

2025 Legislative Session

Trusts, Estates, Guardianship, Powers of Attorney & Advanced Directives

Presented by:

Lauren D. Hunt

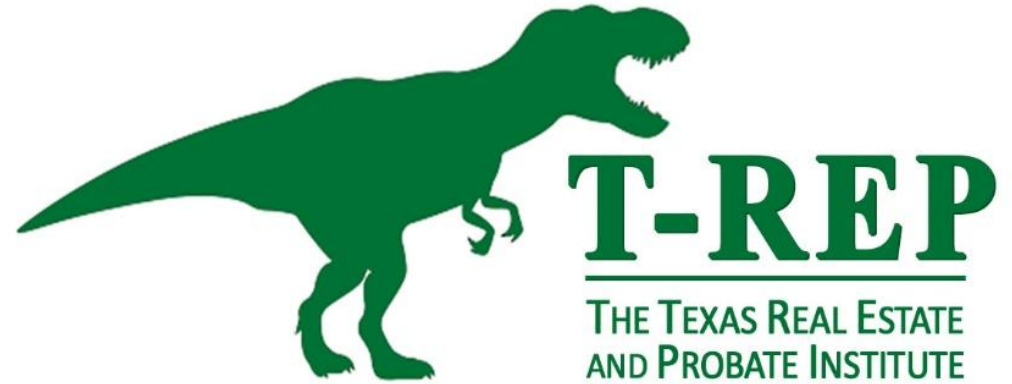
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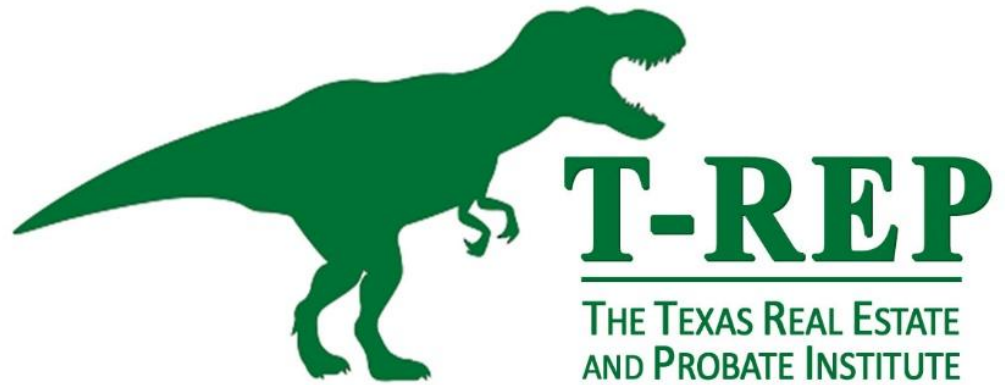


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Welcome to the Real Estate Probate and Trust Law Section ("REPTL") – the largest and second oldest section of the State Bar of Texas. The Section will provide periodic updates on the programs and activities of the Council, along with informational e-blasts to advise of significant developments in the law or your practice requirements.

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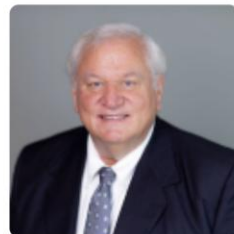
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Legislative Process: Pre-Session

Fall 2023, T-REP Committees began developing bills based on your ideas
(**we will start again fall 2025 so start sending us your proposals for next session**)

2025 T-REP Committee Chairs

Trusts – Chris Jones

Decedents' Estates – Christian Kelso & Arielle Prangner

Guardianship – Gus Tamborello & Victoria Seybold

Powers of Attorney & Advanced Directives - Don Totusek & Shaun Rainey

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Legislative Session

2025 T-REP Co-Chairs of Estate and Trust Legislative Affairs:

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T-REP's 2025 Legislative Session

- **4 bills:**

- Decedent's Estates
- Guardianship
- Trusts
- Medical Power of Attorney

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Legislative Process



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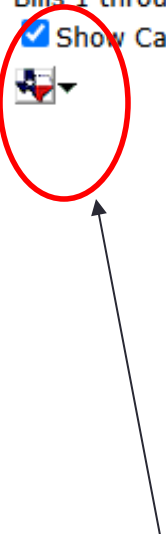
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 [89\(R\) SB 1218 - Introduced Version - Bill Text](#)

Author: Hughes

Caption: Relating to the contents of a trust accounting.

