

PRESENTED AT

19th Annual Estate Planning, Guardianship, and Elder Law Conference

August 3–4, 2017

Moody Gardens, Galveston, Texas

MAKE PROBATE GREAT AGAIN

The 2017 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

Legislative Liaison and Principal Presenter:

Craig Hopper

Hopper Mikeska, PLLC

Chair, REPTL Estate and Trust Legislative Affairs Committee
(See Contact Info and Bio on Page i.)

Author and Alternate Presenter:

William D. Pargaman

Saunders, Norval, Pargaman & Atkins, LLP

Past Chair, REPTL Estate and Trust Legislative Affairs Committee
(See Contact Info and Bio on Page iii.)

This version was updated **July 24, 2017**. You can check for a more recent version at:

www.snpalaw.com/resources/2017LegislativeUpdate

Or go to the [Resources](#) page at snpalaw.com and scroll to "2017 Texas Estate and Trust
Legislative Update."

(See the note on page 1 about hyperlinking to the online version of this paper.)

CRAIG HOPPER

HOPPER MIKESKA, PLLC
400 WEST 15TH STREET, SUITE 408
AUSTIN, TEXAS 78701
(512) 615-6195

chopper@hoppermikeska.com

AREAS OF PRACTICE

Probate litigation, probate administration, guardianship administration, trust administration, and estate planning law.

EDUCATION

Juris Doctor degree, Duke University School of Law, 1995.

Bachelor of Arts degree with high honors, Plan II program, University of Texas at Austin, 1990

PROFESSIONAL HISTORY

Hopper Mikeska, PLLC, 2012-Present

Hopper & Associates, P.C., 2005 - 2012

Shareholder, Graves, Dougherty, Hearon & Moody, 1998 - 2005

Law Clerk, Honorable Guy Herman, Travis County Probate Court No. 1, 1996-1998

PROFESSIONAL AFFILIATIONS

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization

Member, Austin Bar Association

Member, State Bar of Texas

Member, SBOT Real Estate, Probate and Trust Law (REPTL) Section Council Member 2010-2014; Chair of Estate and Trust Legislative Affairs Committee 2014-Present

Member, Estate Planning Council of Central Texas; Director 2008-2014; Chair 2012-2013

Member, Travis County Bar Association Probate and Estate Planning Section; Director, 1999- 2004; Chair, 2003

RECENT PRESENTATIONS/PAPERS

- Author/Speaker, "Extraordinary Remedies in Probate Proceedings," SBOT Probate and Estate Planning Drafting Course 2014, Dallas
- Author/Speaker, "Whack-a-Mole: Handling Problem Litigants and the Occasional Overzealous Ad Litem," SBOT Advanced Guardianship Course 2014, Dallas;
- Speaker, "Mock Guardianship Hearing—How and When to Put Your Ward on the Stand," SBOT Advanced Guardianship Course 2014, Dallas; Tarrant County Bar Association Probate Litigation Seminar 2014, Ft Worth
- Speaker, "Basic Guardianship," Docket Call in Probate Court, San Antonio, Texas 2014
- Speaker, "Ask the Experts" panel 15th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2013
- Author/Speaker, "Creating a Travis County Guardianship," Austin Advisors Forum, Austin 2013
- Course Director, SBOT Advanced Guardianship and Elder Law Courses, Houston, 2013
- Speaker, "Alternatives to Guardianship" and "Ask the Experts" panel 14th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2012
- Author/Speaker, "Drafting the Estate and Trust Distribution Documents," SBOT Advanced Drafting Course, Dallas 2011
- Speaker, "Contested Guardianships," SBOT Advanced Guardianship Course 2011, Houston; South Texas College of Law 26th Annual Wills and Probate Institute, Houston 2011
- Author/Speaker, "The Role of the Guardian," 13th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2011
- Speaker, "Call in the Sheriff: Handling Overzealous Ad Litem and Other Outlaws," SBOT Advanced Guardianship Course 2010, Houston
- Author/Speaker, "Extraordinary Preparation for Mediation in Guardianship Disputes," SBOT Advanced Guardianship Course 2009, Houston
- Author/Speaker, "Extraordinary Remedies in Probate Proceedings," SBOT Advanced Estate Planning and Probate Course 2008, Dallas
- Panel Member, "Ask the Experts," and "Former Statutory Probate Court Staff Attorneys Panel" 9th Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2007
- Speaker, "Attorney Ad Litem Duties" and Panel Member, "Ask the Experts," 8th Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2006

CRAIG HOPPER (cont.)

- Speaker/Panel Member, SBOT Building Blocks of Probate and Estate Planning: Probate Administration, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013
- Author/Speaker, “Using Independent Facilitators to Resolve Probate Disputes,” Guardianship and Elder Law Conference, Galveston, Texas, August 2004



Legal Experience

Bill Pargaman has been a partner in the Austin law firm of Saunders, Norval, Pargaman & Atkins since July of 2012. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and has been a Fellow in the American College of Trust and Estate Counsel (since 1994). He is very active in the Real Estate, Probate and Trust Law Section of the State Bar of Texas, having served as REPIL's Chair for the 2015-2016 bar year, as chair of its Estate and Trust Legislative Affairs Committee for the 2009, 2011, and 2013 legislative sessions, and as a Council member and chair of REPIL's Trusts Committee from 2004 to 2008.

Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. He advises clients on the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities. He represents nonprofit entities with respect to issues involving charitable trusts and endowments. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

Education

- Doctor of Jurisprudence, *with honors*, University of Texas School of Law, 1981, Order of the Coif, Chancellors
- Bachelor of Arts, Government, *with high honors*, University of Texas at Austin, 1978, Phi Beta Kappa

Professional Licenses

- Attorney at Law, Texas, 1981

Court Admissions

- United States Tax Court

Prior Experience

- Brown McCarroll, LLP. (now Husch Blackwell LLP), 1981 – 2012

Speeches and Publications

Mr. Pargaman has been a speaker, author, or course director at numerous seminars, including:

- State Bar of Texas (TexasBarCLE) – Advanced Estate Planning and Probate Course, Advanced Estate Planning Strategies Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Advanced Real Estate Law Course, Advanced Real Estate Drafting Course, Advanced Tax Law Course, State Bar College Summer School, State Bar Annual Meeting, Practice Skills for New Lawyers, Essentials for the General Practitioner, Miscellaneous Webcasts, and more
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Texas Estate Planning, Guardianship, and Elder Law Conference
- South Texas College of Law Wills and Probate Institute
- Estate Planning & Community Property Law Journal Seminar

William D. Pargaman (cont.)

- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute
- Austin Bar Association Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- Dallas Bar Association Probate, Trusts & Estate Section
- Houston Bar Association Probate, Trusts & Estate Section
- Hidalgo County Bar Association Estate Planning and Probate Section
- Bell County Bench Bar Conference
- Midland College/Midland Memorial Foundation Annual Estate Planning Seminar
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association Advanced Trust Forum
- Texas Credit Union League Compliance, Audit & Human Resources Conference
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Lubbock, San Antonio, and Tyler
- Austin Association of Life Underwriters

Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow
- State Bar of Texas
 - Real Estate, Probate and Trust Law Section, Member (Chair, 2015-2016)
 - Real Estate, Probate, and Trust Law Council, Member, 2004–2008
 - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
 - Public Service Committee, Chair, 2013–2014
 - Trusts Committee, Member, 2000–2010 (Chair, 2004–2008)
 - Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
 - Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995–1997
- Estate Planning Council of Central Texas, Member (President, 1991-1992)
- Austin Bar Association, Member
 - Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

Honors

- Recipient, Texas Bar CLE STANDING OVATION award, 2014
- Listed in The Best Lawyers in America®
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in The Best Lawyers in Austin (Austin Monthly)

Community Involvement

- St. Stephen's Episcopal School Professional Advisory Council, Past Member
- City of Austin, XERISCAPE Advisory Board, Past Member
- Volunteer Guardianship Program of Family Eldercare, Inc. of Austin, Past Member, Advisory Board

The 2017 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

© 2017, William D. Pargaman, All Rights Reserved.

TABLE OF CONTENTS

1.	The Preliminaries.....	1
1.1	Introduction and Scope.....	1
1.2	CMA Disclaimers.....	1
1.3	If You Want to Skip to the Good Stuff ...	1
1.4	A Note About Linking to the Electronic Version.....	1
1.5	Acknowledgments.....	1
1.6	Obtaining Copies of Bills.....	2
2.	The People and Organizations Most Involved in the Process.....	2
2.1	REPTL.....	2
2.2	The Statutory Probate Judges.....	2
2.3	The Bankers.....	3
2.4	The Texas Legislative Council.....	3
2.5	The Authors and Sponsors.....	3
2.6	The Committees.....	3
3.	The Process.....	3
3.1	The Genesis of REPTL's Package.....	3
3.2	Preliminary Approval by the REPTL Council.....	3
3.3	Actual Language is Drafted by the Committees, With Council Input and Approval.....	3
3.4	REPTL's Package is Submitted to the Bar.....	3
3.5	Legislative Policy Committee Review.....	3
3.6	State Bar Board of Directors Approval.....	4
3.7	REPTL is Ready to Go.....	4
3.8	During the Session.....	4
3.9	Where You Can Find Information About Filed Bills.....	4
3.10	Where You Can Find Information About Previous Versions of Statutes.....	4
3.11	Summary of the Legislative Process.....	4
3.12	The Legislative Council Code Update Bill.....	5
4.	Key Dates.....	5
5.	If You Have Suggestions ...	6
6.	The REPTL Bills.....	6
6.1	The Original REPTL Legislative Package.....	6
6.2	Consolidation Into REPTL Bills.....	6
7.	Decedents' Estates.....	6
7.1	The REPTL Decedents' Estates Bill.....	6
	(a) Proof of CP Survivorship Agreement (Sec. 112.103).....	6
	(b) Allocation of Estate – NOT GST – Taxes (Sec. 124.001).....	6

