

CREDITOR CLAIMS IN INDEPENDENT AND DEPENDENT ADMINISTRATIONS IN TEXAS—BEWARE OF THE TRAP DOORS!

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I. INTRODUCTION

Handling creditor claims in Texas probate court is a bit like creeping through a haunted house-- confusing and downright scary. The Texas Probate Code sections pertaining to creditor claims are often the most misapplied and misunderstood statutes in the probate process. At first blush, there appears to be no rational organization or specific applicability to an independent or dependent administration. Hence, a clear understanding of the creditor claims process is imperative if we are to guide our clients who are personal representatives, creditors, and beneficiaries through this frightening maze unscathed.

II. INDEPENDENT VS. DEPENDENT ADMINISTRATIONS

There is a significant distinction between an independent administration and a dependent administration in the level of judicial supervision over the exercise of the person representative's power. The personal representative in a dependent administration can perform only a limited number of transactions without seeking a court's permission, such as paying taxes, voting stocks, insuring property, and releasing liens upon full payment.¹ All other functions, including settlement of creditor claims, require court supervision. The claims process, in fact, is replete with mandatory procedures set forth in the Texas Probate Code, which will be addressed in detail in this article. In contrast, independent administrations involve limited court supervision and somewhat more relaxed rules relating to handling of creditor claims,² but there are some traps for the unwary even in independent administrations.

III. THE CREDITOR CLAIMS PROCESS STARTS WITH NOTICE

Regardless of the form of administration, all personal representatives are required to give notice to creditors. The forms of notice vary depending on the type of creditor.

A. Notice to the World

Within one month after receiving letters, a personal representative is required to give notice to all persons having claims against the estate by publishing notice in a newspaper in the county in which the letters were issued.³ The notice shall include the following:

- the date of issuance of letters;
- the address to which claims may be presented; and
- an instruction as to whom the claim should be addressed.⁴

After the notice is published, the publisher will provide what is known as a publisher's affidavit which is required to be filed with clerk of the court where the estate is pending.⁵

B. Notice to the Taxing Authorities

Within one month after receiving letters, the personal representative is required to send notice to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes to the comptroller.⁶

C. Optional Actual Notice to Unsecured Creditors

At any time before an estate administration is closed, the personal representative may give notice by certified or registered mail, with return receipt requested, to an unsecured creditor having a claim for money against the estate expressly stating that the creditor must present a claim within four months after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation.⁷ The notice must include:

- the dates of issuance of letters held by the representative;
- the address to which claims may be presented; and
- an instruction of the representative's choice that the claim be addressed in care of:
 - the representative;
 - the representative's attorney; or
 - "Representative, Estate of " (naming the estate).⁸

D. Notice to Secured Creditors

Within two months after receiving letters, the personal representative is required to give notice of the issuance of such letters to each and every person known to the personal representative to have a claim for money against the estate of a decedent that is secured by real or personal property of the estate.⁹ Within a reasonable time after the personal representative obtains actual knowledge of the existence of a person having a secured claim for money and to whom

notice was not previously given, the personal representative is required to give notice to such person of the issuance of letters.¹⁰

The representative must send the notice by certified or registered mail, with return receipt requested, addressed to the record holder of such indebtedness or claim at the record holder's last known post office address.¹¹ The representative must file a copy of each notice and a copy of the return receipt and an affidavit of the representative stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt.¹²

E. Notice by Successor of Co-Representative

If the required notices have been given by a former representative, or by one where several representatives are acting, that notice is sufficient and need not be repeated by any successor or co-representative.¹³

F. Penalty for Failure to Give Required Notice

If the representative fails to give the required notices, the representative and the surety on the representative's bond will be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.¹⁴ Thus, even with respect to something as seemingly simple as notice provisions, potential liability lurks for the personal representative and his surety.

IV. A CREDITOR IS REQUIRED TO "PRESENT" THE CLAIM

The creditor claims process begins when the creditor "presents" a claim to the personal representative or files the claim with the court. The presentment process differs markedly between a dependent administration and an independent administration.

A. Dependent Administration

1. Formal Presentation is Required

In a dependent administration, the creditor is required to formally present its claim. That is, the creditor must take some affirmative action to notify the estate representative of the claim as a prerequisite to filing suit. The creditor may present the claim directly to the personal representative.¹⁵ The creditor may also present the claim by depositing it with the clerk.¹⁶ The clerk is supposed to notify the administrator that a claim has been filed.¹⁷ However, failure by the clerk to give notice does not affect the validity of the presentment or the presumption of rejection if the claim is not acted upon

within thirty (30) days after it is filed.¹⁸ Therefore, it may be helpful for the personal representative to review the clerk's file or the online record from time to time to check whether anything has been filed without notice to him.

2. Exceptions to Formal Presentation Requirement

There are some exceptions to the presentment requirement in a dependent administration. The Texas Probate Code requires that only "claims for money" be presented to the administrator.¹⁹ The object of this code section was to provide a prompt and inexpensive method for the settlement of claims against estates when the amount claimed is liquidated, or is susceptible, at the time of presentation, of being reduced to a definite and specific sum.²⁰ Accordingly, those claims which are not "claims for money" do not have to be formally presented to the personal representative before filing suit.

