

Face Masks, Zoom, and Quarantines: Welcome to...

The 2021 Texas Estate and Trust Legislative Update

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

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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	Where You'll Be Able to Find the Statutory Language After the Session's Over.....	2
1.6	Acknowledgments.....	2
1.7	Obtaining Copies of Bills.....	2
2.	The People and Organizations Most Involved in the Process.....	2
2.1	REPTL.....	3
2.2	The Statutory Probate Judges.....	3
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 Legislative Package.....	3
3.2	Preliminary Approval by the REPTL Council.....	4
3.3	Statutory Language is Drafted.....	4
3.4	REPTL's Package is Submitted to the Bar.....	4
3.5	Legislative Policy Committee Review.....	4
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.....	5
3.12	Other Legislative Information and Resources.....	5
3.13	The Legislative Council Code Update Bill.....	5
3.14	The REPTL Substantive Code Update Bill.....	6
4.	Key Dates.....	6
5.	If You Have Suggestions ...	7
6.	The REPTL Bills.....	7
6.1	The Original REPTL Legislative Package.....	7
6.2	Consolidation Into REPTL Bills.....	7
7.	Decedents' Estates.....	7

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7.1	REPTL Decedents’ Estates Bill.....	7
	(a) Qualified Delivery Method (Sec. 22.0295).....	7
	(b) Community Property Subject to Creditors’ Claims (Sec. 101.052).....	8
	(c) Property Listed in Heirship Application (Sec. 202.005).....	8
	(d) Service on Minors Who Are At Least 16 Years Old (Secs. 202.056 & 258.002).....	8
	(e) Affidavit of Heirship as Evidence (Sec. 202.151).....	8
	(f) Applicant’s Last Three Digits (Secs. 256.052, 257.051, & 301.052).....	8
	(g) Use of Unsworn Declaration for Oaths (Secs. 305.001-305.003, 305.051-305.053, & 305.055).....	8
	Drafting Tip	8
	(h) Sale of Personal Property in Dependent Administration (Sec. 356.105).....	8
	(i) Removal of References to “Community Debts” (Secs. 453.003 & 453.006-453.007).....	8
7.2	Administration of Unclaimed Property (Sec. 551.005; Ins. Code Secs. 1109.013, 1109.051-1109.056; 1109.101, 1109.151-1109.154; & Prop. Code Sec. 72.001 & Ch. 74).....	8
7.3	Expedited Death Certificate for Religious Purposes (H&S Code Sec. 193.0025).....	9
7.4	Required Statement in Disclaimer Regarding Child Support (Prop. Code Sec. 240.009).....	9
7.5	Procedural Matters Affecting Decedents’ Estates.....	9
8.	Guardianships and Persons With Disabilities.....	9
8.1	The REPTL Guardianship Bill.....	9
	(a) Matters Related to Guardianship Proceeding (Sec. 1021.001).....	9
	(b) Unsworn Declarations in Lieu of Sworn Oath (Secs. 1052.052, 1103.003, 1105.001-1105.003, 1105.051-1105.052, 1105.103, & 1251.101).....	9
	Drafting Tip	9
	(c) Wards’ Bill of Rights (Sec. 1151.351).....	9
	(d) Notice to Creditors (Sec. 1153.001).....	9
	(e) Attorney’s Fees (Sec. 1155.054).....	9
	(f) Sale of Personal Property in Guardianship (Sec. 1158.105).....	9
	(g) Sale of Real Property at Public Auction (Secs. 1158.401-1158.405).....	10
	(h) Private Sale of Real Estate (Secs. 1158.451 & 1158.502).....	10
	(i) Sale of Real Property in Guardianship (Secs. 1158.551-1158.554 & 1158.556-1158.558).....	10
	(j) Agency References (Secs. 1163.005 & 1163.101).....	10
	(k) Ch. 1301 Management Trusts.....	10
	(l) Sale of Property by Nonresident Guardian (Secs. 1355.002 & 1355.105).....	10
	(m) Stay Tuned for Further Updates.....	10
8.2	The Statutory Probate Judges’ Bill.....	10
	(a) Attorney Certification (Sec. 1054.201 & Gov’t Code Sec. 81.114).....	10
	(b) Applicant’s Former Name and Liquid Assets (Sec. 1101.001).....	10
	(c) Waiver of Guardianship Training (Sec. 1101.153).....	10
	(d) Attendance at Legal Proceeding (Sec. 1151.005).....	10
	(e) Citation for Appointment of Temporary Guardian (Sec. 1251.005).....	11
	(f) Final Report in Temporary Guardianship (Sec. 1251.153).....	11
	(g) Criminal History of Guardian (Gov’t Code Sec. 155.205).....	11
8.3	Incapacity of Guardian (Sec. 1203.0521).....	11
8.4	Guardianship Abuse, Fraud, and Exploitation Program (Gov’t Code Secs. 72.121 & 72.1221).....	11
8.5	Professional’s Disclosure of Mental Health Information.....	11
8.6	Prevention of Abuse of Elderly and Disabled.....	11
	(a) Access to Financial Records by the Guardianship Abuse, Fraud, and Exploitation Program.....	11
	(b) Financial Abuse of Elderly Persons.....	11
	(c) Hold on Account of Vulnerable Adult Upon Suspicion of Financial Exploitation.....	11
	(d) Visitation Rights.....	11
	(e) Continuous Sexual Abuse of a Disabled Person.....	12
	(f) Fraudulently Securing Document Execution.....	12
8.7	Modification of Order Following Conservator’s Death (Fam. Code Sec. 156.106).....	12
8.8	Procedural Matters Affecting Guardianships.....	12