Drafting Tip	7
(c) Adoption by Estoppel (Secs. 22.004 & 201.054).	7
Drafting Tip	7
(d) Minor’s Waiver of Citation in Heirship (Sec. 202.057).	7
(e) Increased Value for Small Estate Affidavits (Sec. 205.001).	7
(f) Determining Beneficiaries of Class Gifts (Sec. 255.401).	7
(g) Time Limit to Modify or Reform Will (Sec. 255.451).	7
Drafting Tip	7
(h) Time Limit to Open Administration (Sec. 256.003).	7
(i) Availability of Muniment Proceeding (Secs. 257.051 & 257.054).	7
(j) Citation on Application for Letters (Sec. 303.003).	7
(k) County for Publishing Notice to Creditors (Sec. 308.051).	7
(l) <i>Distributees</i> , not <i>Beneficiaries</i>	7
(i) Frequency and Method of Distributions (Sec. 310.006).	7
(ii) Consent to Power of Sale (Sec. 401.006).	7
(iii) Judicial Discharge of Independent Executor (Sec. 405.003).	7
(m) Deadline for Annual Accounts (Secs. 359.001 & 359.002).	8
(n) No Need to Pay Texas Inheritance Taxes (Sec. 362.010).	8
(o) Non Pro Rata Distributions (Sec. 405.0015).	8
(p) Lawyer Trust Accounts (Secs. 456.003 & 456.0045).	8
(q) Last Will and Testament	8
Drafting Tip	8
7.2 The REPTL Guardianship Bill – Failure to File Affidavit or Certificate of Notice to Beneficiaries (Secs. 361.052 & 404.0035).	8
7.3 The REPTL Digital Assets Bill.	8
7.4 DLs and SSNs in Probate Applications (Secs. 256.052, 257.051, and 301.052).	8
Drafting Tip	8
7.5 Penalty for Inaccurate Affidavit in Lieu (Sec. 309.0575).	8
7.6 Uniform Partition of Heirs Property Act (Prop. Code Ch. 23A).	9
(a) “Heirs’ Property.”	9
(b) Applicability.	9
(c) Notice by Posting – Literally.	9
(d) Determination of Value.	9
(e) Cotenant Buyout.	9
(f) Preference for Partition in Kind.	9
(g) Method of Sale.	10
(h) Prospective Application.	10
7.7 Adverse Possession by Co-Tenant Heirs (Civ. Prac. & Rem. Code Sec. 16.0265).	10
(a) Required Conditions.	10
(b) How to Claim.	10
(c) How to Object.	10
(d) When Title Vests.	10
(e) Lender Protection.	10
(f) Acreage Limits.	10
8. Guardianships and Persons With Disabilities.	10
8.1 The REPTL Guardianship Bill.	10
(a) Intervention by Interested Person (Sec. 1055.003).	11
(b) Omission of Address (Sec. 1102.002).	11
(c) Notice of Transport of Ward to Inpatient Medical Facility (Sec. 1151.051).	11
(d) Removal of Guardian (Sec. 1203.052).	11
(e) Fiduciary Duties of Supporter in SDMA (Secs. 1357.052 & 1357.056).	11
(f) Designation of Alternate Supporter (Sec. 1357.0525).	11
(g) Termination of SDMA (Sec. 1357.053).	11
8.2 The REPTL Digital Assets Bill.	11
8.3 Election to Receive Information About Ward (Sec. 1151.056).	11

Drafting Tip	11
8.4 Redetermination of Capacity Ward (Secs. 1202.051 & 1202.054).	11
8.5 Termination of Guardianship on Creation of ABLE Account (Secs. 1161.003 & 1202.003; Prop. Code Sec. 142.004).	12
8.6 Guardianship Fee Exemption for Military and First Responders (Secs. 1053.053 & 1053.054).	12
8.7 Appointment and Duties of Court Investigators (Secs. 1002.009, 1054.152, and 1054.156)	12
8.8 Changes Related to Notice of Ward's Detention and Training of Guardians.	12
(a) Notification of Ward's Detention (Code Crim. Proc. Secs. 14.055 & 15.171; Fam. Code Sec. 52.011; Gov't. Code Sec. 573.0021).	12
(b) Training of Guardian; Criminal History Check (Est. Code Secs. 1104.003, 1104.004, & 1253.0515; Gov't. Code Ch. 155, Sec. 411.1386).	12
(c) Guardianship Registration and Database (Gov't. Code Ch. 155, Secs. 411.1386, 573.0021).	12
8.9 Registration of Guardianship Programs (Sec. 1104.359 & Gov't. Code Ch. 155).	12
8.10 Order Authorizing Temporary Care for Minor Child (Fam. Code Ch. 35).	13
8.11 Reporting Financial Exploitation of Vulnerable Adults (Fin. Code Ch. 280; Securities Act, VTCS Art. 581-1, Sec. 45; Hum. Res. Code Ch. 48).	13
8.12 Guardianship Compliance Program.	13
8.13 Temporary and Emergency Detention (Health & Saf. Code Secs. 573.001, 573.002, 573.005, 573.012, 573.013, 573.021, & 573.022).	13
8.14 Notice of Right to Use Public Transportation (Trans. Code Sec. 461.009).	14
9. Trusts.	14
9.1 The REPTL Trusts Bill.	14
(a) Reformation (Secs. 111.0035(b) & 112.054).	14
(b) Spendthrift Provisions (Sec. 112.035(e)).	14
(c) Forfeiture Clauses (Sec. 112.038(b)).	14
(d) Decanting (Secs. 112.071, 112.072, 112.078, and 112.085).	14
(i) Definitions (Sec. 112.071).	14
(ii) Full Discretion (Sec. 112.072(a)).	14
(iii) Beneficiary Notice (Sec. 112.074).	14
(iv) Beneficiary's Right to Sue for Breach of Trust (Sec. 112.078).	14
(v) Exceptions to Distribution Powers (Sec. 112.085).	15
Drafting Tip	15
(e) Delegation of Real Property Powers to Agent (Sec. 113.018).	15
(f) Application of Trust Code to TUPMIFA (Sec. 163.011).	15
(i) Background.	15
(ii) Why is the Trust Code Inapplicable?	15
(iii) Educated Guess.	15
(iv) The Amendment.	15
(g) Notice of Trustee's Disclaimer (Sec. 240.0081).	15
9.2 The REPTL Decedents' Estates Bill –Trust Changes.	16
(a) Divorced Trust Beneficiaries (Est. Code Secs. 123.052 & 123.056).	16
(b) Determining Beneficiaries of Class Gifts (Prop. Code Sec. 112.011).	16
9.3 The REPTL Digital Assets Bill.	16
9.4 Perpetual Care Cemetery Trusts (Health & Saf. Code Secs. 712.0351, <i>et seq</i>).	16
10. The REPTL Financial Power of Attorney Bill.	16
10.1 The REPTL Financial Power of Attorney Bill.	16
Chapter 751 – General Provisions Regarding Durable Powers of Attorney.	16
10.2 Changes to Subchapter A – General Provisions.	16
(a) Applicability (Sec. 751.0015).	16
(b) Definitions (Sec. 751.002).	16
(c) Incapacity (Sec. 751.00201).	16
(d) Requirements for Durability (Sec. 751.0021).	17
(e) Presumption of Genuine Signature (Sec. 751.0022).	17
(f) Validity of Non-Texas Powers (Sec. 751.0023).	17

