

SUBJECT: Revising rules and procedures relating to probates and heirships

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White
0 nays
1 absent — Y. Davis

WITNESSES: For — Craig Hopper and Melissa Willms, State Bar of Texas, Real Estate, Probate, and Trust Law Section; (*Registered, but did not testify:* Glenn Karisch and William Pargaman, State Bar of Texas, Real Estate, Probate, and Trust Law Section; Lauren Hunt, State Bar of Texas, Real Estate, Probate, and Trust Law Section, Council Member and Fiduciary Litigation Chair; Guy Herman, Travis County Statutory Probate Court and Presiding Statutory Probate Judge of Texas)

Against — None

On — (*Registered, but did not testify:* Trish McAllister, Texas Access to Justice Commission)

DIGEST: CSHB 2782 would make various changes to the rules and procedures relating to probate and heirship proceedings.

Designation of administrator. The bill would allow a testator's will to grant a person the authority to designate certain persons to serve as an administrator of the testator's estate. This designation would have to be in writing and acknowledged by an officer authorized to take acknowledgements and administer oaths.

A person so designated and not disqualified from serving as an administrator could not receive letters of administration unless each executor named in the testator's will:

- was deceased;
- was disqualified from serving as executor; or
- had indicated an inability or unwillingness to serve by an filing an affidavit with the court.

An administrator designated under this section would have the same rights, powers, and duties as an executor named in the testator's will, unless the will or designation provided otherwise.

The bill set would set procedures for the appointment of an administrator in circumstances in which there was not an executor and either:

- the person who had been designated as administrator under the provisions of this bill was disqualified, had died, refused to serve, or resigned; or
- the person authorized to designate an administrator had not done so and did not intend to do so.

Muniment of title. CSHB 2782 would allow a court that had admitted a will to probate as a muniment of title to appoint a personal representative and open an administration for the testator's estate if:

- an application for letters testamentary or of administration was filed within four years of the testator's death; or
- administration of the estate was necessary to recover the estate's property or, in some circumstances, to prevent real property in the estate from becoming a danger to the general public.

Certain deadlines for an estate for which a personal representative appointed after the will had been admitted to probate as a muniment of title would be calculated based on the date of the qualification of the personal representative rather than the date the will was admitted to probate.

Will modifications and reformations. The bill would expand the

definition of a probate proceeding to include judicial modifications or reformations of wills. CSHB 2782 also would provide rules and procedures for the assignment or transfer of will modification or reformation proceedings before a county court in counties lacking a county court at law or statutory probate court.

In certain circumstances, the county court could or would be required to request that a statutory probate court judge be assigned to hear the proceeding or to transfer the proceeding to the district court or the county court at law, as applicable.

The county court would retain jurisdiction over the management of the estate until the modification or reformation proceeding was resolved. Upon resolution, the proceeding would be returned to the county court for further proceedings consistent with the orders of the statutory probate court, district court, or county court at law.

Removal of will. CSHB 2782 would specify that a will submitted for probate could be removed from the county clerk's custody only by a court order requiring its removal to another place for inspection or transferring the probate proceeding to another court. If the proceeding was transferred, the clerk would be required to deliver the will directly to the clerk of the court to which the proceeding was transferred.

A will removed for inspection would be required to be delivered back to the county clerk once the inspection was completed.

Failed devises to charitable trusts. The bill would provide that current rules for determining the consequences of a failure of a devise in a will would not apply to devises to charitable trusts, unless a will otherwise provided.

Digital assets. Under certain circumstances, CSHB 2782 would allow a personal representative to apply for a court order directing the disclosure of the decedent's electronic communications or assets. The personal representative could make this application at any time between being

appointed and before the administration of the estate was closed.

Nontestamentary transfers. CSHB 2782 would require that certain parties to accounts, agreements, or contracts containing possible nontestamentary transfers provide a personal representative with all information that the party would have provided to the decedent if the decedent had requested the information as of the date of the decedent's death, except to the extent prohibited by federal or state law.

