

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 360. PARTITION AND DISTRIBUTION OF ESTATE

SUBCHAPTER A. APPLICATION FOR PARTITION AND DISTRIBUTION

Sec. 360.001. GENERAL APPLICATION. (a) At any time after the first anniversary of the date original letters testamentary or of administration are granted, an executor, administrator, heir, or devisee of a decedent's estate, by written application filed in the court in which the estate is pending, may request the partition and distribution of the estate.

(b) An application under Subsection (a) must state:

- (1) the decedent's name;
- (2) the name and residence of each person entitled to a share of the estate and whether the person is an adult or a minor;
- (3) if the applicant does not know a fact required by Subdivision (2); and
- (4) the reasons why the estate should be partitioned and distributed.

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

Sec. 360.002. APPLICATION FOR PARTIAL DISTRIBUTION. (a) At any time after original letters testamentary or of administration are granted and the inventory, appraisement, and list of claims are filed and approved, an executor, administrator, heir, or devisee of a decedent's estate, by written application filed in the court in which the estate is pending, may request a distribution of any portion of the estate.

(b) All interested parties, including known creditors, must be personally cited as in other distributions.

(c) Except as provided by Subsection (d), the court, on proper citation and hearing, may distribute any portion of the estate the court considers advisable.

(d) If a distribution is to be made to one or more heirs or

devises, but not to all heirs or devisees, the court shall require a refunding bond in an amount determined by the court to be filed with the court, unless a written waiver of the bond requirement is filed with the court by all interested parties. On approving the bond, if required, the court shall order the distribution of the relevant portion of the estate.

(e) This section applies to corpus as well as income, notwithstanding any other provision of this title.

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

SUBCHAPTER B. CITATION

Sec. 360.051. CITATION OF INTERESTED PERSONS. (a) On the filing of the application, the clerk shall issue a citation that:

(1) states:

(A) the decedent's name; and

(B) the date the court will hear the application;

and

(2) requires all persons interested in the estate to appear and show cause why the estate should not be partitioned and distributed.

(b) A citation under this section must be:

(1) personally served on each person residing in the state who is entitled to a share of the estate and whose address is known; and

(2) served by publication on any person entitled to a share of the estate:

(A) whose identity or address is not known;

(B) who is not a resident of this state; or

(C) who is a resident of this state but is absent from this state.

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

Sec. 360.052. CITATION OF EXECUTOR OR ADMINISTRATOR. When a person other than the executor or administrator applies for

partition and distribution, the executor or administrator must also be cited to appear and answer the application and file in court a verified exhibit and account of the condition of the estate, as in the case of a final settlement.

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

SUBCHAPTER C. PROCEEDINGS; EXPENSES

Sec. 360.101. HEARING ON APPLICATION. (a) At the hearing on an application for partition and distribution, the court shall determine:

(1) the residue of the estate that is subject to partition and distribution;

(2) the persons entitled by law to partition and distribution and those persons' respective shares; and

(3) whether an advancement has been made to any of the persons described by Subdivision (2), and if so, the nature and value of the advancement.

(b) For purposes of Subsection (a)(1), the residue of the estate is determined by deducting from the entire assets of the estate remaining on hand:

(1) the amount of all debts and expenses that:

(A) have been approved or established by judgment but not paid; or

(B) may be established by judgment in the future; and

(2) the probable future expenses of administration.

(c) If an advancement described by Subsection (a)(3) has been made, the court shall require the advancement to be placed in hotchpotch as required by the law governing intestate succession.

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

Sec. 360.102. COURT DECREE. If the court determines that the estate should be partitioned and distributed, the court shall enter a decree stating:

(1) the name and address, if known, of each person entitled to a share of the estate, specifying:

(A) which of those persons are known to be minors;

(B) the name of the minors' guardian or guardian ad litem; and

(C) the name of the attorney appointed to represent those persons who are unknown or who are not residents of this state;

(2) the proportional part of the estate to which each person is entitled;

(3) a full description of all the estate to be distributed; and

(4) that the executor or administrator must retain possession of a sufficient amount of money or property to pay all debts, taxes, and expenses of administration and specifying the amount of money or the property to be retained.

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

Sec. 360.103. EXPENSES OF PARTITION. (a) The distributees shall pay the expense of the estate's partition pro rata.

(b) The portion of the estate allotted to a distributee is liable for the distributee's portion of the partition expense, and, if not paid, the court may order execution for the expense in the names of the persons entitled to payment of the expense.