(g)	Governing Law (Sec. 751.0024).....	17
(h)	Uniformity (Sec. 751.003).....	17
(i)	Other Remedies (Sec. 751.006).....	17
(j)	Other Laws Control; No Validation of Void Instruments (Sec. 751.007).	17
10.3	New Subchapter A-1 – Appointment of Agents.....	17
(a)	Co-Agents (Sec. 751.021).....	17
(b)	Acceptance of Appointment (Sec. 751.022).....	17
(c)	Successor Agents (Sec. 751.023).....	17
(d)	Reimbursement and Compensation (Sec. 751.024).....	17
10.4	New Subchapter A-2 – Authority of Agent Under Durable Power of Attorney.....	17
(a)	General Authority of the Agent and Limitations (Sec. 751.031).....	17
(i)	General Extent (Sec. 751.031(a)).	17
(ii)	“Hot” Powers (Sec. 751.031(b)).....	17
(iii)	Creation of Interest in Agent (Sec. 751.031(c)).	18
(iv)	Overlapping Authority (Sec. 751.031(d)).....	18
(v)	Authority Outside Texas (Sec. 751.031(e)).....	18
(b)	Gift Authority (Sec. 751.032).....	18
(c)	Beneficiary Designation Authority (Sec. 751.033).	18
(d)	Incorporation of Statutory Powers by Reference (Sec. 751.034).	18
10.5	Subchapter B – Effect of Certain Acts on Exercise of Durable Power of Attorney (Sec. 751.051).....	18
10.6	Subchapter C – Duty to Inform and Account (Sec. 751.101).....	18
10.7	New Subchapter C-1 – Other Duties of Agent.	18
(a)	Duty to Notify Principal of Breach by Co-Agent (Sec. 751.121).....	18
(b)	Duty to Preserve Estate Plan (Sec. 751.122).	18
10.8	New Subchapter C-2 – Duration of Durable Power of Attorney and Agent’s Authority.....	18
(a)	Termination of Entire Power (Sec. 751.131).....	18
(b)	Termination of Agent’s Authority (Sec. 751.132).....	19
(c)	Effect of Termination (Sec. 751.134).....	19
(d)	Previous Powers Continue (Sec. 751.135).....	19
10.9	Subchapter D – Recording Durable Power of Attorney for Certain Real Property Transactions (Sec. 751.151).....	19
10.10	New Subchapter E – Acceptance of and Reliance on Durable Power of Attorney.	19
(a)	Acceptance of Power Required (Sec. 751.201).	19
(b)	Other Form Not Required (Sec. 751.202).....	19
(c)	Agent’s Certification (Sec. 751.203).	19
(d)	Attorney’s Opinion (Sec. 751.204).....	19
(e)	English Translation (Sec. 751.205).	19
(f)	Grounds for Refusing Acceptance (Sec. 751.206).	20
(g)	Written Refusal (Sec. 751.207).	20
(h)	Date of Acceptance (Sec. 751.208).	20
(i)	Reliance by Third Party on Certain Facts (Sec. 751.209).....	20
(j)	Reliance by Third Party on Requested Information (Sec. 751.210).....	20
(k)	Actual Knowledge Through Employees (Sec. 751.211).	20
(l)	Cause of Action for Refusal to Accept (Sec. 751.212).....	21
(m)	Liability of Principal (Sec. 751.213).	21
10.11	New Subchapter F – Civil Remedies (Sec. 751.251).....	21
Chapter 752	– Statutory Durable Power of Attorney.....	21
10.12	Subchapter B – Form of Statutory Durable Power of Attorney.....	21
(a)	Statutory Form (Sec. 752.051).....	21
(b)	Modification of Statutory Form to Include “Hot” Powers (Sec. 752.052).....	21
10.13	Subchapter C – Construction of Powers Related to Statutory Durable Power of Attorney.....	21
(a)	Real Property Transactions (Sec. 752.102).	21
(b)	Insurance and Annuity Transactions (Sec. 752.108).	21
(c)	Estate, Trust, and Other Beneficiary Transactions (Sec. 752.109).....	21
(d)	Personal and Family Maintenance (Sec. 752.111).	21

