

BILL ANALYSIS

Senate Research Center
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S.B. 1623
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Sections 155 through 177, Texas Probate Code, exist for the administration of community property after the death of a spouse. Informal administration is the administration of the community property by the surviving spouse without court intervention or court authority, whereas formal community administration is an administration by a surviving spouse pursuant to the authority of the probate court. Both forms of community administration were created at a time when no other statutory mechanism was available for a spouse to administer community property.

In later years, the legislature created an alternative mechanism to administer community property during intestacy by authorizing independent administration for both separate and community property of those dying without a will. This alternative made it easier for a spouse to administer community property. Since this statutory reform, probate practitioners abandoned community administration in favor of the independent administration system. Rarely, if ever, does formal administration of community property now occur.

As proposed, S.B. 1623 deletes existing statute providing for formal administration of a community estate and retains the statute addressing informal administration of a community estate.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 155, Texas Probate Code, as follows:

Sec. 155. New heading: NO NECESSITY FOR ADMINISTRATION OF COMMUNITY PROPERTY. Deletes existing text specifying that community administration or otherwise as not being necessary in the event that community property of a husband or wife who dies intestate passes to the survivor. Provides that nothing in this part of Chapter VI (Special Types of Administration), Texas Probate Code, prohibits the administration of community property under other provisions of Texas Probate Code relating to the administration of an estate.

SECTION 2. Amends Section 156, Texas Probate Code, to require the surviving spouse, rather than the survivor in the administration of community estates, to keep a separate, distinct account of all community debts allowed or paid in the administration and settlement of estates subject to the liabilities of a spouse who was engaged in the sole or joint management, control, and disposition of the community property.

SECTION 3. Amends Section 160(a), Texas Probate Code, to provide that the surviving spouse has the power to sue and be sued, rather than that the surviving spouse, without qualifying as community administrator, has the power to sue or be sued.

SECTION 4. Amends Section 168, Texas Probate Code, as follows:

Sec. 168. ACCOUNTING BY SURVIVOR. Requires the survivor, rather than "the survivor, whether qualified as community administrator or not," to keep a fair and full account of certain items. Deletes existing text requiring neither the survivor nor the survivor's bondsmen to be liable for losses sustained by the estate. Provides that the survivor is prohibited from being liable for said losses with certain exceptions.

SECTION 5. Amends Section 176, Texas Probate Code, to delete existing text providing that the surviving spouse's powers or liabilities as qualified community administrator or administratrix are not terminated by the surviving spouse's remarriage. Makes a conforming change.

SECTION 6. Amends Section 177, Texas Probate Code, as follows:

Sec. 177. DISTRIBUTION OF POWERS AMONG PERSONAL REPRESENTATIVES AND SURVIVING SPOUSE. Deletes existing Subsection (a) (regarding certain entitlements of a qualified community administrator upon qualification). Redesignates text from existing Subsection (b). Makes conforming changes.

SECTION 7. Repealers: Section 151(e) (regarding termination of community administration); Section 161 (Community Administration); Section 162 (Application for Community Administration); Section 163 (Appointment of Appraisers); Section 164 (Inventory, Appraisal, and List of Claims); Section 165 (Bond of Community Administrator); Section 166 (Order of the Court); Section 167 (Powers of Community Administrator); Section 169 (Payment of Debts); Section 170 (New Appraisal or New Bond); Section 171 (Creditor May Require Exhibit); Section 172 (Action of Court Upon Exhibit); Section 173 (Approval of Exhibit); Section 174 (Failure to File Exhibit); and Section 175 (Termination of Community Administration), Texas Probate Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2007.