

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.

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Publication 238 Release 16

November 2009

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