

# **A Quick Introduction to the new Estates Code**

## **What's January 1, 2014?**

- The effective date for the new Texas Estates Code
- The repeal date for the Texas Probate Code

**You're going to love it**

**. . . . eventually**

## **Estates Code §22.001 – Purpose of Code**

*First, the background purpose:*

“(a) . . . part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature

“. . . . a topic-by-topic revision of the state's general and permanent statute law without substantive change.”

## **Estates Code §22.001 – Purpose of Code**

*Now the specifics:*

“(b) Consistent with [those] objectives . . . **make the law . . . more accessible and understandable** by:

“(1) rearranging the statutes into a **more logical order**;

“(2) employing a **format and numbering system** designed to **facilitate citation** of the law and to **accommodate future expansion** of the law;

“(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

“(4) restating the law in **modern American English to the greatest extent possible.**”

## **Probate Code §59(a) – first part**

**Sec. 59. REQUISITES OF A WILL. (a)** Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

## **Estates Code §251.051**

**Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED.**

Except as otherwise provided by law, a last will and testament 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.

## **Estates Code parts**

### **Titles (only three)**

**Title 1: General Provisions**

**Title 2: Estates of Decedents; Durable Powers of Attorney**

**Title 3: Guardianship and Related Procedures**

### **Subtitles**

### **Chapters**

### **Subchapters**

### **Sections**

## **Title 2. Estates of Decedents; Durable Powers of Attorney**

- Subtitle A** Scope, Jurisdiction, Venue, and Courts
- Subtitle B** Procedural Matters
- Subtitle C** Passage of Title and Distribution of Decedents' Property in General
- Subtitle D** Proceedings before Administration of Estate
- Subtitle E** Intestate Succession
- Subtitle F** Wills
- Subtitle G** Initial Appointment of Personal Representative and Opening of Administration
- Subtitle H** Continuation of Administration
- Subtitle I** Independent Administration
- Subtitle J** Additional Matters Relating to the Administration of Certain Estates
- Subtitle K** Foreign Wills, Other Testamentary Instruments, and Fiduciaries
- Subtitle L** Payment of Estates into Treasury
- Subtitle P** Durable Powers Of Attorney

## **Subtitle F. Wills**

- Chapter 251. Fundamental Requirements and Provisions Relating to Wills
- Chapter 252. Safekeeping and Custody of Wills
- Chapter 253. Change and Revocation of Wills
- Chapter 254. Validity of Certain Provisions in, and Contracts Relating to, Wills
- Chapter 255. Construction and Interpretation of Wills
- Chapter 256. Probate of Wills Generally
- Chapter 257. Probate of Will as Muniment of Title
- Chapter 258. Citations and Notices Relating to Probate of Will

## **Sample of what Prof. Johanson includes before each Estates Code chapter**

### **CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS**

#### **SUBCHAPTER A. WILL FORMATION**

- § 251.001. Who May Execute Will.
- § 251.002. Interests That May Pass by Will; Disinheritance.

#### **SUBCHAPTER B. WILL REQUIREMENTS**

- § 251.051. Written, Signed, and Attested.
- § 251.052. Exception for Holographic Wills.

#### **SUBCHAPTER C. SELF-PROVED WILLS**

- § 251.101. Self-Proved Will.
- § 251.102. Probate and Treatment of Self-Proved Will.
- § 251.103. Period for Making Attested Wills Self-Proved.
- § 251.104. Requirements for Self-Proving Affidavit.
- § 251.1045. Simultaneous Execution, Attestation, and Self-Proving.
- § 251.105. Effect of Signature on Self-Proving Affidavit.
- § 251.106. Contest, Revocation, or Amendment of Self-Proved Will.
- § 251.107. Self-Proved Holographic Will.

## So how do you make the transition from the Probate Code to the Estates Code?

### Disposition Tables

Probate Code → Estates Code

### Derivation Tables

Estates Code → Probate Code

### Disposition Table (your *very* best friend)

Probate Code	Estates Code
703(p)	1105.160, 1105.162
703(q)	1105.154
703(r)	1105.163
703(s)	1105.152
704	1105.109
705	1105.108, 1105.110
706	1105.104
707	1105.105
708	1105.106
708A	1105.107
709(a)	1105.201
709(b)	1105.202
709(c)	1105.203
710	1105.202
711	1105.251

Probate Code	Estates Code
732	1154.002
733	1154.054
734	1154.101
735	1154.102
736	1154.103
737	1154.104
738	1154.055
739	1154.151
741(a)	1163.001
741(b)	1163.002
741(c)	1163.003, 1163.004
741(d)	1163.004
741(e), (f)	1163.005
741(g)	1163.006
742(a), (b), (c), (d), (e)	1163.051

## Derivation Table

<u>Estates Code</u>	<u>Probate Code</u>
1154.002	732
1154.003	728
1154.051	729
1154.052	730
1154.053	731
1154.054	733
1154.055	738
1154.101	734
1154.102	735
1154.103	736
1154.104	737
1154.151	739
1155.001	665(h)
→ 1155.002	→ 665(a),(g)
1155.003	665(b)
1155.004	665(a-1)
1155.005	665(f)
1155.006	665(c),(d)

<u>Estates Code</u>	<u>Probate Code</u>
1157.004	788
1157.005	791
1157.006	790
1157.007	789
1157.008	787
1157.051	796
1157.052	797
1157.053	798
1157.054	799(a)
1157.055	799(b)
1157.056	799(c)
1157.057	799(d)
1157.058	799(e)
1157.059	788
1157.060	786(a)
1157.061	786(b)
1157.062	790
1157.063	800

### Section Numbers in the Estates Code:

All section numbers have numbers to the left and to the right of a decimal point. For example:

# 251.051

The number to the left of the decimal is also the chapter number.