The following are examples of some of the claims which do not need to be formally presented:

- unliquidated claims such as tort claims;²¹
- contract claims;²²
- quantum meruit claims;²³
- specific performance;²⁴
- title claims;²⁵
- administrator's claims;²⁶
- claim by heir or beneficiary who makes a claim in such capacity;²⁷
- claim accruing during administration;²⁸ and
- claim for delinquent taxes.²⁹

3. Holders of Judgments

It would seem that one holding a valid judgment would be able to collect upon the judgment without going through the claims process. This is not the case. Judgment holders must comply with the presentment requirements in the same manner as any other creditor holding a claim for money against the estate.³⁰

4. Gratuitous Services by Relatives

Family members sometimes seek reimbursement for services provided to the decedent prior to her death. Family members who make such claims are required to go through the same presentment process as other creditors. However, where persons related by blood are living together as a household, services performed for the other are presumed to be gratuitous.³¹ An express contract for remuneration must be shown, or circumstances must have existed which clearly show a reasonable and proper expectation or mutual intention that there would be compensation.³²

B. Independent Administration

A creditor does not have to formally present a claim to an independent executor. Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor.³³ The limited actions required by an independent executor in the claims process include giving the notices set forth above, and approving, classifying, and paying, or rejecting, claims against the estate in the same order of priority, classification, and proration prescribed in the Texas Probate Code.³⁴

As previously mentioned, a personal representative may give notice by certified or registered mail, with return receipt requested, to an unsecured creditor having a claim for money against the estate expressly stating that the creditor must present a claim within four months after the date of the receipt of the notice or the claim is barred. The Probate Code now allows an independent executor to send this optional notice.³⁵ Although this rule does not require the creditor to make a formal presentment of his claim,³⁶ it does require the creditor to send notice of his claim in either:

- a written instrument that is hand-delivered with proof of receipt or mailed by certified mail, return receipt requested, to the independent executor or the executor's attorney;
- a pleading filed in a lawsuit with respect to the claim; or
- a written instrument or pleading filed in the court in which the administration of the estate is pending.³⁷

Most of the time, upon receipt of the permissive notice, the creditor will simply send another bill or invoice by regular mail. A creditor rarely sends a bill by certified mail or by hand-delivery. Here lies another trap for the unwary. Sending notice by regular mail is not sufficient. It is helpful to save the envelope used by the creditor for proof that the item was not sent by certified mail.

V. FORM OF PRESENTMENT AND THE CLAIM REVIEW PROCEDURE

The claims review procedure also differs significantly between independent and dependent administrations.

A. Dependent Administration

1. Claims Must be Properly Authenticated

No personal representative of a decedent's estate may allow, and the court may not approve, a claim for money against

such estate, unless such claim is supported by an affidavit swearing that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed.³⁸ If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded.³⁹ A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.⁴⁰ Strict compliance with the Section 301 affidavit requirement is mandatory.⁴¹

An authorized officer or representative of a corporation or other entity must make the affidavit required to authenticate a claim of such corporation or entity.⁴² When an affidavit is made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it is sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.⁴³ Note, however, that a creditor bank has a right of offset against a decedent's funds on deposit without having to file a claim in probate.⁴⁴

2. Objections to the Form of Claim are deemed waived after thirty (30) days

An administrator is deemed to have waived any defect of form or claim of insufficiency of exhibits or vouchers presented unless he makes written objections thereto within thirty (30) days of presentment and files them with the county clerk.⁴⁵ There is a difference of opinion, however, on the effect of a defective affidavit. In *City of Austin v. Aguilar*, 607 S.W.2d 310 (Tex. Civ. App.—Austin 1980, no writ), the City filed a claim which was rejected by the administrator.⁴⁶ When the City failed to file suit within 90 days, the City argued that its own claim was a nullity because it was improperly presented due to a defect in the affidavit and that, therefore, the 90 day limitations period never began to run.⁴⁷ The court disagreed, concluding that when an administrator failed to object in writing that the claims were not authenticated by the city manager the defect was of form and waived, hence, rendering the claim valid.⁴⁸ Therefore, the claim was barred when the creditor failed to file suit ninety days after rejection.⁴⁹

On the other hand, in *Boney v. Harris*, 557 S.W.2d 376 (Tex. Civ. App.—Houston [1st Dist.] 1977, no writ), the creditor filed a claim with a defective affidavit, which was rejected rather than objected to by the administrator.⁵⁰ The creditor failed to file suit within 90 days.⁵¹ The court granted administrator's motion for summary judgment on the issue of limitations.⁵² On appeal, the Court reversed, holding that the

rejection of an improperly verified claim did not set in motion the ninety-day statute of limitations.⁵³ The Court found that the failure to state that all “legal offsets, payments or credits have been allowed” rendered the claim void, and the statute of limitations does not run against a void claim.⁵⁴

3. Administrator Must Allow or Reject Claim

Unless the administrator has timely filed an objection to the form of the claim, once a duly authenticated claim against an estate is presented to the representative, or deposited with the clerk, the representative shall, within thirty days after the claim is presented or deposited, endorse thereon, annex thereto, or file with the clerk a memorandum signed by the representative, stating the date of presentation or depositing of the claim, and that the representative allows or rejects it, or what portion thereof the representative allows or rejects.⁵⁵ The failure of a representative of an estate to timely allow or reject a claim under Section 309 constitutes a rejection of the claim.⁵⁶ If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or the representative may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.⁵⁷ This is yet another potential trap where doing nothing may lead to personal liability. Therefore, the representative should take a position one way or the other on any claim presented. If only part of the claim is valid, the representative may allow part and reject part.

4. Creditor Should Closely Monitor Action on his Claim

Strangely enough, there is no specific rule requiring the representative to notify the creditor of a claim rejection. In *Russell v. Dobbs*, 354 S.W.2d 373 (Tex. 1962), the Court pointed out that the creditor knows that his claim has been filed and is therefore charged with knowledge that the claim would be deemed rejected by operation of law if no action was taken by the representative within thirty days.⁵⁸ The Court also stated that the creditor should have known that the claim would be barred in the event suit was not instituted within ninety days after such rejection.⁵⁹ According to the *Russell* court, the probate code contemplates that a creditor will keep himself informed as to the status of his claim and take the steps required by law to reduce the same to judgment.⁶⁰ Whether failing to provide notice of rejection is a violation of the creditor’s right to due process has apparently

never been addressed by a Texas appellate court.

