ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE F. WILLS

CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS

SUBCHAPTER A. WILL FORMATION

Sec. 251.001. WHO MAY EXECUTE WILL. Under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a will if, at the time the will is made, the person:

(1) is 18 years of age or older;

(2) is or has been married; or

(3) is a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

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. 13, eff. September 1, 2017.

Sec. 251.002. INTERESTS THAT MAY PASS BY WILL; DISINHERITANCE. (a) Subject to limitations prescribed by law, a person competent to make a will may devise under the will all the estate, right, title, and interest in property the person has at the time of the person's death.

(b) A person who makes a will may:

(1) disinherit an heir; and

(2) direct the disposition of property or an interest passing under the will or by intestacy.

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. 14, eff. September 1, 2017.

SUBCHAPTER B. WILL REQUIREMENTS

Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Except as otherwise provided by law, a will must be:

(1) in writing;

(2) signed by:

(A) the testator in person; or

(B) another person on behalf of the testator:

(i) in the testator's presence; and

(ii) under the testator's direction; and

(3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator's presence.

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. 15, eff. September 1, 2017.

Sec. 251.052. EXCEPTION FOR HOLOGRAPHIC WILLS. Notwithstanding Section 251.051, a will written wholly in the testator's handwriting is not required to be attested by subscribing witnesses.

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

Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS. A written will does not need to meet the requirements of Section 251.051 if the will is executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 13, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 17, eff. September 1, 2023.

SUBCHAPTER C. SELF-PROVED WILLS

Sec. 251.101. SELF-PROVED WILL. A self-proved will is a will:

(1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or

(2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

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. 2.22, eff. January 1, 2014.

Sec. 251.102. PROBATE AND TREATMENT OF SELF-PROVED WILL. (a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

(1) the testator and witnesses execute a self-proving affidavit; or

(2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

(b) A self-proved will may not otherwise be treated differently than a will that is not self-proved.

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. 2.23, eff. January 1, 2014.

Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED. A will that meets the requirements of Section 251.051

may be made self-proved at:

(1) the time of the execution of the will; or

(2) a later date during the lifetime of the testator and the witnesses.

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. 16, eff. September 1, 2017.

Sec. 251.104. REQUIREMENTS FOR SELF-PROVING AFFIDAVIT. (a) An affidavit that is in form and content substantially as provided by Subsection (e) is a self-proving affidavit.

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths. The officer shall affix the officer's official seal to the self-proving affidavit.

(c) The self-proving affidavit shall be attached or annexed to the will.

(d) An affidavit that is in substantial compliance with the form of the affidavit provided by Subsection (e), that is subscribed and acknowledged by the testator, and that is subscribed and sworn to by the attesting witnesses is sufficient to self-prove the will. No other affidavit or certificate of a testator is required to self-prove a will other than the affidavit provided by Subsection (e).

(e) The form and content of the self-proving affidavit must be substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is [his/her]

will, and that [he/she] had willingly made and executed it as [his/her] free act and deed; and the said witnesses, each on [his/her] oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is [his/her] will, and that [he/she] executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at [his/her] request; that [he/she] was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States, or an auxiliary of the armed forces of the United States, or the United States Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

_____

Testator

_____

Witness

_____

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____ A.D. _____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

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. 2.24, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 17, eff. September 1, 2017.

Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND SELF-PROVING. (a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I willingly make and execute it in the presence of the undersigned witnesses, all of whom are present at the same time, as my free act and deed, and that I request each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20_____.

_____

Testator

The undersigned, _____ and _____, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

_____

Witness

_____

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____, 20_____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(b) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.25, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 14, eff. September 1, 2015.

Sec. 251.105. EFFECT OF SIGNATURE ON SELF-PROVING AFFIDAVIT. A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses or both, except that, in that case, the will may not be considered a self-proved will.

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

Sec. 251.106. CONTEST, REVOCATION, OR AMENDMENT OF SELF-PROVED WILL. A self-proved will may be contested, revoked, or amended by a codicil in the same manner as a will that is not self-proved.

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

Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL. Notwithstanding any other provision of this subchapter, a will written wholly in the testator's handwriting may be made self-proved at any time during the testator's lifetime by the attachment or annexation to the will of an affidavit by the testator to the effect that:

(1) the instrument is the testator's will;

(2) the testator was 18 years of age or older at the time the will was executed or, if the testator was younger than 18 years of age, that the testator:

(A) was or had been married; or

(B) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service at the time the will was executed;

(3) the testator was of sound mind; and

(4) the testator has not revoked the will.

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. 18, eff. September 1, 2017.