For example, Chapter 251 =  
"Fundamental Requirements and  
Provisions Relating to Wills"

The number to the right of the decimal identifies the specific section – *but it's the entire number that's the section number.*

For example, Section 251.051 =  
"Written, Signed, and Attested"

## **Two things to remember about chapter numbers**

- 1. The chapter numbers – the numbers to the left of the decimal – are whole numbers. What looks like a bigger number is a bigger number.**
- 2. When there's a jump in chapter numbers, you're in a new subtitle.**

### **Subtitle D. Proceedings before Administration of Estate**

**Chapter 151.** Examination of Documents and Safe Deposit Boxes

**Chapter 152.** Emergency Intervention

### **Subtitle E. Intestate Succession**

**Chapter 201.** Descent and Distribution

**Chapter 202.** Determination of Heirship

**Chapter 203.** Nonjudicial Evidence of Heirship

**Chapter 204.** Genetic Testing in Proceedings to Declare Heirship

**Chapter 205.** Small Estate Affidavit

### **Subtitle F. Wills**

**Chapter 251.** Fundamental Requirements and Provisions Relating to Wills

**Chapter 252.** Safekeeping and Custody of Wills

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## Two things to remember about the numbers to the right of the decimal

1. The numbers to the right of the decimal are indeed decimal numbers and not whole numbers, and they'll take you back to your math days until you get used to them – to know what number comes after another, **look digit by digit.**
2. When there's a jump in section numbers, you're in a new subchapter.

## Again from Prof. Johanson –

### CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS

#### SUBCHAPTER A. WILL FORMATION

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- § 251.104. Requirements for Self-Proving Affidavit.
- § 251.1045. Simultaneous Execution, Attestation, and Self-Proving.
- § 251.105. Effect of Signature on Self-Proving Affidavit.
- § 251.106. Contest, Revocation, or Amendment of Self-Proved Will.
- § 251.107. Self-Proved Holographic Will.

**It's easy to tell when you move from  
General to Estates to Guardianships**

Title 1: section numbers from 21.001-22.034

Title 2: section numbers from 31.001-752.115

Title 3: section numbers from 1001.001-1356.056

**Is the Probate Code Irrelevant 2014→?**

No.

Although the Estates Code will apply to pending estates, some statutory changes apply only to actions started on or after January 1, 2014. You'll have to check. See Bill Pargaman's paper at the end of this section for more information.

# **Out With the Old [Probate Code] and In With the New [Estates Code]**

## **2013 Texas Estate and Trust Legislative Update**

**(Including Probate, Guardianships, Trusts,  
Powers of Attorney, and Other Related Matters)**

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This version was updated **August 23, 2013**. Updates will be posted as warranted at:

[www.snpalaw.com/resources/2013legislativeupdate](http://www.snpalaw.com/resources/2013legislativeupdate)

Or go to our Resources page and scroll down to "2013 Texas "Estate and Trust" Legislative Update."

**Attachment 2 – History of the Estates Code: Part I**

**1. Why a New Code?**

**1.1 A New Beginning.** January 1, 2014. That's the date our new Estates Code goes into effect, replacing our Probate Code that's been around for almost six decades. Here's the background . . . .

**1.2 Our Current Probate Code is Not a "Code."** Texas has had a number of statutory compilations during its history. In 1925, the 39<sup>th</sup> Legislature adopted its fourth bulk revision of Texas laws, the Revised Statutes of Texas, 1925.<sup>1</sup> In 1936, The Vernon Law Book Company published an unannotated compilation of the 1925 Revised Civil and Criminal Statutes, updated with changes through January 1, 1936. Between 1936 and 1948, this was updated with non-cumulative biennial supplements. In 1948, a new compilation was published, and biennial updates continued. The "Texas Probate Code" was first enacted in 1955, effective January 1, 1956. However, Texas had not yet adopted any organized system of statutory codification at the time, so the Texas Probate Code was incorporated into Vernon's Revised Civil Statutes, known as the "Black Statutes" for those of us old enough to have practiced with the hard copies of these volumes.

**1.3 The "Codification" Process Began in 1963, After Our Probate Code Was Enacted.** In the 38 years since the 1925 general revision of Texas laws, the statutes had become confusing and difficult to use. In 1963, the 58<sup>th</sup> Legislature passed SB 367, which ordered the creation of a permanent, ongoing statutory revision program. The Texas Legislative Council was charged with making a complete, non-substantive revision of Texas statutes. Legislation enacting new code sections is generally based on a Revisor's Report which contains the proposed language of the new code, the language of the old statutes, and brief notes. Upon completion of the program, all general and permanent statutes would be included in one of 27 codes. The Probate Code is not a "code" for purposes of the Code Construction Act and the Legislative Council codification initiative since (1) it was enacted before the codification effort began, and (2) it does not comply with the organizational and stylistic principles of modern Texas codes. According to the chairs of the Probate Code Codification Committee (discussed below), because of the anticipated disruption to our practice that would be caused by a codification project, many years ago REPTL leadership convinced the

Legislative Council to delay the project as long as possible by placing the Probate Code at the end of the project list. But by 2006, the Legislative Council ran out of other codification projects and turned its attention to the Probate Code.

**1.4 The Legislative Council's Procedure.** The Texas Legislative Council's nonsubstantive revision process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law. The Legislative Council staff encourages examination and review of all proposed code chapters by any interested person. The staff attempts to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. A complete and adequate outside review is necessary, however.

**1.5 Legislative Council Staff.** The two members of the Legislative Council legal staff primarily responsible for the production of the nonsubstantive revision of the Probate Code were Maria Breitschopf and Anne Peters. Ms. Breitschopf was responsible for the decedents' estates revisions passed by the 81<sup>st</sup> (2009) Legislature, while Ms. Peters was responsible for the guardianship and power of attorney revisions passed by the 82<sup>nd</sup> (2011) Legislature. Questions, comments, or suggestions relating to the project may be directed to either of them at P. O. Box 12128, Austin, Texas 78711, at 512-463-1155, or at maria.breitschopf@tlc.state.tx.us and anne.peters@tlc.state.tx.us.

**2. Enter REPTL.**

**2.1 REPTL Gets Involved.** When REPTL learned in the summer of 2006 that the Legislative Council was going to codify the Probate Code, it began to work actively with the Legislative Council staff on the codification project.

**2.2 REPTL's Probate Codification Committee.** REPTL established a Probate Code Codification Committee, which was co-chaired by Professor Thomas M. Featherston, Jr., the Mills Cox Professor of Law at Baylor Law School, and by Barbara McComas Anderson, a Dallas attorney, both of whom are former

<sup>1</sup> The source of this "timeline" is:  
[www.lrl.state.tx.us/research/texasLawTimeline.html](http://www.lrl.state.tx.us/research/texasLawTimeline.html).