5. Administrator May Not Approve a Claim Barred by the Statute of Limitations

An administrator is expressly prohibited from allowing a claim that is barred by limitations.⁶¹ If the administrator allows such a claim, and the court is satisfied that limitations has run, the court shall disapprove the claim.⁶² The general statutes of limitation are tolled on the date (1) a claim is filed or deposited with the clerk or (2) suit is brought against the personal representative on a claim that is not required

“Interested persons” or “persons interested” are defined as heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of an incapacitated person, including a minor.

to be presented to the personal representative.⁶³ The statute of limitations is not tolled by filing a suit to establish a claim which has not been properly presented.⁶⁴ The general statute of limitations is tolled for a period of 12 months after a decedent’s death or until an executor or administrator qualifies, whichever is first.⁶⁵ Assurances of payment by the administrator do not toll the statute of limitations.⁶⁶ Therefore, a creditor is advised

to meet all deadlines and not be lulled into a false sense of security by any representations made by the personal representative.

6. Any “Interested Person” May Object to a Claim

Any interested person may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.⁶⁷ “Interested persons” or “persons interested” are defined as heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of an incapacitated person, including a minor.⁶⁸

7. Allowed Claims are Reviewed By the Court

All claims which have been allowed and entered upon the claim docket for a period of ten days are then acted upon by the court, and the court can either approve the allowance in whole or in part or reject the claim.⁶⁹ Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court must examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue.⁷⁰ If not then convinced that the claim is just, the court may disapprove it.⁷¹

When the court has acted upon a claim, the court shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim.⁷² Such orders shall have the force and effect of final judgments.⁷³ When a claimant or any person interested in an estate is dissatisfied with the action of the court upon a claim, the claimant or person may appeal therefrom to the courts of appeals, as from other judgments of the county court in probate matters.⁷⁴ However, the dissatisfied person cannot wait until the close of the estate to complain.

8. Creditor Must Sue Within 90 Days on a Rejected Claim

The creditor must institute suit on a rejected claim, in whole or in part, within ninety (90) days of its rejection or the claim is forever barred.⁷⁵ Suit is brought in the court where the administration is pending.⁷⁶ A claimant's judgment on a rejected claim will not allow any execution thereon, rather, the judgment shall be entered upon the claim docket, be classified and paid in the due course of administration.⁷⁷

All costs incurred in the probate court with respect to claims are taxed as follows:

- (a) If allowed and approved, the estate shall pay the costs.
- (b) If allowed, but disapproved, the claimant shall pay the costs.
- (c) If rejected, but established by suit, the estate shall pay the costs.
- (d) If rejected, but not established by suit, the claimant shall pay the costs, except as provided by Section 310 (when a personal representative fails to endorse or annex memorandum).⁷⁸

In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, the claimant shall pay all costs.⁷⁹

9. No Claims Against the Estate are Allowed After Distribution of the Estate

No claim for money against the estate shall be allowed and no suit shall be instituted against the representative on any claim after an order for final partition and distribution has been made.⁸⁰ After such an order has been made, the owner of any claim not barred by the laws of limitation may bring an action thereon against the heirs, devisees, legatees, or creditors of the estate, limited to the value of the property received by them in distributions from the estate.⁸¹

B. Independent Administration

The requirements of § 301 (authentication of claim), § 302 (waived defects), § 304 (third party authentication), and § 308 (depositing claim with clerk) are not applicable in an independent administration.⁸² The requirements of § 309 (memorandum of allowance or rejection), § 310 (failure to endorse memorandum) and § 313 (suit on rejected claim) have also been held not to be applicable in an independent administration.⁸³ Recently, however, the Fourteenth Court of Appeals stated in dicta that the holding in *Bunting* applies only to an independent *executor* and not an independent *administrator*.⁸⁴ The court found that the procedural requirements in sections 309, 310, and 313 are still applicable to an independent administrator.⁸⁵ Other courts citing *Bunting* interpret the holding as applying in all independent administrations.⁸⁶

Section 298 of the Texas Probate Code states that "personal representative" cannot allow claims barred by the statute of limitations.⁸⁷ Although independent executors and administrators are included in the code's definition of "personal representative," the definition also adds that the inclusion of "independent executors" shall not be held to subject such executor to the control of the courts in probate matters with respect to settlement of estates except where provided by law.⁸⁸ It would seem, however, that even though an independent executor is not specifically mentioned in Section 298, the executor would nonetheless be obligated to reject a claim barred by the statute of limitations. Otherwise, the beneficiaries and other creditors would be penalized by the arbitrary action of the independent executor if a claim barred by limitations were paid.

An independent executor may pay at any time and without personal liability, a claim to the extent approved and classified if:

- (a) the claim is not barred; and
- (b) he reasonably believes the estate will have sufficient assets to pay all claims against the estate at the time of payment.⁸⁹

A creditor may enforce the payment of his claim against an independent executor by suit.⁹⁰ However, an independent executor is not required to file an answer until six (6) months have elapsed from the date that an independent administration is created and the order appointing the independent executor is entered.⁹¹

C. Special Rules for Claims for Child Support

1. Child Support In Arrears at the Time of Decedent's Death

Unpaid child support is a "debt" that survives the death of the

obligor and is payable by the decedent's estate.⁹² Interestingly, in denying writ in *Bramhall* with the notation, "Refused. No Reversible Error," the Texas Supreme Court stated that such action should not be interpreted as approving the conclusion of the Court of Civil Appeals that "unpaid child support is . . . a debt for which judgment may be taken." The Court pointed out that Section 14.09(c) of the Texas Family Code (now repealed) provided only that unpaid child support may be reduced to judgment and enforced by the same means as a judgment for a debt, not that such sums are debts.⁹³