Excerpt: 89(R) **SB 1218** - Introduced version - Bill Text 89R6822 RAL-F By: Hughes S.B.



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History Text Actions Companions Amendments Authors Sponsors Captions Bill Stages

Bill: SB 1218

Legislative Session: 89(R)

Last Action: 02/11/2025 S Filed

Caption Version: Introduced

Caption Text: Relating to the contents of a trust accounting.

Author: Hughes

Subjects: Property Interests--Trusts (I0008)

Actions: (descending date order)

	Description	Comment	Date	Time	Journal Page
S	Filed		02/11/2025		
S	Received by the Secretary of the Senate		02/11/2025		



Version	Bill	Fiscal Note	Analysis	Witness List	Summary of Cmte Action
Introduced					



A BILL TO BE ENTITLED

AN ACT

1

2 relating to the contents of a trust accounting.

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

4 SECTION 1. Section 113.151, Property Code, is amended by
5 adding Subsection (c) to read as follows:

6 (c) Notwithstanding Section 113.152(b), on a showing of
7 good cause, the court may compel the trustee to include in a written
8 statement of account required by the court under Subsection (a) or
9 (b) an allocation of certain receipts and disbursements to
10 principal and income regardless of whether the distribution
11 standard and beneficiaries are the same for principal and income.

12 SECTION 2. Section 113.152, Property Code, is amended to
13 read as follows:

14 Sec. 113.152. CONTENTS OF ACCOUNTING. (a) A written
15 statement of accounts shall show:

16 (1) all trust property that has come to the trustee's
17 knowledge or into the trustee's possession and that has not been
18 previously listed or inventoried as property of the trust;

19 (2) a complete account of receipts, disbursements, and
20 other transactions regarding the trust property for the period
21 covered by the account, including their source and nature, with
22 each receipt and disbursement allocated to ~~[receipts of]~~ principal
23 or ~~[and]~~ income, subject to Subsection (b) ~~[shown separately]~~;

24 (3) a listing of all property being administered, with



T-REP 2025 DECEDENT'S ESTATES BILL (no bill number yet)

Co-Chairs of Decedents' Estates Committee:

Christian Kelso

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Arielle Prangner

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T-REP's 2025 Decedents' Estates Bill

Transfer of Original Will to New Court

Statute Amended: EC 33.105

Current Law (from 2023): When transferring a probate to a new court, transferring court must use electronic filing system to send case documents to new court (instead of paper copies).

Problem: statute contemplates only transfer of electronic copies of probate file, including wills. But original wills should be physically transferred.

Proposed Change: an Original Will (not copy) filed with clerk must be physically (not electronically) delivered to transferee court by qualified delivery method.

Costs of delivery must be paid by the party requesting transfer.

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T-REP's 2025 Decedents' Estates Bill

Copy of Self-Proving Affidavit with a Copy of Will

Statute Amended: EC 256.156

Current Law: Section 256.156 details how to prove up a copy of a will when the original will is unavailable.

Problem: Some courts have determined that a **copy** of a self-proving affidavit is not valid even when attached to a **copy** of a will that is admitted as a copy and the will and affidavit were executed at the same time.

Proposed Change: Clarifies that a copy of a self-proving affidavit is sufficient to make a copy of a will self-proved (an original self-proving affidavit is not required in this case)

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T-REP's 2025 Decedents' Estates Bill

Filing a Copy of the Will

Statute Amended: EC 256.202

Current Law: Section 256.202 addresses the deposit of the original will with the clerk and the handling of the will by the clerk

Problem: Some people deposit a copy of a will not produced in court with the probate clerk but there are no provisions regarding handling of the copy of the will.

Proposed Change: If a paper copy of a will is filed with the clerk, the paper copy must be retained by the clerk in the same manner as an original will.