Multiple-party accounts. The bill would require that a personal representative receive a written demand from a decedent's surviving spouse, creditor, or a person acting on behalf of the decedent's minor child before initiating any proceeding to recover certain payments from the decedent's multiple-party account.

Claims against the estate. The bill would specify that up to \$15,000 in funeral expenses and up to \$15,000 in expenses relating to the decedent's last illness would be classified as Class 1 claims and have the highest priority for payment from the estate. Court costs and commissions to which a public probate administrator was entitled would be included in Class 2 claims.

Procedures governing creditor claims in supervised administrations would apply to a claim of the Medicaid estate recovery program in an independent administration.

Public auctions. CSHB 2782 would require that public auctions of the real property of an estate be held at the county courthouse of a county in which the real property was located or another place in such a county at which auctions of real property were authorized to be held as designated by the county commissioners court. The court could also hold that the auction be held in the county in which proceedings are pending, but notice would have to be published in both that county and the county in which the real estate was located.

Public auctions would be required to be held on the first Tuesday of the

month after the publication of notice, except that if the first Tuesday occurred on January 1 or July 4, the auction would have to be held between 10 a.m. and 4 p.m. on the first Wednesday of the month.

Affidavit in lieu of inventory. The bill would provide that a court-ordered extension of the period for filing an inventory, appraisal, and list of claims would be considered an extension of the filing period for an affidavit in lieu of inventory, appraisal, and list of claims.

Contingent legal fees. CSHB 2782 would allow a personal representative to convey for attorney services up to a one-third contingent interest in any property sought to be recovered without court approval.

Awards for contested probate. The bill would allow an interested person other than a person having a claim against the estate who in good faith and with just cause successfully contested the validity of a will offered for or admitted to probate would be allowed to receive from the estate the person's necessary expenses in that proceeding, including reasonable attorney's fees.

Bond. CSHB 2782 would allow a court under certain circumstances to waive the requirement of a bond for an executor, even if the will did not so provide, if all the distributees to the decedent agreed to the waiver.

Public probate administrators. The bill would revise the requirements for public probate administrators to act without issuance of letters testamentary and would set the deadline for such administrators to file a small estate affidavit.

The bill would specify that all funds coming into the custody of an administrator be deposited in the court registry rather than the county treasury, except for commissions to the administrator. These amounts would be disbursed as ordered by the statutory probate judge who appointed the administrator instead of according to the guidelines of the county treasurer or auditor.

Heirship proceedings. The bill generally would require that testimony regarding a decedent's heirs and family history be provided by two disinterested and credible witnesses in an heirship proceeding. However, if after a diligent search, only one disinterested and credible witness could be found, the testimony of that witness would have to be provided.

Recusal. The bill would change the procedures for recusals or disqualifications of the presiding judge of the statutory probate courts.

Transfer on death deeds. CSHB 2782 would repeal the statutory forms for transfer on death deeds. The validity of transfer on death deeds executed before, on, or after the effective date set out below would not be affected.

The bill also would specify that a recorded transfer on death deed would be void with respect to any real property interest if a memorandum sufficient to give notice of conveyance of the interest later was recorded with the county clerk's office in the county in which the deed was recorded.

Exception for limitations. The bill would specify that an exception existed to the requirement that an applicant for letters testamentary or of administration prove that four years had not passed since the decedent's death in situations in which an administration was necessary to recover the estate's property or, in some circumstances, to prevent real property in the estate from becoming a danger to the public.

Effective dates. The bill would take effective September 1, 2019. Various provisions of this bill would apply to:

- an agreement, account, or designation containing a potential nontestamentary transfer that was made or entered into on or after that date;
- a proceeding commenced on or after that date;
- a proceeding to declare heirship on or after that date;
- a petition to modify or reform the terms of a will filed on or after

that date;

- an application to probate a will filed on or after that date;
- an application for letters of administration filed on or after that date;
- the administration of a decedent's estate commenced on or after that date;
- a contract or conveyance in connection with certain contingent fee legal services entered into on or after that date;
- the estate of a decedent who died on or after that date; or
- a motion or recusal or disqualification of a statutory probate judge made on or after that date.