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REPTL chairs. Through a series of meetings with Legislative Council staff, it was ultimately decided that:

- REPTL and the Legislative Council would cooperate in determining how the new code would be organized.
- The Legislative Council would take the lead in drafting the new code, although REPTL's committee would work on substantive changes to some of the thorniest provisions, like jurisdiction, venue, and independent administration, where it was considered difficult or impossible to codify the current statutes without some tweaking.
- The chapters of the code governing decedents' estates would be drafted first, to be submitted to the Legislature for adoption in 2009.
- The remaining chapters of the code, including those provisions governing guardianships and powers of attorney, would be drafted after the 2009 session, with a goal of submitting these chapters to the Legislature for adoption in 2011.
- The new code would become effective after the 2013 session in order to make that session available to correct any errors identified after the 2009 and 2011 enactments but prior to their effective date.
- REPTL would assist the Legislative Council during the entire legislative process, including providing expert review of chapters as they are drafted and expert testimony about legislation before the Legislature.

### **2.3 Structure of the Estates Code.**

Prof. Featherston took a first crack at drafting an outline of the structure for the new code in 2007. When Legislative Council prepared its initial drafts of what it originally called the "Estates and Guardianship Code" the following year, its structure was remarkably similar to the one proposed by Prof. Featherston. As enacted, the Estates Code is organized into the following Titles:

**Title 1:** General Provisions (Sec. 22.001, *et seq.*)

**Title 2:** Estates of Decedents (Sec. 31.001, *et seq.*); Durable Powers of Attorney (Sec. 751.001, *et seq.*)

**Title 3:** Guardianship and Related Provisions (Sec. 1001.001, *et seq.*)

**2.4 Review of Proposed Chapters.** Beginning in the summer of 2008, Prof. Featherston and Ms. Anderson parceled out chapters of the proposed

code as they were produced by Legislative Council to volunteer reviewers from the Texas Academy of Probate and Trust Lawyers. And while this review was going on, Hurricane Ike hit the Gulf Coast and cause significant delays in the reviews from the volunteers from that area of Texas (*e.g.*, Houston). Remember all of the flooded basements of office buildings and courthouses? That hurricane also led to the cancellation of the REPTL Fall Council meeting, at which these proposed chapters were going to be discussed.

**2.5 The Nonsubstantive Estates Code Bill Passed in 2009.** But the review was eventually completed, and the proposed nonsubstantive revision of the decedents' estates portion of the Probate Code was filed in the 2009 legislative session as HB 2502 by Rep. Hartnett and SB 2071 by Senator Duncan. The House version passed both chambers and will go into effect on January 1, 2014.

**2.6 The Name.** Prior to passage of the bill in the House, Rep. Hartnett raised concerns about the title "Estates and Guardianship Code" being a mouthful. He shortened the name of the new Code to just the "Estates Code" when HB 2502 passed on the floor of the House.<sup>2</sup>

**2.7 The Nonsubstantive Estates Code Bill Passed Again in 2011.** As noted above, the guardianship and power of attorney portions of the Probate Code underwent a nonsubstantive revision by the Legislative Council's legal staff for introduction in the 2011 session. REPTL appointed Deborah Green of Austin and Linda Goehrs of Houston (the current and immediate past chairs of REPTL's Guardianship Committee) as the co-chairs of its Probate Code Codification Committee dealing with this aspect of the recodification process, and it underwent a similar review (no hurricane this time!). This portion of the nonsubstantive recodification was introduced as HB 2759 (Hartnett) and SB 1299 (Duncan). Again, the House version of this bill passed and will also go into effect on January 1, 2014.

## **3. What Next?**

**3.1 Continuing Codification.** While both nonsubstantive codification bills have passed and will go into effect on January 1<sup>st</sup> without further action, that doesn't mean the codification process is finished. Substantive amendments to the Probate Code were

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<sup>2</sup> This author's preference expressed to Rep. Hartnett at the time was the "New Probate Code," since that's what many people are going to call it. Apple apparently agrees, given its name for the most recent full-size iPad.

made in both the 2009 and 2011 sessions that were not included in the nonsubstantive portions of the Estates Code that were enacted those years. Since the Estates Code is intended to be a nonsubstantive codification of the Probate Code as it exists immediately prior to 2014, there is a continuing need to make additional nonsubstantive revisions to incorporate changes to the Probate Code made prior to that time that were not incorporated into the Estates Code. In addition, one reason for the delayed effective date of the Estates Code mentioned above was to provide time for “errors” to be discovered and corrected prior to that effective date. These same issues apply not just to the Estates Code, but to other codes enacted as part of the nonsubstantive codification process. Legislative Council regularly prepares what it refers to as a “general code update bill.” In 2011, that bill was SB 1303 (West), a very lengthy bill that made “nonsubstantive” revisions to a number of codes, including the Estate Code and the Trust Code (see Article 8 and Secs. 21.002 and 21.003 of the bill).

**3.2 Purpose of Code Update.** The stated purposes of the general code update bill are:

- codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;
- conforming codifications enacted by the 81<sup>st</sup> Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;
- making necessary corrections to enacted codifications; and
- renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

**3.3 The 2011 and 2013 Code Update Bills.** The 2011 general code update bill passed, and the portions relating to the Estates Code are effective January 1, 2014. In 2013, the general code update bills are HB 3862 (Harper-Brown) and SB 1093 (West).

SB 1093 was signed by the Governor on May 24<sup>th</sup>.

**3.4 No More REPTL “Probate” Code Proposals.** Any revisions to the Probate Code in the 2013 session would go into effect on September 1<sup>st</sup>, only to be superseded by the Estates Code four months later. REPTL did not think any of its decedents’ estates or guardianship proposals were important enough to warrant that extra four months of effect. Therefore, REPTL opted to keep its 2013 proposals simpler by only proposing changes to the Estates Code that will go

into effect January 1, 2014. (The Trusts bill will still have a September 1 effective date since it is in the Property Code and is unaffected by the transition from the Probate Code to the Estates Code.)

