ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE F. WILLS

CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS

SUBCHAPTER A. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OR LEGACY

Sec. 255.001. DEFINITIONS. In this subchapter:

(1) "Contents" means tangible personal property, other than titled personal property, found inside of or on a specifically devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that:

(A) do not require a formal transfer of title; and

(B) are located in another item of tangible personal property such as a cedar chest or other furniture.

(2) "Titled personal property" includes all tangible personal property represented by a certificate of title, certificate of ownership, written label, marking, or designation that signifies ownership by a person. The term includes a motor vehicle, motor home, motorboat, or other similar property that requires a formal transfer of title.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.002. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OF REAL PROPERTY. A devise of real property does not include any personal property located on, or associated with, the real property or any contents of personal property located on the real property unless the will directs that the personal property or contents are included in the devise.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.003. CONTENTS EXCLUDED FROM LEGACY OF PERSONAL PROPERTY. A legacy of personal property does not include any contents of the property unless the will directs that the contents are included in the legacy.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SUCCESSION BY PRETERMITTED CHILD

Sec. 255.051. DEFINITION. In this subchapter, "pretermitted child" means a testator's child who is born or adopted:

(1) during the testator's lifetime or after the testator's death; and

(2) after the execution of the testator's will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.052. APPLICABILITY AND CONSTRUCTION. (a) Sections 255.053 and 255.054 apply only to a pretermitted child who is not:

(1) mentioned in the testator's will;

(2) provided for in the testator's will; or

(3) otherwise provided for by the testator.

(b) For purposes of this subchapter, a child is provided for or a provision is made for a child if a disposition of property to or for the benefit of the pretermitted child, whether vested or contingent, is made:

(1) in the testator's will, including a devise to a trustee under Section 254.001; or

(2) outside the testator's will and is intended to take effect at the testator's death.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.053. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR HAS LIVING CHILD AT WILL'S EXECUTION. (a) If no provision is made

in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

(b) If a provision, whether vested or contingent, is made in the testator's last will for one or more children of the testator who are living when the testator executes the will, a pretermitted child is entitled only to a portion of the disposition made to children under the will that is equal to the portion the child would have received if the testator had:

(1) included all of the testator's pretermitted children with the children on whom benefits were conferred under the will; and

(2) given an equal share of those benefits to each child.

(c) To the extent feasible, the interest in the testator's estate to which the pretermitted child is entitled under Subsection (b) must be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred on the testator's children under the will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.27, eff. January 1, 2014.

Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001

if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.28, eff. January 1, 2014.

Sec. 255.055. RATABLE RECOVERY BY PRETERMITTED CHILD FROM PORTIONS PASSING TO OTHER BENEFICIARIES. (a) A pretermitted child may recover the share of the testator's estate to which the child is entitled from the testator's other children under Section 255.053(b) or from the testamentary beneficiaries under Sections 255.053(a) and 255.054, other than the pretermitted child's other parent, ratably, out of the portions of the estate passing to those persons under the will.

(b) In abating the interests of the beneficiaries described by Subsection (a), the character of the testamentary plan adopted by the testator must be preserved to the maximum extent possible.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.056. LIMITATION ON REDUCTION OF ESTATE PASSING TO SURVIVING SPOUSE. If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Section 255.053(a) or 255.054 may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.29, eff. January 1, 2014.

SUBCHAPTER C. LIFETIME GIFTS AS SATISFACTION OF DEVISE

Sec. 255.101. CERTAIN LIFETIME GIFTS CONSIDERED SATISFACTION OF DEVISE. Property that a testator gives to a person during the testator's lifetime is considered a satisfaction, either

wholly or partly, of a devise to the person if:

(1) the testator's will provides for deduction of the lifetime gift from the devise;

(2) the testator declares in a contemporaneous writing that the lifetime gift is to be deducted from, or is in satisfaction of, the devise; or

(3) the devisee acknowledges in writing that the lifetime gift is in satisfaction of the devise.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.102. VALUATION OF PROPERTY. Property given in partial satisfaction of a devise shall be valued as of the earlier of:

(1) the date the devisee acquires possession of or enjoys the property; or

(2) the date of the testator's death.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. FAILURE OF DEVISE; DISPOSITION OF PROPERTY TO DEVISEE WHO PREDECEASES TESTATOR

Sec. 255.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies unless the testator's will provides otherwise. For example, a devise in the testator's will stating "to my surviving children" or "to such of my children as shall survive me" prevents the application of Sections 255.153 and 255.154.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 20, eff. September 1, 2017.