As is discussed below, the procedure for obtaining a judgment for post-death child support appears to require the court of continuing jurisdiction to determine the amount due. However, it is unclear whether such a procedure is required to recover the amount of child support in arrears at the time of the obligor's death. The obligee in *Bramhall* presented the claim to the executor and then filed suit within 90 days after the rejection.⁹⁴ On the other hand, Section 157.269 of the Texas Family Code was amended in 2007 and provides:

A court that renders an order providing for the payment of child support retains continuing jurisdiction to enforce the order, including by adjusting the amount of the periodic payments to be made by the obligor or the amount to be withheld from the obligor's disposable earnings, until all current support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid.⁹⁵

The proper jurisdiction for reducing the amount of child support in arrears to judgment appears to depend on the type of action brought by the obligee. If the obligee brings a Suit Affecting Parent-Child Relationship (SAPCR), jurisdiction lies in the family court.⁹⁶ If, however, the obligee treats the failure to pay child support as a breach of contract action, the obligee may bring the matter in the probate court or have the matter brought in family court transferred to the probate court.⁹⁷

2. Child Support Accruing After the Decedent's Death

In 2007, the Texas Legislature set aside the prior rule regarding termination of child support on the death of the obligor. Now, if the child support obligor dies before the child support obligation terminates, the remaining unpaid balance of the child support obligation becomes payable on the date the obligor dies.⁹⁸

The court of continuing jurisdiction shall determine the amount of the unpaid child support obligation for each child

of the deceased obligor.⁹⁹ In determining the amount of the unpaid child support obligation, the court shall consider all relevant factors, including:

- (1) the present value of the total amount of monthly periodic child support payments that would become due between the month in which the obligor dies and the month in which the child turns 18 years of age, based on the amount of the periodic monthly child support payments under the child support order in effect on the date of the obligor's death;
- (2) the present value of the total amount of health insurance premiums payable for the benefit of the child from the month in which the obligor dies until the month in which the child turns 18 years of age, based on the cost of health insurance for the child ordered to be paid on the date of the obligor's death;
- (3) in the case of a disabled child under 18 years of age or an adult disabled child, an amount to be determined by the court under Section 154.306;
- (4) the nature and amount of any benefit to which the child would be entitled as a result of the obligor's death, including life insurance proceeds, annuity payments, trust distributions, social security death benefits, and retirement survivor benefits; and
- (5) any other financial resource available for the support of the child.¹⁰⁰

If, after considering all relevant factors, the court finds that the child support obligation has been satisfied, the court shall render an order terminating the child support obligation. If the court finds that the child support obligation is not satisfied, the court shall render a judgment in favor of the obligee, for the benefit of the child, in the amount of the unpaid child support obligation determined under Tex. Fam. Code §154.015(c). The order must designate the obligee as constructive trustee, for the benefit of the child, of any money received in satisfaction of the judgment.¹⁰¹

The obligee has a claim, on behalf of the child, against the deceased obligor's estate for the unpaid child support obligation determined under Tex. Fam. Code §154.015(c). The obligee may present the claim in the manner provided by the Texas Probate Code.¹⁰² Section 322 of the Texas Probate Code was also amended to make the claims for unpaid child support under Tex. Fam. Code §154.015 a Class 4 claim.¹⁰³

If money paid to the obligee for the benefit of the child exceeds the amount of the unpaid child support obligation remaining at the time of the obligor's death, the obligee shall hold the excess amount as constructive trustee for the benefit of the deceased obligor's estate until the obligee delivers the excess amount to the legal representative of the deceased obligor's estate.¹⁰⁴

Note that effective September 1, 2007, Texas Family Code § 154.016 was added to provide that the court may order a child support obligor to obtain and maintain a life insurance policy that will establish an insurance funded trust or an annuity payable to the obligee for the benefit of the child that will satisfy the obligor's child support obligation in the event of death.¹⁰⁵

VI. CLASSIFICATION AND PAYMENT OF CLAIMS

A. Claim Classification

In both independent and dependent administrations, claims must be classified. In an independent administration, the executor, without court involvement, classifies the claim.¹⁰⁶ In a dependent administration, the court classifies the claim.¹⁰⁷

Claims against an estate of a decedent are classified as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed a total of Fifteen Thousand Dollars, with any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate, including fees and expenses awarded under Section 243 of this code, and unpaid expenses of administration awarded in a guardianship of the decedent.

Class 3. Secured claims for money under Section 306(a) (1), including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage, lien, or security interest shall exist upon the same property, they shall be paid in order of their priority.

Class 4. Claims for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been confirmed and reduced to money judgment, as determined under Subchapter F, Chapter 157, Family Code, and claims for unpaid child support obligations under Section 154.015, Family Code.

Class 5. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes; Section 81.111, Natural Resources Code; the Municipal Sales and Use Tax Act (Chapter 321, Tax Code); Section 451.404, Transportation Code; or Subchapter I, Chapter 452, Transportation Code.

Class 6. Claims for the cost of confinement established by the Texas Department of Criminal Justice under Section 501.017, Government Code.

Class 7. Claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

Class 8. All other claims.¹⁰⁸

The Texas Probate Code does not mention payment of any amounts which may be owing to the United States government. However, a claim of the United States government must be paid before all other debts of a deceased debtor.¹⁰⁹ A personal representative who does not give priority to the claims of the United States is personally liable therefor.¹¹⁰ This is yet another example where failure to take some action can lead to personal liability.