**3.5 A 2015 Code Update Bill?** Of course, the fact that REPTL is making no Probate Code changes doesn’t prevent anyone else from attempting to pass them. Therefore, if any changes to the Probate Code do pass this session, those changes would remain in effect when the rest of the Probate Code disappears in January, and a code update bill will be required in two years to move those orphaned Probate Code sections over to the Estates Code. However, Legislative Council appears to have caught this possibility in other Probate Code bills and “double-billed” them, reducing the possibility of a 2015 code update bill. “Double-billing” is the process of making a change to the Probate Code, effective September 1<sup>st</sup> of the year of enactment, and making the same change, in the same bill, to the corresponding provision of the Estates Code (and repealing the revised portion of the Probate Code, effective January 1, 2014. REPTL “double-billed” its Probate Code bills in prior sessions, but as noted above, chose to make its 2013 proposals simpler by just amending the Estates Code provisions effective January 1<sup>st</sup>.

#### **4. What About Issues “Overlapping” January 1<sup>st</sup>?**

**4.1 The Probate Code is Repealed.** Let’s say you’ve got an estate administration pending at the end of 2013. Does that mean that on January 1<sup>st</sup>, the Probate Code no longer applies? As a general rule, the answer is “yes.” To the author’s knowledge, all of the bills relating to the Probate Code in the last three sessions, taken together, repeal every section of the Probate Code effective January 1, 2014. And all of the bills relating to the Estates Code in the last three sessions go into effect on January 1, 2014. Even the only two bills passed in 2013 that made revisions to the Probate Code effective September 1, 2013 (HB 2380 relating to forfeiture clauses in wills and HB 789 increasing allowances in lieu of homestead and exempt property) provide that those revised sections of the Probate Code are repealed effective January 1<sup>st</sup>. (Both bills make identical changes to the corresponding Estates Code provisions that go into effect on January 1<sup>st</sup>.)

**4.2 The Estates Code Will Apply to Pending Estates.** There is nothing in the nonsubstantive Estates Code bills that makes them inapplicable to estates pending on January 1<sup>st</sup>, so they’ll apply to pending estates at that time. But there really was no need to deal with pending estates separately in the

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nonsubstantive bills – while the code name and section numbers may have changed, the rules didn't – that's why they're called "nonsubstantive" revisions.

**4.3 But the Probate Code Will [Sort of] Remain Relevant.** Even though the Probate Code is repealed in its entirety on January 1<sup>st</sup>, that doesn't mean that it will be completely irrelevant after 2013. For example, this year's REPTL Decedents' Estates bill (HB 2912) makes a number of **substantive** changes that go into effect January 1<sup>st</sup>. There are **some** changes that apply to estate administrations pending or commenced on or after January 1<sup>st</sup>. But you have to check. Section 62 of the bill contains special transitional rules applicable to some of the changes made by the bill:

- A change prohibiting the use of unsworn declarations in self-proving affidavits applies only to wills executed **on or after** January 1<sup>st</sup>.
  - A will executed **before** January 1<sup>st</sup> "is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose."
- Changes relating to genetic testing and gestational agreements apply only to heirships commenced **on or after** January 1<sup>st</sup>.
  - But an heirship commenced **before** January 1<sup>st</sup> "is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose."
- A change relating to competing applications for letters filed by persons equally entitled to them applies only to applications filed **on or after** January 1<sup>st</sup>.
  - A competing application filed **before** January 1<sup>st</sup> "is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."
- A number of changes apply only to actions filed or proceedings commenced **on or after** January 1<sup>st</sup>.
  - But an action filed or proceeding commenced **before** January 1<sup>st</sup> "is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose."
- And a number of other changes apply only to the estates of decedents dying **on or after** January 1<sup>st</sup>.

- But for purposes of those specific changes, the estate of a decedent dying **before** January 1<sup>st</sup> "is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

For these listed categories, the law "in effect" before January 1<sup>st</sup> and "continued in effect for that purpose" is the corresponding Probate Code provision that had been repealed, since the corresponding unamended Estates Code provision hadn't gone into effect yet.

**4.4 Should Live Pleadings Be "Replead" With Updated References to the Estates Code after January 1<sup>st</sup>?** Hopefully not, but then as a practical matter, that depends on the judge you're before.

### *Drafting Tip*

Even if there is no requirement to "replead" with references to the Estates Code after January 1<sup>st</sup>, it would be good practice to revise those references in any amended or new pleadings that are filed.

## **5. Construction Issues.**

### **5.1 Statutory References to the "Probate Code."**

One of the purposes of Legislative Council's general code update bills is to revise other statutes that refer to repealed sections of the Probate Code so that they now refer to the corresponding Estates Code provision. But just in case they miss anything, Estates Code Section 21.003(a) provides a catch-all solution:

(a) A reference in a law other than in this code to a statute or a part of a statute revised by, or redesignated as part of, this code is considered to be a reference to the part of this code that revises that statute or part of that statute or contains the redesignated statute or part of the statute, as applicable.

And in addition to this specific provision in the Estates Code, the Code Construction Act (Chapter 311 of the Government Code), which applies to all of the codifications made pursuant to 1963's SB 367, covers this same situation:

#### **Sec. 311.027. STATUTORY**

**REFERENCES.** Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

**5.2 Nonstatutory References to the "Probate Code."** It is not clear whether Sec. 311.027 applies only to references in other statutes, or to any reference, whether in a statute, agreement, or other instrument (it

probably doesn't). It would have been nice had the Estates Code included a provision similar to Trust Code Sec. 111.002:

**Sec. 111.002. CONSTRUCTION OF SUBTITLE.** This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

But the Estates Code doesn't include this provision. Part of the reason may be that for the most part, the Estates Code truly is a nonsubstantive codification of the Probate Code. The Trust Code, on the other hand, while enacted as part of the nonsubstantive codification of the Property Code, was drafted as part of a 10-year REPTL project that began in 1973. While much of the Texas Trust Code is a nonsubstantive codification of the Texas Trust Act, REPTL intentionally also included new provisions relating to contemporary trust practice that were left unaddressed by the Trust Act and provisions relating to trusts that were not a part of the Trust Act but could be logically integrated into the Trust Code.

***Drafting Tip***

We've all read many times that "the cardinal rule is that the intent of the testator/settlor governs." Hopefully, any leftover references to the Probate Code in wills and trusts will be interpreted as references to the corresponding Estates Code provisions. **However, your best practice is to revise your forms to change any Probate Code references to the corresponding Estates Code provisions for documents executed beginning January 1<sup>st</sup>.** And remember that financial

powers of attorney are also governed by provisions moved to the Estates Code, so check those forms also.

