

## PUBLICATION UPDATE

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# Texas Estate Planning

Publication 238      Release 16

November 2009

## HIGHLIGHTS

### Authorization Agreement for a Nonparent Relative

- Texas family Code provides new opportunity for care of minor child.

### No-Contest Clause in Wills

- Clause unenforceable when brought in good faith with probable cause for bringing action.

**Release 16** of *Texas Estate Planning* is up-to-date for the latest rulings, regulations, and cases. Highlights of this release include:

**Authorization Agreement for a Nonparent Relative.** The Texas Family Code now provides for an Authorization Agreement for a Nonparent Relative. This permits a parent to give certain relatives authority over the care of their minor children while the parent is away or unable to act. See new § 16.13.

**Beneficiary Serving as Trustee.** New Trust Code § 113.029 supplies an ascertainable standard for discretionary trust distributions when a beneficiary is serving as

trustee. See §§ 44.05[6][e], 44/06[5][b], 35.13[3].

**Guardianships.** The Texas Probate Code makes changes to guardianship provisions, including changes to trustees for § 867 management trusts and guardianship compensation. See §§ 16.09, 16.11.

**No-Contest Clauses.** • New Texas Probate Code § 64 provides for unenforceability of no-contest clauses in a Will when the court action is brought and maintained in good faith and probable cause exists for bringing the action. See discussion in § 14.112[4].

**Conflict of Interest.** • Texas Supreme Court case, Kappus v. Kappus, held that “conflict of interest” is not a ground for removal of an independent executor under Probate Code § 149C. See § 15.03.

**Declarations of Guardians.** • Section 679 of the Texas Probate Code provides a new one-step procedure for execution and self-proving affidavit in Declarations of Guardian Before the Need Arises. Texas Probate Code Section 677 provides the same for Declarations of Guardians for Minor Children.

For the complete collection of estates practice information and resources available online, sign onto Lexis.com and follow this path: Legal > Area of Law by Topic > Estates, Gifts & Trusts

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Publication 238   Release 16

November 2009

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