(e) Retirement Plan Transactions (Sec. 752.113).....	21
10.14 Repealers.....	22
Drafting Tip	22
11. Other Bills Relating to Disability Documents.	22
11.1 The REPTL Guardianship Bill – Financial Powers of Attorney.	22
(a) Effect of Guardianship of Estate (Sec. 751.052).	22
(b) Removal of Agent (Secs. 751.054, 751.055, & 752.051 & Ch. 753).	22
11.2 The REPTL Medical Power of Attorney Bill (Health & Saf. Code Secs. 166.155 & 166.162-164).....	22
Drafting Tip	22
11.3 The REPTL Guardianship Declaration Bill (Est. Code Secs. 1104.203-204).	22
Drafting Tip	23
11.4 The REPTL Declaration of Mental Health Treatment Bill (Civ. Prac. & Rem. Code Secs. 137.003 & 137.011).	23
Drafting Tip	23
11.5 The REPTL Digital Assets Bill.....	23
11.6 Display of Information on Bone Marrow Donation (Trans. Code Sec. 521.012).	23
11.7 Authority to Sign Medical Certification for Death Certificates (Health & Saf. Code Secs. 193.005, 671.001 & 671.002).	23
11.8 Designation of Caregiver for Aftercare Instructions (Health & Saf. Code Ch. 317).	23
12. Nontestamentary Transfers.	23
12.1 The REPTL Decedents' Estates Bill –Multi-Party Accounts.	23
(a) Liability of Multi-Party Accounts for Taxes and Administration Expenses (Est. Code Sec. 113.252).	23
(b) Divorce of Parties (Est. Code Sec. 113.252 & 123.151).	23
12.2 Multi-Party and POD Accounts (Secs. 113.052, 113.053, & 113.0531).	23
12.3 Transfer on Death Deeds (Secs. 114.103 & 114.151).	24
12.4 Beneficiary Designation for Motor Vehicles (Ch. 115 & Trans. Code Sec. 501.0315).	24
13. The REPTL Digital Assets Bill.....	24
13.1 The REPTL Digital Assets Bill (Est. Code Ch. 2001 (New), Secs. 752.051, 752.1145, 752.115, 1151.101, Prop. Code Sec. 113.031).	24
13.2 Background.....	24
13.3 The <i>Revised</i> Uniform Act.	24
13.4 ULC Description.....	25
[Very Long] Drafting Tip	25
14. Exempt Property [<i>No bills in this area passed.</i>].....	26
15. Jurisdiction and Venue.....	26
15.1 The REPTL Decedents' Estates Bill – Nearest or Next of Kin (Est. Code Sec. 33.001).....	26
15.2 The REPTL Guardianship Bill – Transfer of Guardianship (Sec. 1023.003-1023.005).....	26
15.3 The REPTL Trusts Bill – Venue Clarification – Again (Trust Code Sec. 115.002).....	26
16. Court Administration.	27
16.1 Sunset Review of State Bar and Board of Law Examiners.....	27
(a) State Bar.	27
(b) Board of Directors.	27
(c) Board of Law Examiners.	27
16.2 Deposit of Wills with Clerk and Fees for Probate Matters (Est. Code Ch. 252).	27
16.3 Notice of Self-Help Resources (Gov't. Code Sec. 51.808).	27
16.4 Judges' Bond (Gov't. Code Secs. 25.006 & 26.001).	28
17. Selected Marital Issues.	28
17.1 Rules Relating to Application of Foreign Law to Marriages and Parent-Child Relationships (Gov'd. Code Secs. 22.0041 & 22.022).	28
17.2 Marriage by Minors.	28
17.3 Clerk's Name on Marriage Licences.	28

18.	Stuff That Doesn't Fit Elsewhere.....	28
18.1	Diacritical Marks (Health & Saf. Code Sec. 191.009; Trans. Code Secs. 521.127 and 522.030).....	28
	Drafting Tip	28
18.2	Online Notarizations (Civ. Prac. & Rem. Code Secs. 121.006 & 121.016; Gov't. Code Secs. 406.101-111).....	28
	Drafting Tip	29
19.	<i>Special Supplement No. 1 – The Missing Delaware Tax Trap Provision.</i>	29
19.1	Original Proposal.	29
19.2	What is the Delaware Tax Trap?	29
19.3	Why Can Estate Inclusion Be a Good Thing?	29
19.4	The 2015 and 2017 REPTL Proposal.	29
19.5	Perpetuities Objections Are Raised.	30
19.6	Argument in Favor of Constitutionality.....	30
19.7	Two Problems.....	30
	(a) Is the Interest Vested, or Has Vesting Been Postponed?.....	30
	(b) Cases Interpreting Our Constitutional Prohibition.	30
19.8	Conclusion.	31
20.	<i>Special Supplement No. 2 – The University vs. the Golf Course.</i>	31
20.1	Austin's Muny Golf Course.....	31
20.2	Current Suggested Donation Language.	31
20.3	Acquisition of the Brackenridge Tract.....	31
	(a) Col. Brackenridge.	31
	(b) Regent Brackenridge.	31
	(c) Col. Brackenridge's Dream.	31
	(d) Plan B.	31
	(e) Attempted Move to the Brackenridge Tract.	32
20.4	Clearing Title to the Brackenridge Tract.	32
20.5	Uses of the Brackenridge Tract.....	32
	(a) University Uses of the Brackenridge Tract.....	32
	(b) Commercial Uses of the Brackenridge Tract.....	32
	(c) Governmental and Civic Uses of the Brackenridge Tract.	32
	(d) Muny.....	33
	(e) Civil Rights Significance.....	33
	(f) Austin Grew Out to the Brack Tract.....	33
	(g) The Development Agreement.....	33
20.6	Dwindling State Educational Funding.....	33
20.7	Possible Development of the Golf Course Land.....	33
20.8	The Legislature's Authority.....	34
	(a) Supporters' Argument.	34
	(b) Back to Donor Intent.	34
	(c) Prior Dispositions.	34
20.9	Compare "The Spirit of the Alamo Lives On."	34
20.10	And What About the French Legation.....	34
20.11	Conclusion?	34
21.	A Little Lagniappe.	35
21.1	Remember the Alamo (Again)!	35
21.2	Ban on Texting While Driving Watching a Movie on a Date.	35
21.3	BBQ, Beer, Wine, and Other Certificates.....	35
21.4	Fort Knox, Redux.	36
21.5	A Rose by Any Other Name	36
21.6	It's All in the [Name] Caption.	37
21.7	Did You Hear that Big "Woo Hoo!" Coming Out of the Treasury Operations Division?	37
21.8	When an Insurance Building Isn't an Insurance Building.	38
21.9	The Texas Balance of Powers Act.....	38