Perhaps in 2015 REPTL will propose adding language to the Estates Code similar to that found in Trust Code Sec. 111.002.

**6. Other [Free!] Resources.**

**6.1 Revisor's Reports.** Legislative Council has prepared and posted online two Revisor's Reports – the first an 882-page report indicating the derivation of each section of the nonsubstantive Estates Code passed in 2009, and a second a 715-page report indicating the derivation of each section of the nonsubstantive Estates Code passed in 2011. You can find a link to the both Revisor's Reports on the Legislative Council website at:

[www.tlc.state.tx.us/code\\_current\\_estates.htm](http://www.tlc.state.tx.us/code_current_estates.htm).

**6.2 Professor Beyer's Estates Code.**

Prof. Gerry Beyer of the Texas Tech University School of Law has prepared and posted online a very helpful compilation of the entire Estates Code through the 2011 session, including substantive revisions, and both derivation and disposition tables. It should be revised for the 2013 changes in the near future, if it hasn't been revised by the time you read this. Prof. Beyer already has posted as a separate document his derivation and disposition tables, updated for changes through the 2013 session. This documents can be found at:

[professorbeyer.com/Estates\\_Code/Texas\\_Estates\\_Code.html](http://professorbeyer.com/Estates_Code/Texas_Estates_Code.html)

**6.3 Texas' Online Estates Code.** The versions of the Texas Constitution and statutes available online from the state now include the Estates Code. You can find those items, and specifically the Estates Code, at:

[www.statutes.legis.state.tx.us/?link=ES](http://www.statutes.legis.state.tx.us/?link=ES).

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**Attachment 2A – It’s Going to Be Okay: Transition to the New *Estates Code***

[The following is a minimally edited version of a paper authored by T. Aaron Dobbs and first presented at the South Texas College of Law 28<sup>th</sup> Annual Wills and Probate Institute. It has been reproduced here with his permission.]

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**1. Hello!**

**1.1 Introduction.** I am not afraid to say it – I just love the Texas Probate Code. I say that mostly because it is familiar – at 57 years old, it is the only probate code that most of us Texas probate and estate planning practitioners have ever known. Sure, it is illogical and disorganized, but we can look past those faults if it means avoiding change for the sake of comfort, right?

Well, you may want to sit down for this: the Probate Code is soon going to be going to the big Probate Court in the sky. You heard me right – the Texas Probate Code is a goner and will be replaced in a few short months with a newer model that promises to be more accessible, more understandable, and more usable.

But fear not brethren! We are not the first section of the State Bar to get a replacement code, and in this case, the discomfort might not be as bad as you think. Here’s why:

**2. It’s a Long Story, But ...**

**2.1 Back in the Day.** For a while, our state laws were simply enacted. The Texas Legislature would meet and vote on the passage of important legislation, but the new statutes were left to fall where they may. The Legislature – realizing the need for some order – made a few early attempts to provide for the organization of existing laws, but those efforts provided some illogical, although alphabetical, results. For example, the statutes began with “accountants” and ended with “wrecks,” and in between the laws of descent and distributions were found adjacent to the laws governing detectives and regulating drainage systems. But those were simpler times when it was a misdemeanor for having a potty mouth “over or through any telephone in this state.” Art. 472, Revised Civil and Criminal Statutes of Texas, 1911.

**2.2 Vernon’s Texas Civil Statutes.** Before the initiation of the current “code” organization system, Texas statutes were last revised in 1925, and no expansion room was built in to the 1925 revision for future laws. Most of the laws enacted after that time had no place to go, so a private publisher unofficially arranged and organized the new statutes in what is now called “Vernon’s Texas Civil Statutes.” However, without uniform drafting guidelines, these efforts resulted in grammatical inconsistencies, bizarre numbering schemes, and surplus substance. *See Texas Legislative Council Drafting Manual, Page 137 (2006).*

**2.3 The Texas Probate “Code.”** In 1955 during the 54th Legislative Session, the Legislature adopted an act that is known and cited as the “Texas Probate Code.” *Tex. Prob. Code §1.* That’s right – the Probate Code that we have come to know is not *really* a Code, but rather a serious of statutes that pretends to be a *code* hanging out in the middle of Vernon’s. Though it has been subject to many amendments throughout its 57 years of existence, the Probate Code looks and feels the same, at least as to style and organization. In fact, the Legislature had an opportunity to scratch the Probate Code by adopting the Uniform Probate Code, but determined that “for the most part, the Texas Probate Code is superior.” *43 TEX. B.J. 892 (1980).*

**2.4 Continuing Statutory Revision Program.** In 1963, the Legislature recognized that the current state of our statutes was in disarray and that modern law dictated a “sensible statutory arrangement.” *See Texas Legislative Council Drafting Manual.* And so, a statute was enacted to create the Continuing Statutory Revisions Program. *Tex. Gov’t Code §323.007.* The Program mandates that the Texas Legislative Council, a nonpartisan professional support agency of the legislative branch (unofficially referred to by some as the Legislature’s law firm), “plan and execute a permanent statutory revision program for the systematic and continuous study of the statutes of this

state and for the formal revision of the statutes on a topical or code basis...to clarify and simplify the statutes and to make [them] more accessible, understandable, and useable.” *Id.* According to the *Texas Legislative Council Drafting Manual*, the revision process “involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law.” The statute creating the revision program concludes with perhaps the most important mandate – ensure that the revision program is implemented in a manner that makes subsequent revisions to the collection of laws unnecessary, for goodness sake.

**(a) Example 1: Breaking apart current sections and moving to different parts of the Code.** The Estates Code is full of remodeled provisions. Take, for example, Section 156 of the Probate Code. That section deals with two different concepts that both just happen to involve the same topic, a deceased spouse’s community property, even though the concepts do not necessarily work together. The first concept discussed in Section 156 relates to the liability of community property for debts of the decedent. The second concept relates to the administration of community property. The Estates Code splits up Section 156 and neatly places the two topics among more relevant provisions. The aspect relating to liability for debts is placed in Section 101.052 of the Estates Code, which happens to be in a chapter that contains provisions relating to the passage of title and distribution of decedents’ property. The aspect relating to the administration of community property is placed in Section 453.006(b) of the Estates Code among other provisions relating to a surviving spouse’s rights, duties, and limitations over community property in the context of a probate estate.