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T-REP's 2025 Decedents' Estates Bill

Marital Property Character of Assets on Inventory

Statutes Amended: EC 309.051 & 309.052

Current Law: An inventory, appraisal and list of claims must specify which portion of decedent's property is separate and which is community.

Problem: If a person was unmarried, you should not have to identify separate and community property on the inventory.

Proposed Change: Would require a statement in the inventory as to whether the decedent was married at death. If unmarried, you don't have to specify separate/community nature.

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T-REP's 2025 Decedents' Estates Bill

Small Estate Accountings

Statutes Amended: EC 354.001

Current Law: after filing inventory, if estate is insolvent, then representative should pay claims ordered paid and then submit an accounting to court for settlement and allowance of account. On receipt of the account, the court, with or without notice, may adjust, correct, settle, allow or disallow the account.

Problem: Though it says “without notice,” it does not say “without citation,” so some courts are requiring citation by posting.

Proposed Change: Clarifies citation is not necessary in these cases.

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T-REP's 2025 Decedents' Estates Bill

Repeal of Old Statute

Statutes Amended: EC 403.060

Current Law: after PR files an inventory, a creditor of estate can cause all distributees of estate, heirs at law and other persons entitled to any portion of estate under the will to be cited by personal service to appear before court and execute a bond for amount equal to amount of creditor's claim or full value of the estate as reported in the inventory. If heirs don't execute the bond, then it becomes a dependent administration. Creditors can sue on the bond.

Problem: nobody uses this, last case in the 1800's, causes heirs to be liable for decedent's debts.

Proposed Change: repeal statute

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T-REP's 2025 Decedents' Estates Bill

Proof of Service in Temporary Administration

Statutes Amended: EC 452.006

Current Law: When a temporary administrator is appointed, the heirs can challenge the appointment within 15 days of the appointment. The Temporary Administrator is supposed to give notice to the heirs of their appointment.

Problem: There is no deadline by which the temporary administrator must give notice to the heirs, so heirs may not get notice before the 15 day deadline by which they must challenge the appointment.

Proposed Change: require temporary administrator to give notice to heirs of TA's appointment within 7 days after appointment.

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T-REP's 2025 Decedents' Estates Bill

Seriously, There is No Such Thing as “Community Debts!”

Statutes Amended: EC 453.003

Current Law: “If there’s no qualified [personal representative] of a deceased spouse's estate, the surviving spouse, as the surviving partner of the marital partnership, may:

sell, mortgage, lease, and otherwise dispose of community property to pay community debts, for which a portion of community property is liable for payment;

Problem: There is no such thing as “community debts”!

Proposed Change: remove the word “community”

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T-REP's 2025 Decedents' Estates Bill

Statutory Probate Courts Must Send Parties Orders

Statutes Amended: Gov't Code 80.002

Current Law (as of 2023): "a statutory county court, district court, or appellate court shall deliver through the electronic filing system... to all parties in each case ... all court orders the court enters for the case."

Problem: Statutory probate courts were left out

Proposed Change: Add "statutory probate courts"



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T-REP 2025 TRUST BILL – SB 1218

Chair of Trusts Committee

Chris Jones

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O H S K S LLP

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T-REP's 2025 Trusts Bill

SB 1218 (Hughes)

Principal & Interest in Trust Accountings

Statutes Amended: Trust Code 113.151, 113.152

Current Law: trust accounting must provide “a complete account of receipts, disbursements, and other transactions ... with receipts of principal and income shown separately.”

Prop. Code Ch. 116 defines what is “principal” and “income”

Problem: It's expensive and time consuming to categorize every receipt and disbursement as income or principal, and sometimes, it really does not matter.

Proposed Change: trustee is not required to allocate a receipt or disbursement to principal or income if the distribution standard and beneficiaries are same for both principal & income.

- Ex: Trust for A, B and C, all entitled to income and principal for HEMS

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Rep. Senfronia Thompson;
Sen. Zaffirini

T-REP 2025 GUARDIANSHIP BILL – HB 1954 & SB 746

Co-Chairs of Guardianship Committee

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T-REP's 2025 Guardianship Bill HB 1954 & HB SB 746

Guardian ad Litem for Proposed Ward

Statutes Amended: EC 1002.013, 1054.051, 1054.054, 1054.056

Current Law:

“Guardian ad litem” means a person appointed by a court to represent the best interests of an *incapacitated* person in a guardianship proceeding.”