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

SUBCHAPTER D. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS CAPABLE OF DIVISION

Sec. 360.151. APPOINTMENT OF COMMISSIONERS. If the estate does not consist entirely of money or debts due to the estate and the court has not previously determined that the estate is incapable of partition, the court shall appoint three or more discreet and disinterested persons as commissioners to make a

partition and distribution of the estate.

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

Sec. 360.152. WRIT OF PARTITION. (a) When commissioners are appointed under Section 360.151, the clerk shall issue a writ of partition directed to the commissioners, commanding the commissioners to:

(1) proceed promptly to make the partition and distribution in accordance with the court decree; and

(2) return the writ, with the commissioners' proceedings under the writ, on a date stated in the writ.

(b) A copy of the court decree must accompany the writ.

(c) The writ must be served by:

(1) delivering the writ and the accompanying copy of the court decree to one of the commissioners; and

(2) notifying the other commissioners, verbally or otherwise, of the commissioners' appointment.

(d) Service under Subsection (c) may be made by any person.

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

Sec. 360.153. PARTITION BY COMMISSIONERS. (a) The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order and manner:

(1) if the real estate is capable of being divided without manifest injury to all or any of the distributees, the commissioners shall partition and distribute the land or other property by allotting to each distributee:

(A) a share in each parcel;

(B) shares in one or more parcels; or

(C) one or more parcels separately, with or without the addition of a share of other parcels;

(2) if the real estate is not capable of a fair, just, and equal division in kind, but may be made capable of a fair, just, and equal division in kind by allotting to one or more of the distributees a proportion of the money or other personal property

to supply the deficiency, the commissioners may make, as nearly as possible, an equal division of the real estate and supply the deficiency of any share from the money or other personal property; and

(3) the commissioners shall:

(A) make a like division in kind, as nearly as possible, of the money and other personal property; and

(B) determine by lot, among equal shares, to whom each share shall belong.

(b) The commissioners shall allot the land or other property under Subsection (a)(1) in the manner described by that subsection that is most in the interest of the distributees.

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

Sec. 360.154. COMMISSIONERS' REPORT. (a) After dividing all or any part of the estate, at least a majority of the commissioners shall make a written, sworn report to the court that:

(1) states the property divided by the commissioners; and

(2) describes in particular the property allotted to each distributee and the value of that property.

(b) If real estate was divided, the report must also contain a general plat of the land with:

(1) the division lines plainly set down; and

(2) the number of acres in each share.

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

Sec. 360.155. COURT ACTION ON COMMISSIONERS' REPORT. (a) On the return of a commissioners' report under Section 360.154, the court shall:

(1) examine the report carefully; and

(2) hear:

(A) all exceptions and objections to the report; and

(B) all evidence in favor of or against the

report.

(b) If the report is informal, the court shall have the informality corrected.

(c) If the division appears to have been fairly made according to law and no valid exceptions are taken to the division, the court shall approve the division and enter a decree vesting title in the distributees of the distributees' respective shares or portions of the property as set apart to the distributees by the commissioners.

(d) If the division does not appear to have been fairly made according to law or a valid exception is taken to the division, the court may:

- (1) set aside the report and division; and
- (2) order a new partition to be made.

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

Sec. 360.156. DELIVERY OF PROPERTY. When the commissioners' report has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees on demand the distributees' respective shares of the estate, including all the title deeds and documents belonging to the distributees.

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

Sec. 360.157. COMMISSIONERS' FEES. A commissioner who partitions and distributes an estate under this subchapter is entitled to \$5 for each day the commissioner necessarily engages in performing the commissioner's duties, to be taxed and paid as other costs in cases of partition.

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

SUBCHAPTER E. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS
INCAPABLE OF DIVISION

Sec. 360.201. COURT FINDING. If, in the court's opinion, all or part of an estate is not capable of a fair and equal partition and distribution, the court shall make a special written finding specifying the property incapable of division.

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

Sec. 360.202. SALE OF ESTATE PROPERTY. (a) When the court has found that all or part of an estate is not capable of fair and equal division, the court shall order the sale of all estate property not capable of fair and equal division.

(b) The sale must be made by the executor or administrator in the manner provided for the sale of real estate to satisfy estate debts.

(c) The court shall distribute the proceeds collected from the sale to the persons entitled to the proceeds.