9.	Trusts.....	12
9.1	The REPTL Trusts Bill.....	12
	(a) Homesteads Owned by Revocable Trusts (Sec. 41.0021).....	12
	Drafting Tip.....	13
	(b) Spendthrift Provisions and Testamentary General Powers of Appointment (Sec. 112.035).....	13
	(c) Attorney Ad Litem for Trust Proceedings (Sec. 112.054).....	13
	(d) Decanting Into the Same Trust? (Sec. 112.0715).....	13
9.2	Rule Against Perpetuities (Sec. 112.036).....	13
10.	Disability Documents.....	14
10.1	The REPTL Financial Power of Attorney Bill (Secs. 751.002, 751.00201, 752.001, & 752.107).....	14
10.2	The REPTL Medical Power of Attorney Bill (H&S Code Secs. 166.1525, 166.160, 166.163, & 166.164).....	14
10.3	The REPTL Anatomical Gift Bill (H&S Code Secs. 692.003, 692.005, & 692A.005-692A007).....	14
	Drafting Tip.....	14
10.4	The REPTL Disposition of Remains Bill (H&S Code Secs. 711.002 & 711.004).....	15
11.	Nontestamentary Transfers.....	15
12.	Exempt Property.....	15
13.	Jurisdiction and Venue.....	15
13.1	Transfer of Guardianship to Foreign Jurisdiction (Sec. 1253.001).....	15
13.2	Notices in Guardianship Transfer and Removal Proceedings (Secs. 1023.004 & 1203.052).....	15
13.3	Transfers, Mediation, and Termination of Guardianships (Secs. 1023.005, 1023.008, 1023.011, 1055.151-1055.152, 1202.001, & 1202.231-1202.235; Gov't Code Sec. 155.301).....	15
14.	Court Administration.....	15
14.1	The Statutory Probate Judges' Bill.....	15
	(a) Electronic Transfer of Clerk's File (Secs. 33.101-33.103 & 1023.006-1023.007).....	15
	(b) Citation Signed Under Court's Seal (Secs. 51.003 & 1051.003).....	15
	(c) Personal Service in Heirships (Sec. 202.054).....	15
	(d) References Changed from Independent Executor to Administrator (Secs. 351.351, 404.0036, & 404.005).....	15
	(e) Notice of Appointment of Temporary Administrator (Sec. 452.006).....	15
	(f) Recording of Non-English Foreign Wills (Sec. 503.002).....	16
	(g) Last Three Digits (CP&R Code Sec. 30.014).....	16
	(h) Bond Extended to Visiting Judge (Gov't Code Secs. 25.0006, 25.00231, & 26.001).....	16
	(i) Fewer Jurors in Probate Proceedings (Gov't Code Sec. 25.0027).....	16
	(j) Defense of Visiting Judge (Gov't Code Sec. 74.141).....	16
14.2	Service on Certain Organizations in Will Contest or Construction Suits (Sec. 55.053).....	16
14.3	Associate Judges for Guardianship and Protective Services Proceedings (Gov't Code Ch. 54A).....	16
14.4	New Courts and Transfer Procedures (Secs. 51.103 & 1051.103; Fam. Code Sec. 155.207; Gov't Code Secs. 25.0172, 25.0173, 25.0631, 51.3071, 51.403 & 72.037).....	16
14.5	Consolidation of Filing Fees.....	16
14.6	Eligibility to be Justice or Judge.....	17
14.7	Recovery of Attorney's Fees (CP&R Code Sec. 38.001).....	17
14.8	New Travis County Probate Courthouse.....	17
14.9	Speaking of New Digs.....	17
15.	Selected Family Law Issues.....	18
15.1	Modification of Order Following Conservator's Death.....	18
16.	Stuff That Doesn't Fit Elsewhere.....	18
16.1	Clients With Diminished Capacity (Proposed Disciplinary Rule 1.16).....	18
16.2	Law Firm Trade Names (Amended Part VII of Disciplinary Rules).....	18
17.	<i>Special Supplement No. 1</i> – Is a Statutory Change to Our Rule Against Perpetuities Constitutional?.....	18
17.1	The Change.....	18