“The judge may appoint a guardian ad litem to represent the interests of an *incapacitated* person in a guardianship proceeding.”

Problem: In a guardianship proceeding, the proposed ward has not yet been determined to be an “incapacitated person,” so technically a GAL should not be appointed (though often they are).

Proposed Change: clarify a GAL can be appointed for a proposed ward

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T-REP's 2025 Guardianship Bill HB 1954 & HB SB 746

Action by Party Adverse to Ward

Statutes Amended: EC 1055.001

Current Law: a person with interests adverse to a proposed ward cannot bring an application to create a guardianship, contest appointment of a proposed guardian or contest an application to restore a ward's capacity.

Problem: Current law does not prevent a person with interests adverse to the ward/proposed ward from applying for appointment of a guardian, filing a motion to request removal of a guardian, or contest a request for removal of a guardian.

Proposed Change: prohibits a person with interests adverse to ward/proposed ward from applying for appointment of guardian, filing motion to request removal of a guardian or contesting a request for removal of guardian

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T-REP 2025 MEDICAL POWER OF ATTORNEY BILL

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Co-Chairs of PAAD Committee



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T-REP MPOA Bill

Medical Powers of Attorney

Current law:

- If MPOA is executed in Texas, must use the statutory form for MPOA
- If MPOA is executed outside of Texas, MPOA is valid and must be accepted by hospital if MPOA executed according to the laws of the state where executed
- 46 other states have optional forms and as long as meet the requirements, MPOA is valid

T-REP MPOA Bill

Medical Powers of Attorney

Proposed Change: would make statutory form permissible, not mandatory

Valid medical power must:

- Be in writing,
- Be signed by the principal (or another person at principal's direction) before two witnesses or a notary; and
- Contain principal's name, date of execution and designation of agent

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Non-T-REP MPOA Bill

HB 1059 (Bhojani)

Medical Powers of Attorney

Proposed Change:

- Allow health care provider to presume advance directive validly executed, absent actual knowledge to contrary
- Directs executive commissioner of Health & Human Services Commission to approve by 12/1/25 MPOA forms promulgated by a national nonprofit organization (i.e. Five Wishes) or American Bar Association Commission on Law and Aging that have been approved by at least 40 other states
- Current statutory form would become permissive

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Non-T-REP MPOA Bill

HB 1059 (Bhojani)



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NON-T-REP BILLS IN 2025

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Non-T-REP 2025 Decedents' Estates Bill SB302/HB1928

Payment of Costs Associated with Assigned Statutory Probate Judge

Statutes Amended: EC 352.054; Gov't Code 25.0022

Current Law: In counties where there is only a constitutional county court and there is no county court at law exercising probate jurisdiction, if a will contest arises, any party, or the judge, may request appointment of a statutory probate judge to hear the contested part of the case.

Problem: Small counties have to bear the burden of the expense of a statutory probate judge

Proposed Change: The court must order that the county be reimbursed for these costs, with the costs allocated among the estate and the parties as the court considers equitable

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Non-T-REP 2025 Decedents' Estates Bill

SB 1222

Eligible Judges for Assignment as Statutory Probate Judge

Statutes Amended: Gov't Code 25.0022-2201, 35.00255

Current Law: In counties where there is only a constitutional county court and there is no county court at law exercising probate jurisdiction, if a will contest arises, any party or the judge may request appointment of a statutory probate judge to hear the contested part of the case. Also, if a probate judge is disqualified or recused from serving, a statutory probate judge is assigned to serve in their place. Only a current or former statutory probate judge can be assigned.

Problem: There aren't enough retired statutory probate judges to be assigned to cases

Proposed Change: A former or retired appellate court justice could be assigned in cases needing a statutory probate judge (i.e. in counties with just constitutional county courts and no county court at law exercising probate jurisdiction or where judge is recused or disqualified)

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Non-T-REP 2025 Decedents' Estates Bill SB 1335

Effect of Letters Testamentary or of Administration

Statutes Amended: EC 306.007

Current Law: "Letters testamentary or of administration or a certificate of the clerk" is sufficient evidence of the appointment and qualification of the personal representative of the estate and the date of qualification.