**(b) Example 2: Collapsing multiple sections into one section of the Code.** Another example would be the collapse of four sections of the Probate Code relating to the bonding requirements of certain executors into one section of the Estates Code. Sections 214 through 217 of the Probate Code are now located together in Section 305.102.

**(c) Example 3: Clarifying intent through the use of more logical punctuation and format.** A final example from the Estates Code project is seemingly mundane, but nonetheless important. Section 100 of the Probate Code provides three grounds for contesting a foreign will. Each ground listed is concluded with a period. The reader is left to interpret

the statute as to whether a contestant must plead and prove each of the three grounds or just one of the grounds to contest a foreign will. Section 100 is revised as Section 504.001(b) of the Estates Code, which clarifies that a contestant must prove only one of the three grounds by replacing the period after each ground with a semicolon or the “or.”

**2.5 The Original Blueprint.** The original blueprint for the revision program envisioned breaking the law into 26 different codes, but a 27<sup>th</sup> code was later added to the plan. See *Bill Analysis for the engrossed version of HB 2505 (81<sup>st</sup> Legislative Session, Regular Session)*. Since the beginning of the revision program, most of the permanent statutes have been codified into various codes. The Legislative Council decided to save the best of the uncoded statutes for the last of the initial revision program – the Texas Probate Code.

With the adoption of the actual code to house our probate laws, one of the last codes will be enacted. However, the law requires that all of the codes be continuously updated in an effort to preserve the Legislative Council’s massive overhaul that began five decades ago. Although we will probably not see another systematic reorganization of our laws, each code will receive routine maintenance to ensure maximum accessibility and usability.

### 3. It’s Like Plastic Surgery, Except for Laws.

**3.1 You Can Call It an Improvement.** The revision process involves redrafting and reorganizing current statutes involving a particular area of law. Some statutes, such as those creating municipal utility districts, have never been compiled before the adoption of the Special District Local Laws Code. Other statutes, such as probate statutes, have at least been compiled together although not officially as a “code.”

In between each legislative session, the legal staff of the Texas Legislative Council works on revising at least one proposed code. This involves a thorough review of the current law, analyzing such law against case law interpreting the law, identifying statutes that are invalid, duplicative, or ineffective, and redrafting the statutes into “a single, well-organized, well-written statutes that conforms to the format and consistent manner of expression in the codes that have already been revised.” See *Texas Legislative Council Drafting Manual*. For example, if the Estates Code is being revised to use the term “Person,” the goal is that the meaning of that terms is the same across all of the codes instead of having varying meanings of the same term.

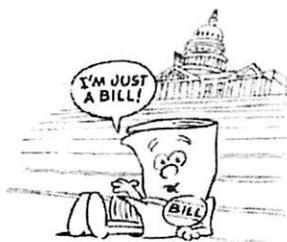
As you can imagine, it is no small task to be as consistent as possible over 27 codes that have been enacted over a 50 year period. To ensure consistency, the Legislative Council has adopted drafting conventions and guidelines that are published in a drafting manual for its staff but is also available to the public at [www.tlc.state.tx.us/lege\\_ref.htm](http://www.tlc.state.tx.us/lege_ref.htm). Although not intended for drafting outside of the legislative process, I find the manual helpful in my legal practice when attempting to draft motions, briefs and other pleadings in plain English. After all, your pleading stands to be more persuasive if the judge actually understands it.

You may have heard the Otto von Bismarck quote, "Laws are like sausages, it is better not to see them being made." While this is no doubt a fair assessment of most law making which can be subject to last minute amendments, the statutory



revision program is a thorough process that involves several levels of internal review and the opportunity for external comment. Typically, an attorney is assigned a particular chapter of the old law to revise into a logical, clear and concise product. The drafter's task is to use simple language, not fancy legalese. After that attorney completes the initial draft, it is then reviewed by at least two other experienced attorneys and edited by at least one professional legal editor for form, style, internal consistency, and grammar.

After a preliminary draft is prepared, the Legislative Council solicits comments from the public and from certain stakeholders.



For instance, the Real Estate, Probate & Trust Law section of the State Bar of Texas provided significant support, guidance and review of the proposed Estates Code. Once a final version of the proposed Code is ready, it is presented to the Legislature as a bill. For reasons discussed below, it is unlikely that the bill will be amended throughout the legislative process. How do you like them apples, Otto von Bismarck?!

A document called a "revisor's report" is prepared to go along with the bill for the new code. This report is helpful to understand the proposed new law, the old law (referred to as the "source law"), and a "Revisor's Note" that explains the revision. By way of example,

the following appeared in one of the two Revisor's Reports for the Estates Code:

Revised Law

*Sec.22.001. APPLICABILITY OF DEFINITIONS. (a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.*

*(b) If Chapter XIII provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Chapter XIII applies in that chapter.*

Source Law

*Sec.3. Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context: ...*

Revisor's Note

*Section 3, Texas Probate Code, refers to "Chapter XIII of this Code," meaning Chapter XIII, Texas Probate Code. That chapter has been redesignated in the Estates Code as Chapter XIII, Title 25, and the revised law therefore retains the reference to Chapter XIII. However, the revised law omits the reference to "of this Code" as unnecessary because the revised law is also part of the Estates Code, and Section 311.006(1), Government Code (Code Construction Act), applicable to the revised law, provides in part that a reference to a chapter in a code without further identification is a reference to a chapter of that code.*

As you get familiar with the Estates Code, it may be helpful to refer to the Revisor's Reports if you do not understand why a certain revision was made.

**Practice Tip:** After the Estates Code becomes operative law, the Revisor's Report may be helpful in arguing statutory construction or legislative intent.

**3.2 But Don't You Dare Call It Substantive!**

You see, there is this one, small thing: when a code is put together under the Revision Program, no part of the revision process may alter the sense, meaning, or effect of the statute. That means that the Legislative Council must take painstaking measures to organize and refine the statutes in a logical order and in modernized language without making any substantive changes. §323.007(b), *Tex. Gov't Code*. This means that if a particular statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved. See *Bill Analysis to the engrossed version of HB 2505 (81<sup>st</sup> Legislative Session, Regular Session)*.