B. Claim Payment

The dependent administrator may not pay a claim for money in the due course of administration until the claim is approved by the court or established by judgment.¹¹¹ However, all personal representatives shall pay claims in the following order:

- (1) Funeral expenses and expenses of last sickness, in an amount not to exceed Fifteen Thousand Dollars.
- (2) Allowances made to the surviving spouse and children, or to either.
- (3) Expenses of administration and the expenses incurred in the preservation, safekeeping, and management of the estate.
- (4) Other claims against the estate in the order of their classification.¹¹²

A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.¹¹³

Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there

are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.¹¹⁴

After the sixth month after the date letters are granted and on application by the personal representative stating that the personal representative has no actual knowledge of any outstanding enforceable claims against the estate other than the claims already approved and classified by the court, the court may order the personal representative to pay any claim that is allowed and approved.¹¹⁵

When there is a deficiency of assets to pay all claims of the same class, other than secured claims for money, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed.¹¹⁶ No personal representative shall be allowed to pay the claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.¹¹⁷

If any representative of an estate fails to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on the representative's bond to show cause why they should not be held liable for such debt, interest, costs, and damages.¹¹⁸ Upon return of citation duly served, if good cause to the contrary is not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.¹¹⁹

VII. METHOD OF HANDLING SECURED CLAIMS

There are some additional rules which apply specifically to secured claims.

A. Specification of Claim--Matured Secured or Preferred Debt and Lien

When a secured claim for money against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(a) whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(b) whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.¹²⁰

Within six months after the date letters are granted, or within four months after the date notice is received under Section 295, whichever is later, the secured creditor may present the creditor's claim and shall specify whether the claim is to be allowed and approved under Paragraph (1) or (2) of Subsection (a) of Section 306.¹²¹ If a secured claim is not presented within the time prescribed or if the claim is presented without specifying how the claim is to be paid, it shall be treated as a preferred debt and lien against the specific property securing the indebtedness, and a claim may not be asserted against other assets of the estate.¹²² The same rule applies in independent administrations.¹²³

1. Matured Secured Claims

If a claim has been allowed and approved as a matured secured claim, the claim shall be paid in due course of administration, and the secured creditor is not entitled to exercise any other remedies in a manner that prevents the preferential payment of claims for funeral expenses and expenses of last illness up to \$15,000, allowances made to the surviving spouse or children, or expenses of administration.¹²⁴ The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the estate.¹²⁵

2. Preferred Debt and Liens

When an indebtedness has been allowed and approved as a preferred debt and lien, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior

to final maturity and payment of the debt.¹²⁶

If property securing a claim allowed, approved, and fixed as a preferred debt and lien is not sold or distributed within six months from the date letters are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same.¹²⁷ If the representative defaults in such payment or performance, on application by such creditor, the court shall:

- (1) require the sale of said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities;
- (2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or
- (3) authorize foreclosure by the claimholder as provided by Subsections (f) through (k) of Section 306.¹²⁸

The affidavit required to foreclose upon the property allowed as preferred debt and lien shall:

- (1) describe the property or part of the property to be sold by foreclosure;
- (2) describe the amounts of the claimholder's outstanding debt;
- (3) describe the maturities that have accrued on the debt according to the terms of the debt;
- (4) describe any other debts secured by a mortgage, lien, or security interest against the property that are known by the claimholder;
- (5) contain a statement that the claimholder has no knowledge of the existence of any debts secured by the property other than those described by the application; and
- (6) request permission for the claimholder to foreclose the claimholder's mortgage, lien, or security interest.¹²⁹

On the filing the application, the clerk shall issue citation by personal service to the personal representative and to any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property and by posting to any other person interested in the estate.¹³⁰ The citation must require the person to appear and show cause why foreclosure should or should not be permitted.¹³¹ When the application is filed, the clerk shall immediately notify the judge.¹³² The judge shall schedule in writing a date for a hearing on the application.¹³³ The judge may, by entry on the docket or otherwise, continue the hearing for a reasonable time to allow an interested person to obtain an appraisal or other evidence concerning the fair market

value of the property that is the subject of the application.¹³⁴ If the interested person requests an unreasonable time for a continuance, the person must show good cause for the continuance.¹³⁵

At the hearing, if the court finds that there is a default in payment or performance under the contract that secures the payment of the claim, the court shall:

- (A) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;
- (B) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or
- (C) authorize foreclosure by the claimholder.¹³⁶

When the court grants a claimholder the right of foreclosure, the court shall authorize the claimholder to foreclose the claimholder's mortgage, lien, or security interest in accordance with the provisions of the document creating the mortgage, lien, or security interest or in any other manner allowed by law.¹³⁷ In the discretion of the court and based on the evidence presented at the hearing, the court may fix a minimum price for the property to be sold by foreclosure that does not exceed the fair market value of the property.¹³⁸ If the court fixes a minimum price, the property may not be sold at the foreclosure sale for a lower price.¹³⁹ Any person interested in the estate may appeal the order of foreclosure.¹⁴⁰

If a foreclosure sale authorized under this section is conducted and the property is not sold because no bid at the sale met the minimum price set by the court, the claimholder may file another application.¹⁴¹ The court may, in the court's discretion, eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.¹⁴²

B. Suspension of Normal Foreclosure Rules in a Dependent Administration

The creditor whose debt is secured by a mortgage, lien, or other security device is estopped from pursuing the usual collection remedies in a dependent administration.

(a) When No Administration is Pending.

