



National Investors Title Insurance Company

INNOVATIVE BY INSTINCT

WHO WILL SIGN IN PROBATE MATTERS

THE TRANSACTION DOCUMENTS

A Discussion of

**Death
Divorce, &
Bankruptcy**

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Note: Texas homestead law creates an exception to every rule. We will try to discuss the homestead implications as we discuss the following:

DEATH or INCAPACITY(f/k/a NCM)

1. Testate vs. Intestate
 - a. Does a Will have to be probated?
 - b. What is probate of a Will as a Muniment of Title?
 - c. 4 Steps to sell by Court Order
 - d. Testate – Devisees, Executor (Court), Independent Executor, Administrator (Court), Heirs, Spouses
 - e. Intestate – will need an Affidavit of Heirship by two disinterested parties or Court Determination of Heirship – Heirs, Administrator (Court), Independent Administrator, Spouses
2. Guardianship (Court)
 - a. of the Estate vs. of the Person
 - b. same 4 steps to sell by Court Order
3. Trust – Trustee(s), Alternate Trustee, Court Appointed Trustee, maybe the Beneficiaries
4. Interest of Minor or Incapacitated Person (without Guardianship)
 - a. Texas Probate Code 889 – Sale by natural or adoptive parent or managing conservator when interest is \$100,000 or less.
 - b. Texas Probate Code 890 – Sale by Guardian of the Person when interest is \$100,000 or less.

- c. All proceeds go to court not parent or Guardian. They will then be distributed by petitioning the court.
- 5. Judicially Declared Incapacitated Spouse – 883 (s/k/a) Community Administrator – surviving spouse as to all community property
- 6. Other Issues
 - a. Foreign Wills, foreign probate
 - b. Estate Taxes
 - c. Probate proceedings and filing of Inventory

DIVORCE

- 1. Status of Divorce Proceedings
- 2. Community vs. Separate Property
- 3. Divorce Decree/Property Settlement Agreement

“Awards or vests” title in A + “Divests title from B = Successful Closing

- 4. Receivership

BANKRUPTCY

1. Types

a. Chapter 7 – Liquidation

- i. homestead – debtors
- ii. all other property – Trustee
- iii. When does the bankruptcy Trustee's control of the estate terminate? When case is “concluded” which means essentially when there is a Discharge Order + Trustee's Final Report?

b. Chapter 11 – Reorganization – business with an income stream

- i. debtor in possession
- ii. sale in the normal course of business

c. Chapter 13 – Individual Workout – individual or couple with steady income

- i. Has Ch. 13 Plan been submitted and approved by Creditors and Court?
- ii. If Plan approved, what does it require?
- iii. Is property exempt?
- iv. Will Trustee Consent?

d. Spouses

e. Entities

f. Conflicts between Bankruptcy and Probate proceedings:

Property acquired by the debtor within 180 days of filing bankruptcy petition, acquired by inheritance or devise, property settlement agreement with spouse or the result of any other court order becomes part of debtor's bankruptcy estate and subject to the bankruptcy proceedings.

EXHIBIT “A”
DECEDENTS ESTATE – PROBATE SALES - TEXAS PROBATE CODE

Step 1

Section 341 Application for Sale of Real Estate

Section 342 Contents of Application

Section 343 Setting of Hearing on Application

Section 344 Citation and Return on Application

Section 345 Opposition to Application

Step 2

Section 346 Order of Sale

The court shall order the sale to be made. The order shall specify:

- 1) Description of the property;
- 2) Whether at public auction (specify the time and place) or private sale
- 3) The necessity or advisability of the sale and its purpose
- 4) Whether bond should be increased
- 5) That the sale shall be made and the report returned in accordance with law
- 6) The terms of the sale

Section 347 Procedure When Representative Neglects to Apply for Sale

Section 348 Permissible Terms of Sale of Real Estate

- 1) For cash or credit
- 2) Recoveyance upon redemption

Section 349 Public Sales of Real Estate

- 1) Notice of Sale
- 2) Method of Sale
- 3) Time and Place of Sale
- 4) Continuance of Sale
- 5) Failure of Bidder to Comply

Section 350 Private Sales of Real Estate

Step 3

Section 353 Report of Sale

Within 30 days after the sale is made.

- 1) The date of the order of sale
- 2) Description of property sold
- 3) The time and place of sale
- 4) The purchaser
- 5) The amount
- 6) The terms of the sale, whether made at public auction or privately
- 7) Whether the purchaser is ready to comply with the order of sale

Section 354 Bond of Sale of Real Estate

Step 4

Section 355 Action of Court on Report of Sale

After expiration of 5 days from filing, court shall hold a hearing, the court shall enter a decree confirming the sale, and authorizing the conveyance upon compliance by the purchaser with the terms of the sale. This is a final judgment.

CLOSE

Section 356 Deed Conveys Title to Real Estate

The deed shall refer to and identify the decree of the court confirming the sale

Section 357 Delivery of Deed, Vendor's and Deed of Trust Lien

After a sale is confirmed by the court and the terms of the sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver a deed.

EXHIBIT “B”
GUARDIANSHIP ESTATE – PROBATE SALES - TEXAS PROBATE CODE

STEP 1

Section 820 Application to Sell Real Estate

When necessary or advisable

Section 821 Contents of Application

Section 822 Setting of Hearing on Application

Section 823 Citation and Return on Application

Section 824 Opposition to Application

STEP 2

Section 825 Order of Sale

After hearing, the order shall specify:

- 1) Identify the property
- 2) Whether it's to be a public auction or private sale
- 3) The necessity or advisability of the sale and its purpose
- 4) Whether a bond is required
- 5) That the sale shall be made and the report returned in accordance with law
- 6) The terms of the sale

Section 826 Procedure When Guardian Neglects to Apply for Sale

Section 827 Permissible Terms of Sale of Real Estate

Section 828 Public Sale of Real Estate

Section 829 Private Sale of Real Estate

Section 830 Sales of Easements and Rights of Way

Section 831 Guardian Purchasing Property of the Estate

STEP 3

Section 832 Report of Sale

Within 30 days after sale is made

- 1) The date of the order of sale
- 2) Description of property
- 3) Time and place of sale
- 4) Name of purchaser
- 5) The amount
- 6) Terms of the sale, and whether it was public or private
- 7) Whether the purchaser is ready to comply with the order of sale

Section 832 Bond on Sale of Real Estate

STEP 4

Section 834 Action of Court on Report of Sale

Five days after report of sale is filed, the court shall enter a decree confirming the sale and authorizing the conveyance.

CLOSE

Section 835 Deed Conveys Title to Real Estate

When real estate is sold, the conveyance of real estate shall be by proper deed that refers to and identifies the decree of the court that confirmed the sale.

Section 836 Delivery of Deed, Vendor's Lien and Deed of Trust Lien

After a sale is confirmed by the court, and one purchaser has complied with the terms of sale, the guardian shall deliver a proper deed.