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This is an exacting task. But what happens if the Legislative Council makes an unintended departure from the prior law? Several cases have examined this question with mixed and controversial results.

The Supreme Court of Texas has held that when a nonsubstantive bill makes a substantive change, the new law controls if the new law is clear, direct, unambiguous, and irreconcilable with the prior law. *Fleming Foods of Texas, Inc. v. Rylander*, 6 SW3d 278, 285 (Tex. 1999). The Court reasons that prior law and legislative history cannot be used to alter or disregard the express terms of a code provision when its meaning is clear from the code when considered in its entirety, unless there is an obvious error such as a typographical one that resulted in the omission of a word, or application of the literal language of a legislative enactment would produce an absurd result. *Id.* at 284.

In *American Indemnity Co. v. City of Austin*, the Supreme Court upheld the recodification of previously unconstitutional law and found the recodification to be constitutional. 246 SW 1019, 1024 (Tex. 1922). The Court reasoned that “the general rule...is that such [revised] Codes are not mere compilations of laws previously existing, but bodies of law so enacted that laws previously existing ... cease to exist.” *Id.*

The holding in a more recent case, *Entergy Gulf States, Inc. v. Summers*, is based on the same premise as *Fleming Foods* and *American Indemnity*, although the Legislative Council contends the holding is flawed because the alleged substantive change was enacted four years prior to and outside of the Council’s recodification of the same statute. 282 SW3d 433 (Tex. 2009).

Several intermediate courts have held that when a substantive change is made to a statute through legislation intending to make nonsubstantive revisions, the former law should be considered, or even govern, if the codification is ambiguous. *See Minton v. Perez*, 783 SW2d 803, 805 (Tex.App.— San Antonio 1990, orig. proceeding); *Bryant v. Metropolitan Transit Authority*, 722 SW2d 738 (Tex.App.—Hou. [14th Dist.] 1986, no writ).

Although the Legislative Council is prohibited by law from making substantive revisions as a part of its revision program, substantive changes may be made concurrently through separate legislation. For instance particular substantive changes to the Estates Code were amended in the same legislative session that the nonsubstantive Estates Code bill was adopted. When this happens, the Legislative Council is tasked with

conforming the newly enacted code to the substantive changes made to it by the same legislature.

### 4. Enter the Estates Code.

The Legislative Council started working on the Estates Code in the summer of 2007. The Council anticipated it would take two interim legislative sessions to complete the review of the Probate Code and proposed enacting the Estates Code in two installments.

**4.1 81<sup>st</sup> Regular Session.** The first installment of the Estates Code was carried in HB 2502 and enacted by the 81<sup>st</sup> Legislature. Although the 81<sup>st</sup> Legislature adjourned in 2009, the changes adopted by HB 2502 become effective January 1, 2014. The initial installment includes revisions to general provisions of the Probate Code, most sections relating to decedent’s estates, and nontestamentary transfers.

The sections of the Probate Code relating to the scope of a “probate proceeding” and jurisdiction were not included in either of the Legislative Council’s nonsubstantive revisions bills. However, during the 81<sup>st</sup> Legislative Session, these sections underwent substantive revisions and were added to the Estates Code as Chapters 31 and 32 through the enactment of SB 408. Even though the Estates Code is not even effective until 2014, certain sections of Chapters 31 and 32 were also amended during the 82<sup>nd</sup> Legislature by SB 1198.

**4.2 82<sup>nd</sup> Regular Session.** The second installment of the Estates Code was carried in HB 2759 and enacted by the 82<sup>nd</sup> Legislature. Although the 82<sup>nd</sup> Legislature adjourned in 2011, the changes adopted by HB 2759 become effective January 1, 2014. The second installment includes revisions to guardianships (except for provisions relating to the scope, jurisdiction, and venue of guardianship proceedings), and the Durable Power of Attorney Act.

The sections of the Probate Code relating to venue (except for Section 5B and 5C), the creation, administration, and closing of an independent administration, and the exemption, allowances and claims in an independent administration were not included in either of the Legislative Council’s nonsubstantive revisions bills. However, during the 82<sup>nd</sup> Legislative Session, these sections underwent substantive revisions and were added to the Estates Code through the enactment of SB 1198.

**4.3 82<sup>nd</sup> First Called Session/83<sup>rd</sup> Regular Session.** Sections 5B and 5C of the Texas Probate Code relating to the transfer of a probate proceeding and actions to collect delinquent property taxes, and the

sections of the Probate Code relating to the scope, jurisdiction, and venue of guardianship proceedings were not included in either of the prior nonsubstantive revision bills.

Through a series of legislation in the 81<sup>st</sup> and 83<sup>rd</sup> Legislative Sessions, Sections 5B and 5C were transferred from the Probate Code and redesignated as Sections 34.001 and 34.002 of the Estates Code. Through a series of legislation in the 82<sup>nd</sup> Regular Session, 82<sup>nd</sup> First Called Session, and 83<sup>rd</sup> Regular Session, the sections relating to the scope, jurisdiction, and venue of guardianship proceedings were added to the Estates Code or transferred from the Probate Code and redesignated as Chapters 1021, 1022, and 1023 of the Estates Code.

**4.4 Organization.** The Probate Code has a knack for jumping around from topic to topic. For instance, smack dab in the middle of Sections 221 and 222 regarding the resignation and removal of a personal representative are two sections relating to Resident Agents. Wouldn't the sections relating to Resident Agents be more appropriately located with more procedural sections?

The Estates Code reorganized the Probate Code in an attempt to group together provisions that logically work or go together. Sure, we may have memorized the numbering of all of the sections of the Probate Code, but the Estates Code attempts at being a more logical and intuitive collection of laws. My humble guess is that it will not take you very long to adjust.

The Estates Code is now broken into three titles: Title 1 has general provisions, including definitions; Title 2 contains statutes relating to Decedent's Estates and Durable Powers of Attorney; and Title 3 houses statutes relating to Guardianships. While this seems to follow the Probate Code's approach, most reorganization occurs within each Title.