A trustee's sale by a mortgagee made under a power of sale is not void but is *voidable* in the event a dependent administration is initiated within the four-year statutory period and the administrator seeks to have the sale canceled.¹⁴³

(b) During The Pendency of A Dependent Administration

The power of sale under the deed of trust is suspended as

long as the administration is pending, and a non-judicial foreclosure sale by the mortgagee is void.¹⁴⁴

(c) Temporary Administration

The power of sale is suspended even in a case where a temporary administration had not been made permanent.¹⁴⁵

(d) Value of Use of Property

The administrator may also recover the value of the use of the property during the time the mortgagee held the property if the sale is set aside.¹⁴⁶

(e) Executory Contracts

A contract vendor cannot declare an executory contract of sale forfeited for nonpayment while the estate of the intestate vendee is pending but must file a claim with the probate court because the contract of sale is a claim for money.¹⁴⁷

(f) Four Year Rule

A power of sale may be exercised and the purchaser's sale becomes absolute when more than four years have passed from the date of decedent's death and there has been no administration of the estate.¹⁴⁸

(g) Joint Obligation

If the debt is a joint and several obligation of both the husband and wife and the security is community property, the lien may be foreclosed against the surviving spouse's interest only in the property.¹⁴⁹

(h) Independent Administrations

In independent administrations, non-judicial foreclosure is effective to pass title.¹⁵⁰ Notice of trustee's sale is given to the independent executor just as it would have been given to the mortgagor. Suit may be brought against the estate through the independent executor to satisfy any deficiency.¹⁵¹

VIII. CONCLUSION

THERE you have it. You have made it safely through the spiders and snakes. If the practitioner still feels a little uneasy, always keep in mind the differences between independent and dependent administrations. If you are representing a creditor in a dependent administration, you must act boldly but carefully as you wind your way through the maze of claims procedures, trying to avoid the many "trap doors" lying in wait.

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¹ See TEX. PROB. CODE § 234(b) (West 2009).

² See TEX. PROB. CODE §§ 145-47 (West 2009).

³ TEX. PROB. CODE § 294(a) (West 2009).

⁴ *Id.*

⁵ TEX. PROB. CODE § 294(b) (West 2009).

⁶ TEX. PROB. CODE § 294(a) (West 2009).

⁷ TEX. PROB. CODE § 294(d) (West 2009).

⁸ *Id.*

⁹ TEX. PROB. CODE § 295(a) (West 2009).

¹⁰ *Id.*

¹¹ TEX. PROB. CODE § 295(b) (West 2009).

¹² TEX. PROB. CODE § 295(c) (West 2009).

¹³ TEX. PROB. CODE § 296 (West 2009).

¹⁴ TEX. PROB. CODE § 297 (West 2009).

¹⁵ TEX. PROB. CODE § 298(a) (West 2009).

¹⁶ TEX. PROB. CODE § 308 (West 2009).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ TEX. PROB. CODE § 298 (West 2009).

²⁰ *National Guaranty Loan & Trust Co. v. Fly*, 69 S.W. 231, 232 (Tex. Civ. App.-Houston [1st Dist.] 1902, no writ).

²¹ Party bringing personal injury action against executrix need not present claim for damages to executrix as prerequisite to bringing suit for such injuries. *Carter v. Kahler*, 902 S.W.2d 85 (Tex. App.-Houston [1st Dist.] 1995, writ denied) (medical malpractice claim); *Wilder v. Mossler*, 583 S.W.2d 664 (Tex. Civ. App.-Houston 1979, no writ)(breach of fiduciary duty); *Allen v. Denk*, 87 S.W.2d 303 (Tex. Civ.App.-Austin 1935, no writ)(automobile negligence).

²² A claim for damages for violation of a contract which are unliquidated and uncertain need not be presented. *Evans' Adm'r v. Hardeman*, 15 Tex. 480 (1855); *Bullion v. Campbell*, 27 Tex. 653 (1864); *Donaldson v. Taylor*, 713 S.W.2d 716 (Tex. App.-Beaumont 1986, no writ)(breach of warranty).

²³ *Wells v. Hobbs*, 122 S.W. 451 (Tex. Civ. App.-1909, no writ); *Moore v. Rice*, 80 S.W.2d 451 (Tex. Civ. App.-Eastland 1935, writ dismissed w.o.j.).

²⁴ See *Bullion v. Campbell & Strong*, 27 Tex. 653 (1864); *Robinson v. McDonald's Widow & Heirs*, 11 Tex. 385 (1854).

²⁵ An action for possession and title to property due to an express vendor's lien is not a claim for money requiring assertion through the probate courts. *Lusk v. Mintz*, 625 S.W.2d 774 (Tex. App.-Houston [14th Dist.] 1981, no writ). See also, *Walton v. First Nat'l. Bank of Trenton*, 956 S.W. 2d 647 (Tex. App.-Texarkana 1997, pet. denied).

²⁶ Presentment is not required where the administrator has a claim against the decedent, but such claim must be filed with the court within six (6) months after the personal representative is qualified or such claim is barred. Tex. Prob. Code §317(a) (West 2009).

²⁷ Tex. Prob. Code §317(c)(1) (West 2009).

²⁸ A claim accruing against the estate after the granting of letters for which the representative of the estate has contracted is not

required to be presented. Tex. Prob. Code §317(c)(2) (West 2009). See also *Ullrich v. Anderson*, 740 S.W.2d 481 (Tex. App.-Houston [1st Dist.] 1987, no writ) (holding that a claim for accounting fees pursuant to a contract with an administrator was not required to be presented to the administrator and could therefore be acted upon by the court in the first instance).

²⁹ A claim for delinquent ad valorem taxes against a decedent's estate that is being administered in probate in (A) a county other than the county in which the taxes were imposed; or (B) the same county in which the taxes were imposed, if the probate proceedings have been pending for more than four years, is not required to be presented. TEX. PROB. CODE § 317(c)(3) (West 2009).

³⁰ *Harms v. Ehlers*, 179 S.W.2d 582, 583 (Tex. Civ. App.-Austin 1944, writ ref'd)(upon the death of a judgment debtor and an administration upon his estate, a judgment for a debt only, without the foreclosure of any lien property, ceases to have the usual force of a judgment, and becomes merely a claim to be established in the same manner as other claims for money); *First Nat. Bank of Bowie v. Cone*, 170 S.W. 2d 782, 783 (Tex. Civ. App.-Fort Worth 1943, writ ref'd); *Dent v. A. Harris & Co.*, 255 S.W. 221, 222 (Tex. Civ. App.-Dallas 1923, no writ).

