2019 Probate Academy

2019 LEGISLATIVE UPDATE

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UT vs. A&M

- UT and A&M would have to play football against each other every Thanksgiving weekend.
  - Failure to do so would result in defunding of all state money for athletic scholarships.
“Marihuana” becomes “cannabis”
Drug testing of legislators
No front plate

ITS THE LAW

WXX-9051
Making probate better?
Nothing is real (at least not yet)

- **Monday, May 27, 2019**
  - Last possible day for voting on bills.

- **Sunday, June 18, 2019**
  - Last possible day for governor to sign or veto.

- **Monday, August 26, 2019**
  - Effective date for bills without specific effective dates.
    - Most bills have effective date of September 1, 2019
1. Intestacy

2. Wills

3. Estate Administration

4. Other Probate Matters
Intestacy
Assume Surviving Spouse, one marital child, and one non-marital child.

- SS keeps his/her 50%.
- Each child inherits 25%.

Some lawyers and judges incorrectly claimed:
- SS keeps his/her 50%.
- SS inherits 25%.
- Each child inherits 12.5%.
Wills
Electronic Wills
Non-English Wills

- Non-English wills would need:
  - English translation
  - Affidavit swearing to accuracy of translation
  - Filed along with will
Estate Administration
Contested Matters

- In a county without a statutory probate court or county court at law exercising probate jurisdiction, if multiple parties request assignment of a statutory probate judge or transfer to district court, the first one filed must be granted.
  - A party can file the motion with the party’s original pleadings to guaranty a first-place position.
If a party asks for assignment of a statutory probate judge, the court could order the estate to reimburse the county for the costs associated with the assignment.
Probate proceedings may be transferred to county of executor's residence after issuance of letters if no immediate family member resides in the county of the decedent's residence.
Determination of Heirship

- Two disinterested and credible witnesses needed unless court satisfied that only one can be found.

Can I Get a Witness?
Distributees could waive bond for an independent executor or administrator even if the will does not do so.
Without court approval, a dependent personal representative could hire and pay:

- Accountants,
- Bookkeepers,
- Tax professionals,
- Real estate agents, and
- Appraisers.
Contingent Attorney Fees

- Court approval in dependent administration only needed for fees in excess of one-third.
Creation of a procedure for the personal representative to terminate the lease of a deceased tenant early to avoid liability for rent after the tenant’s death.
A testator would have the ability to designate a person who has the power to select a successor personal representative.
Will Reformation Actions

- Removal of will reformation actions from constitutional county court in counties without a statutory probate court would be allowed.
  - To county court-at-law with original probate jurisdiction, or, if none,
  - To district court.
Even after probating a will as a muniment of title, a personal representative can be appointed if:

- Filed within four years of death, or
- Court finds administration is necessary.
Digital Asset Access

- Clarifies procedure for executors and administrators, especially independent ones, to get a court order to access digital assets.
These two categories are now combined with the $15,000 limit

They would be separated with each having a $15,000 limit.
Trusts
Revocable Trusts Become “Wills”

- Rules currently governing wills would now govern revocable trusts such as:
  - Pretermitted children
  - Anti-lapse provisions
  - Class gift rules
  - Advancements
Judicial reformations would relate back to date of trust creation rather than date of judgment.
Decanting

- The second “decanting” trust could be created under the same instrument as the original trust.
  - Would allow decanting into trust with same name as original to save costs:
    - Keep same TIN
    - Avoid need to retitle trust property
Directed Trusts

- Person with authority to direct, consent to, or disapprove trustee decisions =
  - Fiduciary!

- Person with authority to remove and appoint trustees, advisors, protectors, etc. =
  - Not fiduciary.
Trustee’s and Attorney’s Fees

- Settlor would not be able to limit the court’s ability to deny trustee’s fees or make an equitable and just award of costs and attorney fees.
Rule Against Perpetuities

- Time period to become 300 years from effective date of trust.
Other Probate Matters
Transfer on Death Deeds

- Repeal of Statutory Forms
  - Creation
  - Revocation
Medical Power of Attorney

- Statutory form would become optional.
Instead of witnessing of documents, notarization would be allowed.
Now, we wait and see!

WE'LL JUST HAVE TO WAIT AND SEE.

John Lovell