21.10	The Texas Sovereignty Act.....	38
21.11	The State Flag.	38
21.12	Abolition of the Federal Income Tax.....	39
21.13	“Gentlemen, [Don’t Re-] Set Your Watches!.....	39
21.14	The Man’s Right to Know Act.	39
21.15	Just Add Water!.....	39
21.16	Symbols.	39
21.17	Places.	39
21.18	Dates.	40
21.19	Mascots.	40
22.	Conclusion.	40
	Attachment 2 – Changes to the Self-Proving Affidavit	41
	Attachment 3 – New Optional Certification of Power of Attorney Form.....	43
	Attachment 4 – Changes to Statutory Power of Attorney Form	45
	Attachment 5 – Changes to Medical Power of Attorney Form.....	51
	Attachment 6 – Changes to Statutory Declaration of Guardian in the Event of Later Incapacity or Need of Guardian Form.....	55
	Attachment 7 – Changes to Statutory Declaration for Mental Health Treatment Form	57
	Attachment 8 – Selected Bills that <i>DID NOT</i> Pass	61
7.	Decedents’ Estates.	61
7.1	Limit on Increase in Life Insurance Premiums and Other Costs (Ins. Code Sec. 1101.157).	61
8.	Guardianships and Persons With Disabilities.	61
8.1	Attorney Certification in Guardianship Proceedings (Sec. 1154.201).....	61
8.2	Parental Administration. (Secs. 1002.0015, 1002.002, 1002.004, Ch. 1359; Pen. Code Sec. 25.10).	61
8.3	Using Person First Respectful Language (Secs. 22.033, 1001.004, and 1002.026; Gov’t. Code Secs. 155.001, 411.114; & Prop. Code Sec. 240.002).	61
	Drafting Tip	61
8.4	Duration of Attorney Ad Litem’s Appointment in DFPS Case (Fam. Code Sec. 107.016).	61
8.5	Rotational Appointment of Guardians Ad Litem and Guardians (Gov’t. Code Sec. 37.004).	61
8.6	Financial Elder Abuse and Exploitation.	61
(a)	Reporting Financial Abuse of Elderly Persons (Fin. Code Ch. 280, Hum. Res. Code Ch. 48).....	61
(b)	Reporting Financial Exploitation of Elderly Person (Securities Act, VTCS Art. 581-1, Sec. 45; Hum. Res. Code Ch. 48).	61
(c)	Investigation of Exploitation of Elderly Person or Person With Disability (Hum. Res. Code Sec. 48.1512).	62
(d)	Financial Elder Abuse and Exploitation Prevention Act (Penal Code Pen. Code Sec. 32.55).	62
8.7	Office of Public Guardian (Secs. 1002.0215, 1002.0265, 1104.251, 1104.326-1104.338, 1104.402, 1104.409, 1155.151, & 1163.101; Gov’t Code Sec. 155.001, 155.101, 155.102, 155.105, & 411.1386, Hum. Res. Code Sec. 161.103).	62
(a)	Guardian Court Pilot Program (Gov’t. Code Ch. 111).	62
8.8	Funding Guardianship Programs and Money Management Services.....	63
8.9	Electronic Filings in Mental Health Proceedings (Health & Saf. Code Sec. 571.014).....	63
8.10	Non-Physician Mental Health Professional (Health & Saf. Code Sec. 571.003).....	63
8.11	Unlawful Possession of Firearms (Penal Code Sec. 46.04).	63
8.12	Handguns in State Hospitals (Gov’t. Code Sec. 411.209; Health & Saf. Code Sec. 552.002).	63
8.13	Temporary and Emergency Detention (Health & Saf. Code Secs. 573.001, 573.002, 573.005, 573.012, 573.013, 573.021, & 573.022).	63
8.14	Notice to Peace Officer of Communication Impediment (Trans. Code Secs. 502.061 & 521.142).	63
8.15	Notice of Right to Use Public Transportation (Trans. Code Sec. 461.009).	63