Sec. 255.152. FAILURE OF DEVISE; EFFECT ON RESIDUARY ESTATE. (a) Except as provided by Sections 255.153 and 255.154, if

a devise, other than a residuary devise, fails for any reason, the devise becomes a part of the residuary estate.

(b) Except as provided by Sections 255.153 and 255.154, if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, that residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate.

(c) Except as provided by Sections 255.153 and 255.154, the residuary estate passes as if the testator had died intestate if all residuary devisees:

(1) are deceased at the time the testator's will is executed;

(2) fail to survive the testator; or

(3) are treated as if the residuary devisees predeceased the testator.

(d) Unless the will provides otherwise, Subsections (a), (b), and (c) do not apply to a devise to a charitable trust, as defined by Section 123.001, Property Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 9, eff. September 1, 2019.

Sec. 255.153. DISPOSITION OF PROPERTY TO CERTAIN DEVISEES WHO PREDECEASE TESTATOR. (a) If a devisee who is a descendant of the testator or a descendant of a testator's parent is deceased at the time the will is executed, fails to survive the testator, or is treated as if the devisee predeceased the testator by Chapter 121 or otherwise, the descendants of the devisee who survived the testator by 120 hours take the devised property in place of the devisee.

(b) Devised property to which Subsection (a) applies shall be divided into the number of shares equal to the total number of surviving descendants in the nearest degree of kinship to the devisee and deceased persons in the same degree of kinship to the devisee whose descendants survived the testator. Each surviving

descendant in the nearest degree of kinship to the devisee receives one share, and the share of each deceased person in the same degree of kinship to the devisee whose descendants survived the testator is divided among the descendants by representation.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.154. DEVISEE UNDER CLASS GIFT. For purposes of this subchapter, a person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee unless the person died before the date the will was executed.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. DEVISE OF SECURITIES

Sec. 255.251. DEFINITIONS. In this subchapter:

(1) "Securities" has the meaning assigned by Section 4001.068, Government Code.

(2) "Stock" means securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.10, eff. January 1, 2022.

Sec. 255.252. INCREASE IN SECURITIES; ACCESSIONS. Unless the will of a testator clearly provides otherwise, a devise of securities that are owned by the testator on the date the will is executed includes the following additional securities subsequently acquired by the testator as a result of the testator's ownership of the devised securities:

(1) securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a

reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment; and

(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.253. CASH DISTRIBUTION NOT INCLUDED IN DEVISE. Unless the will of a testator clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities that accrues before the testator's death, regardless of whether the distribution is paid before the testator's death.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER G. EXONERATION OF DEBTS SECURED BY SPECIFIC DEVISES

Sec. 255.301. NO RIGHT TO EXONERATION OF DEBTS. Except as provided by Section 255.302, a specific devise passes to the devisee subject to each debt secured by the property that exists on the date of the testator's death, and the devisee is not entitled to exoneration from the testator's estate for payment of the debt.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.302. EXCEPTION. A specific devise does not pass to the devisee subject to a debt described by Section 255.301 if the will in which the devise is made specifically states that the devise passes without being subject to the debt. A general provision in the will stating that debts are to be paid is not a specific statement for purposes of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.303. RIGHTS OF CERTAIN CREDITORS AND OTHER PERSONS. (a) Section 255.301 does not affect the rights of creditors provided under this title or the rights of other persons or entities provided under Chapters 102 and 353.