³¹ *McFaddin v. Trahan*, 80 S.W. 2d 492, 493 (Tex. Civ. App.-Beaumont 1935, no writ).

³² *Id.* See also *Herbst v. Sheppard*, 995 S.W. 2d 310, 314-315 (Tex. App.-Corpus Christi 1999, writ denied).

³³ TEX. PROB. CODE § 147 (West 2009).

³⁴ TEX. PROB. CODE § 146 (West 2009).

³⁵ TEX. PROB. CODE § 146(d) (West 2009).

³⁶ *Ditto Investment Co. v. Ditto*, 293 S.W.2d 267, 269 (Tex. Civ. App.-Fort Worth 1956, no writ).

³⁷ TEX. PROB. CODE § 146(e) (West 2009).

³⁸ TEX. PROB. CODE § 301 (West 2009).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *W. P. Converse & Co. v. Sorely*, 39 Tex. 515, 528 (Tex. 1873) (a judgment not having been presented to the administrator in the mode and within the time prescribed by law, was not legally established as a claim against the estate.)

⁴² TEX. PROB. CODE § 304 (West 2009).

⁴³ *Id.*

⁴⁴ See *Bandy v. First State Bank of Overton*, 835 S.W.2d 609 (Tex. 1992).

⁴⁵ TEX. PROB. CODE § 302 (West 2009).

⁴⁶ *Id.* at 311.

⁴⁷ *Id.*

⁴⁸ *Id.* at 312.

⁴⁹ *Id.*

⁵⁰ *Id.* at 377.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 378.

⁵⁴ *Id.*

⁵⁵ TEX. PROB. CODE § 309 (West 2009).

⁵⁶ TEX. PROB. CODE § 310 (West 2009).

⁵⁷ *Id.*

⁵⁸ *Id.* at 376.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ TEX. PROB. CODE § 298(b) (West 2009).

⁶² *Id.*

⁶³ TEX. PROB. CODE § 299 (West 2009).

⁶⁴ *Furr v. Young*, 578 S.W.2d 532, 536 (Tex. Civ. App.-Fort Worth 1975, no writ).

⁶⁵ TEX. CIV. PRAC. & REM. CODE § 16.062 (West 2009).

⁶⁶ *Russell v. Dobbs*, 354 S.W.2d 373, 376 (Tex. 1962).

⁶⁷ TEX. PROB. CODE § 312(a) (West 2009).

⁶⁸ TEX. PROB. CODE § 3(r)(West 2009).

⁶⁹ TEX. PROB. CODE § 312(b) (West 2009).

⁷⁰ TEX. PROB. CODE § 312(c) (West 2009).

⁷¹ *Id.*

⁷² TEX. PROB. CODE § 312(d) (West 2009).

⁷³ *Id.*

⁷⁴ TEX. PROB. CODE § 312(e) (West 2009).

⁷⁵ TEX. PROB. CODE § 313 (West 2009).

⁷⁶ *Howe State Bank v. Crookham*, 873 S.W.2d 745 (Tex. App.-Dallas 1994, no writ).

⁷⁷ TEX. PROB. CODE § 313 (West 2009).

⁷⁸ TEX. PROB. CODE § 315 (West 2009).

⁷⁹ *Id.*

⁸⁰ TEX. PROB. CODE § 318 (West 2009)

⁸¹ *Id.*

⁸² See *Fischer v. Britton*, 83 S.W.2d 305 (Tex. 1935).

⁸³ *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

⁸⁴ *In re Estate of Gaines*, 262 S.W.3d 50 (Tex. App.-Houston [14th Dist.] 2008, no pet.) (emphasis added). In *Gaines*, the claimant filed two claims for money against the estate. The independent administrator filed a memorandum rejecting both of the claims. *Id.* at 61. The following day, the court entered two orders recognizing the disallowance. *Id.* The claimant did not file suit within 90 days of the rejected. *Id.* at 61. The claimant then attempted to appeal the orders recognizing the disallowance, contending that the 90 day deadline set forth in Section 313 did not apply in an independent administration. The Court found that the orders were interlocutory because they did not finally dispose of and were not conclusive on a controverted issue and that, therefore, the court lacked jurisdiction over the issue. *Id.* However, prior to reaching that conclusion, the court addressed *Bunting v. Pearson*, 430 S.W.2d 470, 473 (Tex. 1968) and the applicability of sections 309, 310 and 313 of the Texas Probate Code on an independent executor. The court cited *Bunting* with approval, but stated that *Bunting* applied only to an independent executor and not an independent administrator. *Id.* n.11.

⁸⁵ *Id.* at 61.

⁸⁶ See *In re Bateman's Estate*, 528 S.W.2d 86, 89 (Tex. Civ. App.-Tyler 1975, writ ref'd n.r.e.) (the procedures for establishing claims against an estate, set forth in Sections 309, 310 and 313 of the Probate Code are not applicable when the estate is under independent administration); *Alterman v. Frost Nat. Bank of San*

Antonio, 675 S.W.2d 619, 621 (Tex. App.-San Antonio 1984, no writ) (the requirement of the Probate Code for a formal authenticated claim does not apply in an independent administration); *Montague v. Brassell*, 443 S.W.2d 703, 707 (Tex. Civ. App.-Beaumont 1969, writ ref'd n.r.e.) (the mechanism set up in Sections 309, 310, and 313 for use in court-supervised proceedings does not apply to independently administered estates).

⁸⁷ TEX. PROB. CODE § 298(b) (West 2009).

⁸⁸ TEX. PROB. CODE § 3(a)(a) (West 2009).

⁸⁹ TEX. PROB. CODE § 146(c)(1)(2) (West 2009). *See also Rowland v. Moore*, 174 S.W.2d 248 (Tex. 1943) (executor has full powers to resolve creditor claims where will contains no restrictive terms on his authority).

⁹⁰ TEX. PROB. CODE § 147 (West 2009).