17.2	No Position on the Merits of the RAP.	19
17.3	Origins of the Statutory Rule.	19
17.4	The Constitutional Rule.	19
17.5	History Behind the Constitutional Rule.	19
17.6	Court Interpretation of the Constitutional Rule.	19
17.7	A Closer Look at the <i>ConocoPhillips</i> Case.	21
	(a) “Simplified” Facts.	21
	(b) The Supreme Court Opinion.	22
	(c) My Conclusions.	24
17.8	My Interpretation of the Court Interpretations.	24
17.9	Can the Legislature More Clearly Define the Rule?.....	24
18.	<i>Special Supplement No. 2 – Some Comments on Affidavits in Lieu of Inventories</i>	25
18.1	Why This Discussion?	25
18.2	2011 Enactment.	25
18.3	2013 Amendment.	25
18.4	2019 Amendment.	25
18.5	Can a Judge Refuse to Accept an Affidavit in Lieu and Require the Filing of an Inventory?.....	25
	(a) Sec. 309.051.	25
	(b) Sec. 309.054.	25
	(c) Sec. 309.056.	26
	(d) Sec. 309.057.	26
	(e) Sec. 309.0575.	26
	(f) Sec. 404.0035.	26
	(g) Tell the Judge to Shove It!.....	26
19.	A Little Lagniappe.	26
19.1	Farewell Barton Springs?.....	26
19.2	Our Long National Nightmare Is Over.	26
19.3	Big Changes to Presidential Elections.	27
19.4	Texas Bicentennial Commission.....	27
19.5	License to Hunt Bigfoot (and Reward for Capture!).	27
19.6	Speaking of Hunting.	27
19.7	Here, Hold My Beer!	27
19.8	Don’t Bogart That Joint!	27
19.9	How Much is That Doggie in the Window?	28
19.10	Dedicated to Ken Herman.....	28
	(a) Monday Might Be Thursday.....	28
	(b) Who is a “Native Texan?”	28
	(c) What is a “Bicycle?”	28
	(d) What Time is It?	28
	(e) State District of What?.....	28
	(f) Fort Knox-Leander, Redux.	29
	(g) Right to Choose.	29
	(h) SXSW Eligible for MERP?.	29
	(i) Another Secession Proposal.	29
	(j) Van Arsdale’s List.	29
	(k) City Hall.	30
	(l) REPTL’s Trusts Bill.	30
	(m) Vaya Con Dios, Señor Herman.	30
19.11	Places.	30
19.12	Symbols.	31
19.13	Dates.	31
19.14	Juneteenth!.....	31
19.15	Mascots.	32
20.	The End.....	32

