B) the total amount of the payments made by the separate estate to reduce the principal on the debt; and

(C) the total amount of any additional amount spent by the separate estate to acquire the interest in the property.

(c) For purposes of this section, the cost of any improvements made to the separate property paid

for by either the separate or community estate is included as part of the principal of the debt.

Sec. 3.403. APPLICATION OF INCEPTION OF TITLE RULE.

(a) This subchapter does not affect the rule of inception of title under which the character of property is determined at the time the right to the property is acquired.

(b) The equitable interest created under this subchapter does not create an ownership interest in property.

Sec. 3.404. EQUITABLE INTEREST OF SEPARATE PROPERTY ESTATE.

(a) The separate estate of a spouse has an equitable interest in the enhanced value of the separate estate of the other spouse or in the enhanced value of the community estate for:

(1) a financial contribution made to the other separate estate or to the community estate; and

(2) the discharge of all or part of a debt of the other separate estate or of the community estate.

(b) The equitable interest created by this section is measured in the manner provided by Section 3.401(b) or 3.402(b), as appropriate.

Sec. 3.405. USE AND ENJOYMENT OF PROPERTY. The use and enjoyment of property during a marriage does not create a claim of offsetting benefits to the equitable interest created by this subchapter.

Sec. 3.406. EQUITABLE LIEN. On termination of a marriage, the court shall impose an equitable lien on community or separate property to secure a claim arising by reason of an equitable interest as provided by this subchapter.

SECTION _____. Section 7.002, Family Code, is amended to read as follows:

Sec. 7.002. DIVISION OF PROPERTY UNDER SPECIAL CIRCUMSTANCES. In addition to the division of the estate of the parties required by Section 7.001, in a decree of divorce or annulment the court shall order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage:

(1) property that was acquired by either spouse while domiciled in another state and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; <or>

(2) property that was acquired by either spouse in exchange for real or personal property and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition; or

(3) the equitable interest, as provided by Subchapter E, Chapter 3, of the:

(A) community estate in the separate estate of a spouse;

(B) separate property of a spouse in the separate property of the other spouse; and

(C) separate estate of a spouse in the community estate.

(2) Strike SECTION 2 of the bill and substitute the following appropriately numbered section:

SECTION _____. (a) Except as provided by this section, this Act takes effect September 1, 1999.

(b) The change in law made by this Act by the addition of Subchapter C, Chapter 4, Family Code, takes effect January 1, 2000, but only if the constitutional amendment proposed by the 76th

Legislature, Regular Session, 1999, relating to the conversion of separate property to community property, is approved by the voters. If the proposed constitutional amendment is not approved by the voters, that subchapter does not take effect.

(c) The change in law made by this Act by the enactment of Section 3.006, Family Code, and Subchapter E, Chapter 3, Family Code, and by the amendment of Section 7.002, Family Code, applies to a suit for dissolution of a marriage pending on September 1, 1999, or filed on or after that date.

**TEXAS ACADEMY OF PROBATE AND TRUST LAWYERS
2000 - 2001 DUES**

List below the information to be included in the membership roster.

Name

Firm or School/University

Address

City _____, Texas Zip _____

Area Code - Telephone Number

Area Code - Fax Number

e-mail

I prefer receiving information via ____ e-mail, ____ fax, ____ U.S. Mail

Check the appropriate box(es):

Board Certified in Probate and Trust Law,
Texas Board of Legal Specialization
AND/OR

Fellow of the American College of Trust
and Estate Counsel

\$200.00

Academician

\$100.00

Please make your check payable to the Texas Academy of Probate and Trust Lawyers and mail to the following:

Texas Academy of Probate and Trust Lawyers

P. O. Box 17346

Fort Worth, Texas 76102