Problem: there is no such thing as a certificate of the clerk of the court

Proposed Change: Remove the reference to a certificate



Non-T-REP 2025 Decedents' Estates Bill SB 1335

Removal of Personal Representative

Statutes Amended: EC 361.052

Current Law: The court may remove a personal representative of an estate on the court's own motion or the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set in the notice.

Proposed Change:

If the removal is on the court's own motion, the PR is to be notified by **CMRRR**.

If the removal is on the complaint of an interested person, notice is to be by **personal service**.



Non-T-REP 2025 Decedents' Estates Bill SB 1335

Procedures When No Estate Remains or when Estate Fully Administered

Statutes Amended: EC 362.012, 362.013, 405.001(c), 405.007(b)

Current Law: Court is to enter an order discharging the PR and close the estate if, on final settlement of the estate, none of the estate remains, or if the estate is fully administered.

Problem: Statutes fail to address cancellation of letters and discharge of sureties on bond

Proposed Change: Adds to statute that the order discharging the PR shall also cancel the letters issued to the PR and discharge and release the sureties on the PR's bond, if applicable.



Non-T-REP Bills

SB 66

Supported Decision Making

Statutes Amended: EC 1357.051, 1357.056

Current Law:

An adult w. disability may voluntarily enter a supported decision-making agreement w. a supporter under which the adult authorizes the supporter to do any or all of the following:

- (1) provide supported decision-making, incl. assistance in understanding options, responsibilities, and consequences of adult's life decisions, without making those decisions on behalf of the adult;
- (2) assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records;
- (3) Assist the adult in understanding the info in #2
- (4) Assist the adult in communicating the adult's decisions to appropriate persons

Problem: The list in #2 does not include legal information

Proposed Change: authorize a supporter in a supported decision-making agreement to assist the adult person with a disability in obtaining legal records, and to assist the adult with legal proceedings in which the person is involved

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Non-T-REP Bills

HB 1914

Modification of Possession Order for Child of Incapacitated Conservator

Statutes Amended: Fam Code 156.107

Proposed Change:

- Bill provides that the temporary or permanent incapacity of a child's conservator is a material and substantial change in circumstances sufficient to justify a modification of an existing order regarding conservatorship.
- If there is a co-conservator, that person is temporarily entitled to exercise the possession rights of the incapacitated conservator
- "Incapacity": a physical or mental condition or incarceration that prevents the conservator from caring for the child.

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Non-T-REP Bills

SB 643

Court-Ordered Mental Health Services

Statutes Amended: H&S Code 574.001

Current law: An application for court-ordered mental health services may be filed in the county in which the patient:

- resides
- is found; or
- is receiving mental health services by court order

Proposed Change:

Adds that an application can be filed where the patient:

- is located at the time the application is filed; or
- was apprehended under Chapter 573 (emergency detention)

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Non-T-REP Bills

HB 2200

Cremation of Human Remains

Statutes Amended: H&S Code 711.001, 716.001, 716.002, 716.151, 716.1525, Occ Code 651.001 & 651.651

Proposed Change: Would allow cremation through natural organic reduction (aka “human composting”) and directs the creation of rules and requirements for that process

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Non-T-REP Bills

SB 697

Recording Real or Personal Property Documents

Statutes Amended: CPRC 12.003; Gov't Code 51.901; Prop Code 12.001

Current Law: If a district, county or municipal clerk has reason to believe certain filed documents are fraudulent (incl. a document placing a lien on property), clerk must send notice to last known address of debtor/obligor.

Problem: deed fraud is rampant

Proposed Change: If clerk believes in good faith document is fraudulent, clerk can provide notice to last known address of grantor or last owner (if different from that named in the document) and can refuse to file/record document if listed statutory requirements are met.