(b) A debt described by Section 255.301 that a creditor elects to have allowed and approved as a matured secured claim shall be paid in accordance with Sections 355.153(b), (c), (d), and (e).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 255.304. APPLICABILITY OF SUBCHAPTER. This subchapter is applicable only to wills executed on or after September 1, 2005.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 18, eff. September 1, 2015.

SUBCHAPTER H. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL

Sec. 255.351. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL. A testator may not exercise a power of appointment through a residuary clause in the testator's will or through a will providing for general disposition of all of the testator's property unless:

(1) the testator makes a specific reference to the power in the will; or

(2) there is some other indication in writing that the testator intended to include the property subject to the power in the will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER I. CLASS GIFTS

Sec. 255.401. POSTHUMOUS CLASS GIFT MEMBERSHIP.

(a) A right to take as a member under a class gift does not

accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.

(a-1) For purposes of this section, a person is:

(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.

(b) A provision in the testator's will that is contrary to this section prevails over this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 21, eff. September 1, 2017.

SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION OF WILLS

Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED. (a) Subject to the requirements of this section, on the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:

(1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;

(2) the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or

(3) the order is necessary to correct a scrivener's

error in the terms of the will, even if unambiguous, to conform with the testator's intent.

(a-1) A personal representative seeking to modify or reform a will under this section must file a petition on or before the fourth anniversary of the date the will was admitted to probate.

(b) An order described in Subsection (a)(3) may be issued only if the testator's intent is established by clear and convincing evidence.

(c) Chapter 123, Property Code, applies to a proceeding under Subsection (a) that involves a charitable trust.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 22, eff. September 1, 2017.

Sec. 255.452. JUDICIAL DISCRETION. The court shall exercise the court's discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Sec. 255.453. RETROACTIVE EFFECT. The court may direct that an order described by this subchapter has retroactive effect.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Sec. 255.454. POWERS CUMULATIVE. This subchapter does not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under Section 112.054, Property Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Sec. 255.455. DUTIES AND LIABILITY OF PERSONAL REPRESENTATIVE UNDER SUBCHAPTER. (a) This subchapter does not

create or imply a duty for a personal representative to:

(1) petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will;

(2) inform devisees about the availability of relief under this subchapter; or

(3) review the will or other evidence to determine whether any action should be taken under this subchapter.

(b) A personal representative is not liable for failing to file a petition under Section 255.451.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 19, eff. September 1, 2015.

Sec. 255.456. JURISDICTION AND TRANSFER OF PROCEEDING. (a) To the extent that this section conflicts with other provisions of this title, this section prevails.

(b) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, if a personal representative petitions the county court to modify or reform the terms of a will, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the proceeding, as provided by Section 25.0022, Government Code; or

(2) transfer the proceeding to the district court, which may then hear the proceeding as if originally filed in the district court.

(c) A district court to which a proceeding is transferred under Subsection (b) has the jurisdiction and authority granted to a statutory probate court by Subtitle A.

(d) If a party to a modification or reformation proceeding files a motion for the assignment of a statutory probate court judge to hear the proceeding before the judge of the county court transfers the proceeding to a district court under this section,

the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the proceeding to the district court unless the party withdraws the motion.

(e) A statutory probate court judge assigned to a proceeding under this section has the jurisdiction and authority granted to a statutory probate court by Subtitle A.

(f) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, if a personal representative petitions the county court to modify or reform the terms of a will, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the proceeding to the county court at law, which may then hear the proceeding as if originally filed in the county court at law.

(g) The county court shall continue to exercise jurisdiction over the management of the estate, other than the modification or reformation proceeding, until final disposition of the modification or reformation proceeding is made in accordance with this subchapter.

(h) On resolution of the modification or reformation proceeding, the statutory probate court judge assigned to hear the proceeding or the district court or county court at law to which the proceeding is transferred under this section shall return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court, district court, or county court at law, as applicable.

(i) The clerk of a district court to which a modification or reformation proceeding is transferred under this section may perform in relation to the proceeding any function a county clerk may perform with respect to that type of matter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 10, eff. September 1, 2019.