9.	Trusts.	64
9.1	Rule Against Perpetuities (Prop. Code Sec. 112.036).	64
11.	Other Bills Relating to Disability Documents.	64
11.1	The REPTL Anatomical Gift and Disposition of Remains Bill (Health & Saf. Code Secs. 692A.004-007 & 711.002).	64
	Drafting Tip	64
11.2	Accounting Demand by Principal’s Guardian (Secs. 751.104-751.105, & 752.051).	64
11.3	Advance Directives.....	64
(a)	Disclosure of Policy Regarding Life-Sustaining Treatment; Withholding Treatment from Minor (Health & Saf. Code Secs. 166.012 & 166.013).	64
(b)	Effect of Pregnancy (Health & Saf. Code Secs. 166.033, 166.049, & 166.098).	64
(c)	Advance Directive and DNR of Pregnant Patient (Health & Saf. Code Secs. 166.033, 166.049, 166.083, & 166.098).	64
(d)	The Texas Patient Autonomy Restoration Act of 2017 (Health & Saf. Code Secs. 166.045, 166.046, 166.051, & 166.052; Gov’t Code Sec. 25.021).	64
11.4	Anatomical Gifts.....	65
(a)	Default Inclusion on Donor Registry (Trans. Code Secs. 502.189 & 502.401; Health & Saf. Code Secs. 692A.006 & 692A.007).	65
(b)	Brain Donation (Health & Saf. Code Sec. 692A.002).	65
(c)	No Anatomical Gifts by Certain Persons (Health & Saf. Code Secs. 692A.002 & 692A.009).	65
(d)	Anatomical Gifts by HIV-Positive Patients (Health & Saf. Code Sec. 692A.0155).	65
11.5	General Procedures for DNR Orders (Health & Saf. Code Sec. 166.012).	65
12.	Nontestamentary Transfers.	65
12.1	Elimination of Convenience and Trust Accounts (Ch. 113).	65
14.	Exempt Property	66
14.1	Insurance Proceeds of Certain Criminal Defendants (Code Crim. Proc. Art. 21.32; Ins. Code Sec. 1108.053).	66
15.	Jurisdiction and Venue.....	66
15.1	Venue for Probate of Wills (Sec. 33.1011).	66
15.2	“Venue” for Recording Adverse Possession Affidavit of Cotenant Heir (Sec. 33.1011).	66
15.3	Jurisdictional \$\$ Limits (Gov’t. Code Secs. 26.042 & 27.031).	67
15.4	Review of Travis County Venue Requirements.	67
16.	Court Administration.....	67
16.1	Electronic Display of Clerk’s Notices (Gov’t. Code Sec. 51.3032).	67
16.2	The Uniform Electronic Legal Material Act (Gov’t. Code Ch. 2051).	67
16.3	Amendment to 2011 “Loser Pays” Bill (Gov’t. Code Sec. 22.004).	67
16.4	Payment of Costs Associated with Assigned Statutory Probate Judge (Gov’t. Code Sec. 25.0022).	67
16.5	Judicial Term Limits (Gov’t. Code Sec. 22.021).	67
16.6	Assignment Eligibility of Retired Judges (Gov’t. Code Secs. 74.041 & 74.055).	67
16.7	Records Accepted by District Clerk (Gov’t. Code Sec. 51.303).	68
16.8	New 15 th Court of Appeals (Gov’t. Code Chs. 22 and 101).	68
17.	Selected Marital Issues.	68
17.1	Divorce.	68
17.2	Application of Foreign Law to Marital Relationship and SAPCRs.	68
17.3	Forcing Minor to Marry.	68
17.4	Same-Sex Marriages and Conduct.	68
17.5	Persons Conducting Marriage Ceremonies.	69
18.	Stuff That Doesn’t Fit Elsewhere.....	69
18.1	New “Chancery” Court (Gov’t Code Ch. 24A).	69
18.2	Compliance With Ethical and Statutory Requirements by Out-of-State Attorneys (Gov’t Code Ch. 85).	69

18.3 Voting of Jointly Held Interests (Bus. Org. Code Sec. 6.157).....	69
18.4 Availability of Financial Records of Nonprofit Corporations (Bus. Org. Code Secs. 22.353 & 22.354).....	69
18.5 Perpetual Duration of Old Corporations (Bus. Org. Code Sec. 402.015).....	69
18.6 Notary Fee Schedules (Gov't. Code Secs. 406.024 & 406.027).....	70
18.7 Recording Signer's Address in Notary's Record Book (Gov't. Code Sec. 406.014).....	70
Attachment 9 – 2017 Amendments to the Texas Estates Code (General Provisions).....	71
Attachment 10 – 2017 Amendments to the Texas Estates Code (Decedents' Estates).....	73
Attachment 11 – 2017 Amendments to the Texas Estates Code (Powers of Attorney).....	93
Attachment 12 – 2017 Amendments to the Texas Estates Code (Guardianship)	117
Attachment 13 – 2017 Amendments to the Texas Estates Code (TRUFADAA)	127
Attachment 14 – 2017 Amendments to the Texas Trust Code	135
Attachment 15 – 2017 Selected Amendments to the Texas Property Code (Excluding Trust Code).....	141
Attachment 16 – 2017 Selected Amendments to the Texas Health & Safety Code.....	147
Attachment 17 – Other Selected 2017 Amendments	155
CIVIL PRACTICE & REMEDIES CODE.....	155
CODE OF CRIMINAL PROCEDURE	158
FAMILY CODE	158
FINANCE CODE	160
GOVERNMENT CODE.....	162
LOCAL GOVERNMENT CODE	168
THE SECURITIES ACT (Art. 581-1, <i>et seq.</i> , V.T.C.S.).....	169
TRANSPORTATION CODE	170

The 2017 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

© 2017, William D. Pargaman, All Rights Reserved.

1. The Preliminaries.

1.1 Introduction and Scope. The 85th Regular Session of the Texas Legislature spans the 140 days beginning January 10, 2017, and ending May 29, 2017. This paper presents a summary of the bills that relate to probate (*i.e.*, decedents' estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. Issues of interest to elder law practitioners are touched upon, but are not a focus of this paper. (And, to be honest, sometimes I go off on a tangent and discuss a bill of interest to me that has nothing to do with any of the areas mentioned above.)

1.2 CMA Disclaimers. While reading this paper, please keep in mind the following:

- I've made every reasonable attempt to provide accurate descriptions of the contents of bills, their effects, and in some cases, their background.
- Despite rumors to the contrary, I am human. And have been known to make mistakes.
- In addition, some of the descriptions in this paper admittedly border on editorial opinion, in which case the opinion is my own, and not necessarily that of REPTL, Craig Hopper, or anyone else.
- I often work on this paper late at night, past my normal bedtime, perhaps, even, under the influence of strategic amounts of Johnnie Walker Black (donations of Red, Black, Green, Gold, Blue, Platinum, or even Swing happily accepted!¹).
- As companion bills make their way through the legislative process, I usually base descriptions on the most recently approved version in either chamber. In the case of REPTL bills, I sometimes have access to drafts of substitutes before they are officially posted, in which case the descriptions may be based on what we think the bill will look

like, rather than what the currently-online version looks like.

- As a consequence, while the descriptions contained in this paper are hopefully accurate at the time they are written, they may no longer accurately reflect the contents of a bill at a later stage in the legislative process.