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Non-T-REP Disability Document Bills HB 2072

Felony Offense for Withdrawing Treatment Contrary to Patient Directive Statutes Amended: CPRC 74.251, 74.252, 74.304; H&S Code 166.045; 166.048

Proposed Change: it would be a first degree felony to withdraw or withhold life-sustaining treatment from a patient contrary to a validly executed directive or a health care decision made by patient or on behalf of patient by person authorized to make such decision.

- Criminal liability regardless of the health care provider's knowledge of the directive!!!
- No statute of limitations on this claim.

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Non-T-REP Bills

HB 1243

Separate Homesteads for Spouses

Statutes Amended: Tax Code 11.13

Proposed Change: allow spouses living in separate residences to each claim an ad valorem homestead exemption

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Non-T-REP Bills

HB 168 & SB 967

Minimum Marriage Age

Statutes Amended: Fam Code 2.009, 2.101, 6.205

Current law: requires both applicants for marriage license to be at least 18 or to have disabilities of minority removed by a court

Proposed Change: Both applicants for marriage license must be 18 (does not matter if disabilities of minority are removed by a court)

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Void Marriages and Divorce Decrees

Statutes Amended: Fam Code 6.202 and 9.401

Current law: a marriage is void if either party has an undissolved prior marriage. The later marriage becomes valid once the prior marriage is dissolved if the parties to later marriage live together and represent themselves as spouses following dissolution of the prior marriage

Proposed Change: The later marriage does not become valid if spouse in later marriage didn't know their spouse was still married to someone else and the later spouse files suit to declare later marriage void before 2nd anniversary of knowing about the issue

Non-T-REP Bills

SB 1379

Criminal Penalties for Forgery

Statutes Amended: Penal Code 32.21

Current law: it is a state jail felony to forge a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, check, credit card

Proposed Change: it would become a felony of the third degree to forge any of the above listed documents.

State Jail Felony:

180 days to 2 yrs jail

Fine up to \$10k

Third Degree Felony:

2 to 10 years in jail

Fine up to \$10k

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Non-T-REP Bills

Domestic Asset Protection Trusts (aka Self-Settled Asset Protection Trusts)

Current Law: When a person creates a trust with their own assets and is the beneficiary of the trust, that is a self-settled trust and Texas law does not protect those assets from creditors' claims.

Problem: Some banks believe Texas banks are losing a lot of trust business to banks in other states that allow Domestic Asset Protection Trusts or Self Settled Asset Protection Trusts

- 20 other states authorize DAPTs/SSAPTs, but only one of them is a community property state

Proposed Change: currently unfiled bill would allow creation of self settled asset protection trusts.

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Non-T-REP Bills

Domestic Asset Protection Trusts (aka Self-Settled Asset Protection Trusts)

T-REP's issues with yet-to-be-filed bill:

- **Child support protections insufficient:** bill would provide that assets transferred to a SSAPT are not protected from collection of a court-ordered child support obligation of the trust beneficiary if at the time of the transfer of the asset to the SSAPT, the settlor is in *arrears* on child support obligation by more than 30 days.
 - This is the only protection in the draft bill related to child support
 - As long as settlor is not in arrears on child support by more than 30 days when transfers assets to trust, the settlor could transfer ALL his or her assets to the trust and those assets could never be accessed to pay child support and settlor could claim they are penniless and can't pay
 - Of the 20 states authorizing SSAPTs, at least 12 provide that SSAPT assets can be accessed to pay child support obligations

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Non-T-REP Bills

Domestic Asset Protection Trusts (aka Self-Settled Asset Protection Trusts)

T-REP's issues with yet-to-be-filed bill:

- **Community property protections are inadequate:** If one spouse transfers community property to a SSAPT without the knowledge of the other spouse, under the current draft, the non-participating spouse would not have any way of accessing their community property held in the SSAPT – either during marriage or upon divorce or death of transferring spouse
- The bill draft attempts to protect spouses by relying on existing state law regarding fraud on the community. However, fraud on the community only addresses issues related to division of CP on death or divorce and does not offer a remedy for enforcing an agreement or court order for spousal support. There are hurdles for forcing return of community assets from a third party (i.e. a SSAPT) through fraud on the community. Fraud on the community is an inadequate remedy
- Reimbursement claims would not be addressed by fraud on community