(d) A distributee who buys property at the sale is required to pay or secure only the amount by which the distributee's bid exceeds the amount of the distributee's share of the property.

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

Sec. 360.203. APPLICABILITY OF PROVISIONS RELATING TO SALE OF REAL ESTATE. The provisions of this title relating to reports of sales of real estate, the giving of an increased general or additional bond on the sale of real estate, and the vesting of title to property sold by decree or by deed apply to sales made under this subchapter.

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

SUBCHAPTER F. CERTAIN TYPES OF ESTATE PROPERTY

Sec. 360.251. ESTATE CONSISTING ONLY OF MONEY OR DEBTS. If the estate to be distributed consists only of money or debts due to the estate, the court shall:

(1) set the amount to which each distributee is

entitled; and

(2) order the executor or administrator to pay and deliver that amount.

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

Sec. 360.252. ESTATE PROPERTY LOCATED IN ANOTHER COUNTY.

(a) If any portion of the estate to be partitioned is located in another county and cannot be fairly partitioned without prejudice to the distributees' interests, the commissioners may report those facts to the court in writing.

(b) On the making of a report under Subsection (a), if the court is satisfied that the property cannot be fairly divided or that the sale of the property would be more advantageous to the distributees, the court may order a sale of the property. The sale must be conducted in the manner provided by Subchapter E for the sale of property that is not capable of fair and equal division.

(c) If the court is not satisfied that the property cannot be fairly and advantageously divided, or that the sale of the property would be more advantageous to the distributees, the court may appoint three or more commissioners in each county in which the property is located. If the court appoints commissioners under this subsection, the proceedings under Subchapter D for partition by commissioners must be followed.

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

Sec. 360.253. COMMUNITY PROPERTY. (a) If a spouse dies leaving community property, the surviving spouse, at any time after letters testamentary or of administration have been granted and an inventory, appraisement, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed, may apply in writing to the court that granted the letters for a partition of the community property.

(b) The surviving spouse shall execute and deliver a bond to the judge of the court described by Subsection (a). The bond must be:

(1) with a corporate surety or at least two good and sufficient personal sureties;

(2) payable to and approved by the judge;

(3) in an amount equal to the value of the surviving spouse's interest in the community property; and

(4) conditioned for the payment of half of all debts existing against the community property.

(c) The court shall proceed to partition the community property into two equal moieties, one to be delivered to the surviving spouse and the other to be delivered to the executor or administrator of the deceased spouse's estate.

(d) If a partition is made under this section:

(1) a lien exists on the property delivered to the surviving spouse to secure the payment of the bond required under Subsection (b); and

(2) any creditor of the community estate:

(A) may sue in the creditor's own name on the bond; and

(B) is entitled:

(i) to have judgment on the bond for half of the debt the creditor establishes; and

(ii) to be paid by the executor or administrator of the deceased spouse's estate for the other half.

(e) The provisions of this title relating to the partition and distribution of an estate apply to a partition under this section to the extent applicable.

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. 2.50, eff. January 1, 2014.

Sec. 360.254. JOINTLY OWNED PROPERTY. (a) A person who has a joint interest with a decedent's estate in any property may apply to the court that granted letters testamentary or of administration on the estate for a partition of the property.

(b) On application under Subsection (a), the court shall

partition the property between the applicant and the decedent's estate.

(c) The provisions of this title relating to the partition and distribution of an estate govern a partition under this section to the extent applicable.

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

SUBCHAPTER G. ENFORCEMENT

Sec. 360.301. LIABILITY FOR FAILURE TO DELIVER ESTATE PROPERTY. (a) If an executor or administrator neglects, when demanded, to deliver a portion of an estate ordered to be delivered to a person entitled to that portion, the person may file with the court clerk a written complaint alleging:

- (1) the fact of the neglect;
- (2) the date of the person's demand; and
- (3) other relevant facts.

(b) On the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the executor or administrator. The citation must:

- (1) apprise the executor or administrator of the complaint; and
- (2) cite the executor or administrator to appear before the court and answer, if the executor or administrator desires, at the time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned and that the executor or administrator is guilty of the neglect alleged, the court shall enter an order to that effect.

(d) An executor or administrator found guilty under Subsection (c) is liable to the complainant for damages at the rate of 10 percent of the amount or the appraised value of the portion of the estate neglectfully withheld, per month, for each month or fraction of a month that the portion is or has been neglectfully withheld after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

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