Therefore, you'll find directions in Section 1.6 on page 2 for obtaining copies of the actual bills themselves so you may review and analyze them yourself before relying on any information in this paper.

1.3 If You Want to Skip to the Good Stuff ... If you don't want to read the rest of these preliminary matters and want to skip to the legislation itself, you'll find it beginning with **Part 6 on page 6**.

1.4 A Note About Linking to the Electronic Version. Feel free to link to the electronic version of this paper if you'd like. If you do, use the URL found on the cover page to link to the most recent version of the paper:

www.snpalaw.com/resources/2017LegislativeUpdate

Once you click on that link, you'll open a PDF version of this paper. However, **don't** copy the URL that you'll find in your browser's address bar when you open the PDF! That's likely to be a 100+ character web address that will take you to that particular version of the paper only, and only so long as that version remains posted. Trust me – the link I've given you will take you to the right version each time.

And note that you can bring up my previous legislative updates going back to 2009 by substituting the appropriate odd-numbered year for "2017" in the URL.

1.5 Acknowledgments. A lot of the effort in every legislative session comes from the Real Estate, Probate & Trust Law Section of the State Bar of Texas ("REPTL"). REPTL, with approximately 9,000 members, has been active in proposing legislation in this area for more than three decades. During the year

¹ I checked with Craig Hopper, and he says Scotch donations are okay with him, too.

and a half preceding a session, the REPTL Council works hard to come up with a package that addresses the needs of its members and the public, and then works to get the package enacted into law. In addition to myself, others who have been deeply involved in this legislative process include:

- Craig Hopper of Austin, Chair, Estate and Trust Legislative Affairs Committee; and principal presenter of this paper
- Tina Green of Texarkana, Chair-Elect/Secretary of REPTL (and Chair beginning in July of 2017)
- Melissa Willms of Houston, Chair, Decedents' Estates Committee
- Catherine Goodman of Fort Worth, Chair, Guardianship Committee
- Laura Upchurch of Brenham, Immediate Past Chair, Guardianship Committee
- Jeffrey Myers of Fort Worth, Chair, Trusts Committee
- Lora Davis of Dallas, Chair, Powers of Attorney and Advance Directives (PAADs) Committee
- Gerry Beyer of Lubbock, Chair, Digital Assets Committee
- Clint Hackney of Austin, Lobbyist
- Barbara Klitch of Austin, who provides invaluable service tracking legislation for REPTL

REPTL is helped along the way by the State Bar, its Board of Directors, and its staff (in particular, KaLyn Laney, Assistant Deputy Director).

Other groups have an interest in legislation in this area, and REPTL tries to work with them to mutual advantage. These include the statutory probate judges (Judge Guy Herman of Austin, Presiding Statutory Probate Judge) and the Wealth Management and Trust Division of the Texas Bankers Association.

Last, but of course not least, are the legislators and their staffs. In the 2017 session, sponsors of REPTL legislation include Rep. Jessica Farrar (D- Houston), Rep. Tan Parker (R-Flower Mound), Rep. John Wray (R-Waxahachie), Sen. José Rodríguez (D-El Paso), Sen. Van Taylor (R-Plano), and Sen. Judith Zaffirini (D-Laredo).

Thanks go to all of these persons, their staffs, and the many others who have helped in the past and will continue to do so in the future.

Hopefully, the effort that goes into the legislative process will become apparent to the reader. In the best of circumstances, this effort results in passing good bills and blocking bad ones. But in the real world of legislating, the best of circumstances is never realized.

1.6 Obtaining Copies of Bills. If you want to obtain copies of any of the bills discussed here, go to www.legis.state.tx.us. Near the top of the page, in the middle column, you'll see **Search Legislation**. First, select the legislative session you wish to search (for example, the 2017 regular legislative session that spans from January through May is "85(R) - 2017). Select the Bill Number button, and then type your bill number in the box below. So, for example, if you wanted to find the Decedents' Estates bill prepared by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas ("REPTL"), you'd type "HB_____" and press Go. (It's fairly forgiving – if you type in lower case, place periods after the H and the B, or include a space before the actual number, it's still likely to find your bill.)

Then click on the Text tab. You'll see multiple versions of bills. The "engrossed" version is the one that passes the chamber where a bill originated. When an engrossed version of a bill passes the other chamber without amendments, it is returned to the originating chamber where it is "enrolled." If the other chamber does make changes, then when it is returned, the originating chamber must concur in those amendments before the bill is enrolled. Either way, it's the "enrolled" version you'd be interested in.

2. The People and Organizations Most Involved in the Process.

A number of organizations and individuals get involved in the legislative process:

2.1 REPTL. REPTL acts through its Council.

Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL legislation. REPTL is not allowed to sponsor legislation or oppose legislation without the approval of the Board of Directors of the State Bar. There is no provision to support legislation offered by someone other than REPTL, and the ability of REPTL to react during the legislative session is hampered by the necessity for Bar approval. Therefore, REPTL must receive prior permission to carry the proposals discussed in this paper that are identified as REPTL proposals. REPTL has hired Clint Hackney, who has assisted with the passage of REPTL legislation for many sessions.

2.2 The Statutory Probate Judges. The vast majority of probate and guardianship cases are heard by the judges of the Statutory Probate Courts (18 of them in 10 counties). Judge Guy Herman of the Probate Court No. 1 of Travis County (Austin) is the Presiding Statutory Probate Judge and has been very active in promoting legislative solutions to problems in our area for many years.

Also available as part of the eCourse

[2017 Estate Planning and Elder Law Legislative Update and Important Recent Cases](#)

First appeared as part of the conference materials for the
19th Annual Estate Planning, Guardianship and Elder Law Conference session
"Legislative Update"