### Title 2

Title 2 is broken into Subtitles A through L, and Subtitle P. Subtitles A and B contain provisions mostly found in the front of the Probate Code – jurisdiction/venue and procedural matters. Those provisions relating to Resident Agents? They are now found in Subtitle B.

Subtitle C regards the passage of title and distribution of decedents' property. Sections from all over the Probate Code are grouped together here, including the sections relating to nonprobate assets (former Section 450) multiple-party accounts (former Sections 436-439), homestead (former Sections 270, 284, 285), and

valuation/taxation of estate property (former Sections 322 and 378A).

Subtitle D groups together proceedings that occur prior to administration of an estate, such as entry into safe deposit boxes (former Sections 36B-36F) and emergency intervention (former Sections 108-115).

Subtitle E regards intestate succession, including small estate affidavits which were formerly sandwiched in between temporary administrations and independent administrations.

Subtitle F contains provisions relating to the making, safekeeping, and probate of wills. The notices to beneficiaries after probate of will (former Section 128A) or on application to probate will after four years (former Section 128B) are now found at the end of this subtitle. Those same notice provisions were located between emergency intervention sections and temporary administration sections in the Probate Code.

Subtitle G groups together provision relating to the initial appoint of personal representative and opening of administration – from the application through the inventory, appraisalment and list of claims.

Subtitle H relates to most issues that come up during the continuation of administration after the inventory, appraisalment and list of claims has been filed.

Subtitle I relates to the creation, administration and closing of an independent administration, and Subtitle J relates to additional matters relating to the administration of certain estates – including temporary administrations, the administration of community property, and orders of no administration.

Subtitle K relates to ancillary probates and the probate of a foreign will. Subtitle L relates to the payment of estates into the State Treasury.

Subtitles M-O do not contain any current statutes and are reserved for expansion (future probate laws).

Subtitle P contains statutes relating to the durable powers of attorney.

### Title 3

Perhaps due to extensive changes to the guardianship statutes in 1993, the transformation and reorganization of the guardianship provisions is not as dramatic as the reorganization of the probate provisions. *See Acts 1993, 73<sup>rd</sup> Leg., ch. 957.*<sup>1</sup> Title 3 is broken into Subtitles A through I. Subtitles A, B and C contain general jurisdiction/venue, and procedural statutes. Subtitle D

<sup>1</sup> Session laws can be searched at [www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm](http://www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm).

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contains provisions relating to the creation of a guardianship. Subtitle E relates to the administration of a guardianship, and Subtitle F relates to the evaluation, modification, or termination of a guardianship.

Subtitle G contains statutes relating to special types of guardianships, including temporary guardianships, guardianships for nonresident wards, and interstate guardianships. Subtitle H relates to management trusts (sadly, the new section designation is 1301, not 867) and pooled trust subaccounts.

Finally, Subtitle I relates to a potpourri of provisions, including special proceedings and alternatives to guardianship

**4.5 T Minus 104 Days.** Our fair legislature knew just how hard it would be to pry our Probate Codes from us probate attorneys. In order to give practitioners (and the public) time to come to grips with the transition from the old law to the new law, the Legislature has delayed the effective date of the Estates Code until January 1, 2014. While January 1, 2014 seemed a world away when the Legislature first contemplated the Estates Code in June 2007, all of the planning, revisions, comments, review, and legislative wrangling is now complete. Here's a dose of reality – January 1, 2014 is exactly 104 days away.<sup>2</sup>

**4.6 50 Shades of Probate.** A little known (a somewhat dull) fact is that the original title proposed for the new Probate Code was "Estates and Guardianship Code" because the Probate Code was a collection of laws covering not only probate, but also guardianships, durable powers of attorney, and non-testamentary transfers. This is sound logic, but the Legislature decided to revert back to a less inclusive (though less cumbersome) title by changing the "Estates and Guardianship Code" to simply the "Estates Code." In fact, the sole amendment to the bill adopting the first installment of the Estates Code was to strike "and Guardianships" from the title.

### 5. Tips, Takeaways, and Smart Remarks.

The following are a few suggestions to help your transition into the new Estates Code:

#### 5.1 Tips.

- The full text of the Estates Code is available at [www.statutes.legis.state.tx.us/](http://www.statutes.legis.state.tx.us/).
- If you are having trouble locating provisions in the Estates Code, there are several sources of derivation tables (Estates Code » Probate Code)

and disposition tables (Probate Code » Estates Code) at your disposal. Tables are found at the front of Johanson's Texas Probate Code Annotated. Tables are found at the end of both Revisor's Reports, which can be found at [www.tlc.state.tx.us/code\\_current\\_estates.htm](http://www.tlc.state.tx.us/code_current_estates.htm). Professor Gerry Beyer has also published his Conversion Table on his website at [www.professorbeyer.Estates\\_Code.html](http://www.professorbeyer.Estates_Code.html).

- After January 1<sup>st</sup>, use the Revisor's Report to argue legislative history. Before January 1<sup>st</sup>, use the Estates Code to argue a more favorable interpretation of the Probate Code (after all, most of the Estates Code is nonsubstantive).

#### 5.2 Takeaways.

- The Code Construction Act applies to the Estates Code (it did not apply to the Probate Code). The Code Construction Act is found in Chapter 311 of the Texas Government Code, and it contains general statutory construction rules (and aids) for each code enacted as a part of the statutory revision program.
- The Probate Code is repealed as of January 1, 2014, but some of its provisions may still apply to some estates and guardianships pending on that date. Accordingly, during this time of transition, do not throw away your Probate Code just yet.

#### 5.3 Smart Remarks.

- So that you are not so overwhelmed on January 1<sup>st</sup>, begin updating references in your pleadings and estate planning forms now.
- To help you become fluent in the Estates Code by January 1<sup>st</sup>, start citing to both the Probate Code and the Estates Code. Your advocacy skills may be more sharp if you are not fumbling around for the new code provision.

### 6. Conclusion.

Granted, the Estates Code is the biggest thing to happen to the Probate Section of the State Bar since 1956. But remember, although the Estates Code will look and feel different, it is not intended to be a change of the meaning, intent, or substance of the law. Accordingly, not much will change at 11:59 p.m., December 31, 2013. Use the next 104 days by getting familiar with the Estates Code, but keep your cool and don't stress out!

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<sup>2</sup> This paper was originally prepared for presentation on September 19, 2013.