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Non-T-REP Bills

Domestic Asset Protection Trusts (aka Self-Settled Asset Protection Trusts)

T-REP's issues with yet-to-be-filed bill:

- **Two year limitations period is too limited:** the draft bill provides that a creditor of the settlor cannot bring an action with respect to any transfer to the SSAPT unless action is commenced before 2nd anniversary of the transfer or 180th day after date creditor discovers transfer. A person is considered to have discovered the transfer at time a “public record” is made of the transfer.
- Example: C sues D for breach of contract. During the lawsuit, D transfers all his assets to SSAPT. Over two years later, C obtains a judgment against D. So long as D can delay post-judgment discovery for more than 2 years, C may have zero recourse by time transfer is discovered. Would require plaintiffs to constantly monitor deed records across state

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Non-T-REP Bills

Domestic Asset Protection Trusts (aka Self-Settled Asset Protection Trusts)

T-REP's Issues with yet-to-be-filed Bill:

- **Limitation on suing trustee is problematic:**
- A trust is not a legal entity. Thus, a trust can't sue or be sued.
- A creditor seeing to claw back trust assets improperly transferred to SSAPT must sue the trustee of the trust.
- The bill provides that a trustee of a SSAPT cannot be sued unless they knowingly and in bad faith violated Texas law and the creditor suffered damages because of the *trustee's* actions
- Under the bill, if settlor fraudulently transfers assets to the trust and the trustee is not aware it is a fraudulent transfer, the assets would be protected from the creditor's claims because creditor could not sue the trustee

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Non-T-REP Bills

SB 600

Uniform Partition of Heirs' Property Act

Heirs' Property – land handed down from generation to generation without the use of wills.

- Frequently found in communities where access to attorneys, and funds to pay them, has historically been scarce.
- Particularly prevalent in the South in predominantly black communities
- Each individual heir eventually owns only a tiny % of the land

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NEWS & POLITICS

Black-Owned Land Is Under Siege in the Brazos Valley

Acre by acre, families have lost long-held property near Bryan and College Station—much of it to the efforts of two men who weaponized arcane documents to acquire plots potentially worth millions.



By Nate Blakeslee and Jason Heid

November 2023



Lawrence (seated) and Brad Smith at the former site of Brooks Chapel Methodist Church, in Millican, on September 27, 2023.

Photograph by Michael Starghill

<https://www.texasmonthly.com/>

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Priscilla's Family Tree

Year	Estimated Avg Children per Family	Total in Generation
1875		7
1900	3.5	24
1925	3	72
1950	3	216
1975	2	432
2000	2	864
2025	1.75	1,512

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NEWS & POLITICS

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Non-T-REP Bills

Uniform Partition of Heirs' Property Act - SB 600

Safeguards:

- Requirements for petition to partition heirs' property
- Special requirements if non-heir cotenant brings the petition to partition
- Required due diligence to locate heirs and give notice of proceeding
- Citation must attach a notice of heirs' property bill of rights
- Affidavit signed by plaintiff regarding due diligence
- Settlement conference provisions
- Standards for an appraiser appointed in the case
- Prohibits a **non-heir** cotenant holding less than 50% of the property for less than 10 years from filing suit for partition
- If a cotenant wants to sell an interest in heirs' property to a **non-heir** cotenant, must give any heir cotenants who reside on the property a right of first refusal to purchase the interest

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MISCELLANEOUS NON-LEGISLATIVE MATTERS

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Licensed Legal Paraprofessionals

August 6, 2024 – TX Supreme Court issued preliminary rules allowing certain licensed non-attorney professionals to provide limited legal services in estate planning & probate law, among other areas.

Purpose: to increase access to legal services for low-income Texans

Proposal: a licensing system is proposed for individuals to become licensed as a “licensed legal paraprofessional” in either family law, estate planning and probate or consumer debt law.

