



Significant Probate Law Changes from 2009 Legislature

Cowles & Thompson | August 2009

Editor-in-Chief

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By the Numbers

Behind every successful law firm you will find attorneys who love their profession, and Cowles & Thompson is no exception.

Our numbers speak for themselves. In business since 1978, we have worked with over 48 of the Fortune 100 companies (2006) as well as local middle-market companies. Our experience includes having handled more than 500 appellate matters and 20,000 litigation matters, over 2,000 business matters and more than 500 legal malpractice matters. Experience matters.

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Significant Probate Law Changes from 2009 Legislature

The 81st Regular Session of the Texas Legislature is now in the books. Our firm's probate litigation section monitored the action of the legislature and has analyzed how that action will impact the probate law practice. We have included a summary of the relevant developments here to bring you up to date on the latest revisions to the Texas Probate Code and related statutes.

Over 7,000 bills were filed during the 81st Legislature, of which some 1,500 were sent to Governor Perry for enactment. There were many bills passed that dealt with decedent's estates, guardianships, and trusts. The four that are likely of the greatest interest are:

1. Probate Code to be Rewritten and Called the "Estates Code"

HB 2502 contains mammoth legislation that takes the first step in fulfilling a requirement to complete non-substantive revisions of the Texas Probate Code by reclassifying and rearranging the statutes in a more logical order, eliminating duplicative or ineffective provisions and correcting draftsmanship. A second portion of the Texas Probate Code is anticipated to be revised during the 2011 legislative session. The new Code will be called the "Estates Code" when complete, and will have an effective date of January 1, 2014.

2. Probate Application to Include Marriage Dissolution Information

HB 1460 amends Probate Code § 81(a) to require that an application to probate a written will include a statement regarding whether a marriage of the decedent was ever dissolved after the will was made, whether by divorce, annulment or declaration that the marriage was void. This is to help avoid contested probates of wills due to questions of marital status. The effective date is September 1, 2009.

3. Forfeiture Clauses Further Disfavored

HB 1969 codifies case law that a provision in a will or trust that purports to penalize an interested person for contesting the will or trust is unenforceable in cases where a challenge to a will or trust is brought in good faith and with just cause. The effective date is September 1, 2009, and the revisions are to Probate Code § 64 and Property Code §§ 111.0035(b) and 112.038.

4. "Convenience Signers" on Bank Accounts

HB 3075 permits banks to offer the option of having "convenience signers" on a number of account types, not just the typical joint account

Construction
Corporate
Healthcare
Hospitality & Lodging
Insurance
Intellectual Property
Int'l Business & Trade
Labor & Employment
Public Law
Negligence & Torts
Oil & Gas
Premises Liability
Probate Litigation
Product Liability
Professional Liability
Real Estate
Transportation
Toxic Tort/ Environmental
Estate Planning
Worker's Compensation

without survivorship rights that is currently considered a "convenience account." A "convenience signer" has no ownership rights in the account during the primary account holder's lifetime or at the death of the primary account holder, unless the convenience signer is also designated as a pay on death payee or has a right of survivorship in the account on the signature card. The effective date is September 1, 2009, and the amendments are to Probate Code §§ 438B, 439(a), and 439(b).

Many other bills were passed that may affect you and your clients. If you are interested in a complete list, please let us know and we can provide you with a detailed analysis of all of the changes.

If you have questions, click [here](#) to contact Steve Spitzer.



Your Probate Litigation Resource

Cowles & Thompson's probate litigation section has a web site at www.TexasEstateDisputes.com. The web site provides current information on disputed probate, heirship and trust issues, including the latest on statutory changes made by the Texas Legislature.

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