

## UNDERWRITING BULLETIN - TEXAS

No. 14

**DATE:** September 15, 2011

**RE:** 2011 Legislative Update - 82nd Session – Probate Code

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The 82<sup>nd</sup> Session of the Texas Legislature enacted and/or amended several sections of the Texas Probate Code. A complete text of each referenced bill may be found on the State of Texas Legislature web site: [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

### **Granting an Independent Executor the Power of Sale By Agreement**

**Effective September 1, 2011, SB 1198 added new Section 145A to the Probate Code.**

Upon application to the court, an order appointing an independent executor (IE) may contain general or specific authority for the IE to sell real estate. All heirs or devisees who will take an interest in the real property must consent to the grant of the power of sale by joining in the Application to appoint the IE or by executing separate consents to the Application.

This type of order may be entered when (1) the decedent does not have a will, (2) when a decedent's will does not contain language authorizing the personal representative to sell real property, or (3) when the will contains language that is not sufficient to grant the representative the power of sale.

When the court has granted an IE power of sale in this manner, the IE may sell property without the further consent or joinder of the heirs or devisees.

<p><b>Note: This procedure is only available if the decedent died on or after September 1, 2011.</b></p>
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WFG will insure a title coming out of such a sale provided the Application, consents (if any) and the Order comply with Sect. 145A.

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### **Power of Sale Implied by Existence of Certain Debts – Necessity of Affidavit**

**Effective September 1, 2011, SB 1198 added new Section 145C to the Probate Code.**

An Independent Executor (IE) or an Independent Administrator (IA) may sell estate property (unless limited by the terms of a will) without court supervision and without satisfying the “four step” process when:



1. The sale is made to pay expenses of administration, funeral expenses and expenses of the last sickness of the decedent, and allowances and claims against the estate of the decedent; and,

2. The IE or IA provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in paragraph 1 above, which are the purposes stated in Sect. 341(1) of the Probate Code.

WFG will insure a title coming out of such a sale provided the IA or IE executes the required affidavit and it is placed of record at the time of the sale.

**Note: This procedure is only available if the decedent died on or after September 1, 2011.**

**Note: Dependent Administrators must still comply with the "four step" process.**

**A Joint Account is Not Automatically a Survivorship Account**

**Effective September 1, 2011, SB 1198 added new Section 452(c) to the Probate Code.**

In 2009, the Texas Supreme Court held that an agreement establishing a joint tenancy automatically creates rights of survivorship. (Holmes v. Beatty) In response to the decision, and to overturn it, the legislature added the following subsection (c) to Section 452 of the Probate Code:

(c) A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

For an agreement to establish rights of survivorship in community real property, it should contain substantially the following wording:

1. "with right of survivorship";
2. "will become the property of the survivor";
3. "will vest in and belong to the surviving spouse"; or,
4. "shall pass to the surviving spouse."

**Note: This new subsection applies only to agreements created or existing on or after September 1, 2011.**