- Must have work experience
- Pass ethics and subject matter exam
- Pay annual dues to State Bar
- Comply with annual licensing requirements

Services can only be provided to low-income clients (at or below 200% of federal policy guidelines)



Licensed Legal Paraprofessionals

Estate planning and Probate permitted actions:

Advising clients on completing and filing

- Disability planning documents
- Deeds
- Small estate affidavits
- Muniment of title applications
- Other estate planning forms approved by statute or approved entity

Representing a client in an uncontested muniment of title court proceeding

Based on comments received in response to proposed rules, Supreme Court delayed the rules indefinitely



Supreme Court's Promulgation of Will Forms

2015 Legislation directed Supreme Court to promulgate certain probate forms with instructions

- Simple will forms
- Written in plain, easy-to-understand language
- Conspicuous statement that form is not substitute for legal advice
- Any court would be required to accept a promulgated form unless completed in a way causing a substantive defect that can't be cured

Forms and instructions posted for comment on September 6, 2022 and on May 5, 2023 Court gave final approval for the forms and instructions.

See forms at: www.txcourts.gov/forms

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**NEW TX BOARD OF
LEGAL SPECIALIZATION
AREA:**

**TRUST, ESTATE &
GUARDIANSHIP
LITIGATION**

O H S K S LLP

Osborne Helman Scott Knisely & Stanton LLP

TRUST, ESTATE & GUARDIANSHIP LITIGATION SPECIALIZATION

To qualify for exam:

- 30% of practice devoted to Trust, Estate, Guardianship Litigation in last 3 years
- Applicant must provide information concerning specific tasks performed in Texas trust, estate, and guardianship litigation.
- In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

TRUST, ESTATE & GUARDIANSHIP LITIGATION SPECIALIZATION

To qualify for exam:

- (a) Lead counsel (or significant & substantial involvement, incl. actively participating in court appearances & hearing prep) in **8 contested trials or binding arbitrations** in trust, estate and guardianship litigation:
- i. in which oral testimony was taken;
 - ii. in which issues were determined by a finder of fact in a court of record or in a binding arbitration, excluding default judgments; and
 - iii. five of which must involve any of the following:
 1. Fiduciary duties of representative (trustee/executor/administrator/guardian/agent-in-fact/etc.);
 2. Appointment or removal of a representative;
 3. Contest to estate planning documents or account documents; or
 4. Similar important trust, estate, or guardianship issues, which may include, but are not limited to, trust/will modification or reformation, instruction or declaratory relief, and discharge relief.

TRUST, ESTATE & GUARDIANSHIP LITIGATION SPECIALIZATION

To qualify for exam:

- (a) Lead counsel (or significant & substantial involvement, incl. actively participating in court appearances & hearing prep) in **8 contested trials or binding arbitrations** in trust, estate & guardianship litigation cases:

...

- iv. The following experience can substitute for 4 of the 8 contested trials or binding arbitrations:
1. civil bench or jury trial conducted as lead counsel where case submitted to fact-finder for decision and amount in controversy exceeded \$25,000 or case involved significant nonmonetary claims; and
 2. represented a party as 1st or 2nd chair in a trust, estate, or guardianship case in an appellate court in two matters where the court of appeals issued an opinion.

TRUST, ESTATE & GUARDIANSHIP LITIGATION SPECIALIZATION

To qualify for exam:

- (b) Participated as lead counsel (or significant & substantial involvement in case, including actively participating in court appearances & hearing prep) in **25 contested court appearances** involving trusts, estates, or guardianship, handled and disposed without necessity of contested final hearing or trial on the merits.

May include, but are not limited to, hearings on the following issues:

- temporary restraining order or temporary injunctions
- receiverships
- experts
- discovery
- motions for summary judgment
- TX R. Civ. Pro 91(a), SLAP motions
- Trust Code Section 114.008 motions
- plea to the jurisdiction
- motions to exclude
- pleas in abatement
- contested motions to transfer venue
- motions in limine
- show cause motions
- other hearings if deemed sufficient for qualification by the advisory commission

- (c) Represented a party, or was a mediator, in 15 Texas mediations involving trust, estate, guardianship litigation.

2025 Legislative Session

Trusts, Estates, Guardianship, Powers of Attorney & Advanced Directives

Presented by:

Lauren D. Hunt

Osborne Helman Scott Knisely & Stanton, LLP

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