⁹¹ *Id.*

⁹² *Smith v. Bramhall*, 556 S.W.2d 112, 113 (Tex. Civ. App.-Waco 1977, writ ref'd n.r.e.); TEX. PROB. CODE § 37 (West 2009) (estate vests immediately in heirs at law subject to debts of the testator or intestate and *subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death*)(emphasis added); TEX. FAM. CODE § 154.013.

⁹³ *Smith v. Bramhall*, 563 S.W.2d 238, 239 (Tex. 1978); *see also Ex parte Shaver*, 597 S.W.2d 498, 500 (Tex. Civ. App.- Dallas, 1980, no writ) (it is well settled that the natural and legal duty of a parent to support his child is not a debt, but arises from the relationship.)

⁹⁴ *Bramhall*, 556 S.W.2d at 113.

⁹⁵ TEX. FAM. CODE § 157.269 (West 2009).

⁹⁶ *Fleming v. Easton*, 998 S.W.2d 252 (Tex. App.-Dallas 1999, no pet.)(probate court had no jurisdiction over motion to enforce decree and to modify child support order); *Curtis v. Gibbs*, 511 S.W. 2d 263, 266 (Tex. 1974) (suit to remove custody restrictions and increase child support).

⁹⁷ *Carson v. Korus*, 575 S.W.2d 326, 328 (Tex. Civ. App.-San Antonio 1979, no writ) (a suit to enforce the terms of a support agreement set forth in the decree by contempt proceedings or other remedies available for enforcement of a judgment must be brought under family code as a 'suit affecting the parent-child relationship,' but a suit to enforce the terms of such an agreement as contract terms is not one 'brought under this subtitle,' and, further, is not permitted unless the agreement provides that it may be enforced as a contract. If the contract does so provide, the suit may be brought, but it must be brought under the common law rather than 'under this subtitle.');

⁹⁸ *Fleming*, 998 S.W. 2d at 255.

⁹⁸ TEX. FAM. CODE § 154.015(b) (West 2009).

⁹⁹ TEX. FAM. CODE § 154.015(c) (West 2009).

¹⁰⁰ TEX. FAM. CODE § 154.015(c) (West 2009).

¹⁰¹ TEX. FAM. CODE § 154.015(d) (West 2009).

¹⁰² TEX. FAM. CODE § 154.015(e) (West 2009).

¹⁰³ TEX. PROB. CODE § 322 (West 2009).

¹⁰⁴ TEX. FAM. CODE § 154.015(f) (West 2009).

¹⁰⁵ TEX. FAM. CODE § 154.016(a) (West 2009).

¹⁰⁶ TEX. PROB. CODE § 146(a)(3) (West 2009).

¹⁰⁷ TEX. PROB. CODE § 312(b) (West 2009).

¹⁰⁸ TEX. PROB. CODE § 322 (West 2009).

¹⁰⁹ 31 U.S.C. § 3713(a) (2009).

¹¹⁰ 31 U.S.C. § 3713(b) (2009).

¹¹¹ TEX. PROB. CODE § 319 (West 2009).

¹¹² TEX. PROB. CODE §§ 146(a)(3); 320(a) (West 2009).

¹¹³ TEX. PROB. CODE § 320(c) (West 2009).

¹¹⁴ TEX. PROB. CODE § 326 (West 2009).

¹¹⁵ TEX. PROB. CODE § 320(d) (West 2009).

¹¹⁶ TEX. PROB. CODE § 321 (West 2009).

¹¹⁷ *Id.*

¹¹⁸ TEX. PROB. CODE § 328 (West 2009).

¹¹⁹ *Id.*

¹²⁰ TEX. PROB. CODE § 306(a) (West 2009).

¹²¹ TEX. PROB. CODE § 306(b) (West 2009).

¹²² *Id.*

¹²³ TEX. PROB. CODE § 146(b) (West 2009).

¹²⁴ TEX. PROB. CODE § 306(c) (West 2009).

¹²⁵ TEX. PROB. CODE § 146(b) (West 2009).

¹²⁶ TEX. PROB. CODE § 306(d) (West 2009).

¹²⁷ TEX. PROB. CODE § 306(e) (West 2009).

¹²⁸ *Id.*

¹²⁹ TEX. PROB. CODE § 306(f) (West 2009).

¹³⁰ TEX. PROB. CODE § 306(g) (West 2009).

¹³¹ *Id.*

¹³² TEX. PROB. CODE § 306(h) (West 2009).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ TEX. PROB. CODE § 306(i) (West 2009).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ TEX. PROB. CODE § 306(j) (West 2009).

¹⁴¹ TEX. PROB. CODE § 306(k) (West 2009).

¹⁴² *Id.*

¹⁴³ *Pearce v. Stokes*, 291 S.W.2d 309, 311 (Tex. 1956)(emphasis added).

¹⁴⁴ *Id.* (emphasis added).

¹⁴⁵ *Hury v. Preas*, 673 S.W.2d 949, 951 (Tex. App. -Tyler 1984, writ ref'd n.r.e.).

¹⁴⁶ *American Savings & Loan Ass'n v. Jones*, 482 S.W.2d 62, 64 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.).

¹⁴⁷ *Rivera v. Morales*, 733 S.W.2d 677, 679 (Tex. App.-San Antonio 1987, writ ref'd n.r.e.).

¹⁴⁸ *Pearce v. Stokes*, 291 S.W.2d 309, 310 (Tex. 1956).

¹⁴⁹ *Albiar v. Arguello*, 612 S.W.2d 219, 219 (Tex. Civ. App. - Eastland 1980, no writ).

¹⁵⁰ *Pearce v. Stokes*, 291 S.W.2d 309, 310 (Tex. 1956).

¹⁵¹ *Fischer v. Britton*, 83 S.W.2d 305, 305 (Tex. 1935).