Selected Bills that <i>DID NOT</i> Pass.....	33
7. Decedents' Estates.....	33
7.1 Electronic Wills Act and Other Online Notarizations ([mostly] Ch. 259).....	33
7.2 Persons Disqualified to Serve as Personal Representatives (Sec. 304.003).	33
7.3 Parents Who May Not Inherit From Child (Sec. 201.062).	33
7.4 Actions Without Court Approval (Sec. 351.052).	33
7.5 Claims for Cost of Certain Electrical Service (Secs. 355.102 & 355.103).....	33
7.6 State Estate Tax (New Tax Code Ch. 212).	33
7.7 Satisfaction of a Reverse Mortgage after Surviving Borrower's Death (Fin. Code Secs. 343A.001-343A.002).	33
8. Guardianships and Persons With Disabilities.	34
8.1 "Independent Guardianships" for Minor Wards with Profound Intellectual Difficulties (Secs. 1054.001, 1054.151, 1103A.001-1103A.003, 1105.101, 1106.002, 1163.001-1163.0025, 1163.101, & 1201.052).	34
8.2 Examination of Proposed Ward (Secs. 1101.103, 1101.104, 1102.002, 1202.054, & 1202.152).	34
8.3 Pilot Program to Establish Public Guardians (Secs. 1104.326-1104.349).....	34
8.4 Criminal Conduct of Proposed Guardian. (Sec. 1104.353; Penal Code Sec. 72.04).	34
8.5 Use of Criminal History Records (Secs. 1104.401-1104.411; Gov't Code Secs. 152.203-152.2035, 155.206-155.207, 411.114, 411.1386-411.13861, & 411.1408-411.1409).	34
8.6 Critical Care Decisions by Private Professional Guardians. (Secs. 1151.051 & 1151.057).....	34
8.7 Notice and Filing Requirements in Court Proceeding Involving Person with Mental Illness.	34
8.8 Temporary Guardian for Social Security Benefits (Secs. 1251A.001-1251A.103).....	34
8.9 Supported Decision-Making Agreements (Gov't Code Secs. 57A.001-57A.002 & CP&R Code Sec. 21A.002).	35
8.10 Settlement of Claims on Behalf of a Minor (CP&R Code Secs. 150D.001-150D.008 & Prop. Code Sec. 141.008).	35
8.11 Prevention of Abuse of Elderly and Disabled.....	35
(a) Definition of Exploitation.....	35
(b) Obtaining Unneeded Medical Treatment by Deception; Continuous Abuse.....	35
(c) Abandoning or Endangering an Elderly or Disabled Individual.	35
(d) Pilot Program to Prevent Financial Exploitation of Elderly.	35
9. Trusts.	35
9.1 Shortened SOL to Review Trust Accounting (Prop. Code Sec. 113.153).	35
9.2 Regulation of State Trust Companies.	35
10. Disability Documents.....	35
10.1 Individuals Not Authorized to Dispose of Remains (Sec. 152.102; H&S Code Sec. 711.002; Occ. Code Sec. 651.460).	35
10.2 Durable POAs and Home Equity Loans (Est. Code Sec. 752.051 & Fin. Code Secs. 343.002 & 343.301-343.302).....	36
10.3 Release of Unclaimed Property to Agent (Prop. Code Sec. 74.501).	36
10.4 Advance Directives.....	36
(a) Permissive Forms for Directives and MPOAs (H&S Code Secs. 166.012, 166.013, 166.031, 166.0325, 166.0335, 166.036, 166.102, & 166.163).	36
(b) Physicians Refusing to Honor Directive (H&S Code Secs. 166.012, 166.046-166.0465, 166.052, 166.054, 166.202-166.206, 166.209 & 313.004).....	36
(c) End-of-Life Matters and Hospice Care (H&S Code Secs. 166.012, 166.046-166.0466, 166.052, 166.054, 166.202-166.206, 166.209 & 313.004).....	36
(d) Directives and DNRs for Pregnant Women (H&S Code Secs. 166.033, 166.049, 166.083, 166.084, & 166.098).	36
(e) Restrictions on Refusal to Comply with Directive (H&S Code Secs. 166.002, 166.045-166.046, 166.051-166.052, 166.054, 166.158 & 166.166).....	36
(f) Execution of DNRs by Nurses and Physician Assistants (H&S Code Secs. 166.081-166.084, 166.087-166.089, 166.092, 166.095, 166.102, 166.203, 166.205 & 193.005).....	36

(g)	Revocation of DNRs for Admitted Patients (H&S Code Sec. 166.205).....	37
10.5	Respecting Texas Patients’ Right to Life Act (Gov’t Code Sec. 25.0021(b); H&S Code Secs. 166.045, 166.046, 166.051, & 166.052).....	37
10.6	Death When Certain Functions Have Ceased (H&S Code Secs. 671.001-671.002).....	37
10.7	Disregard of Mental Health Declarations (CP&R Code Sec. 137.008).....	37
11.	Nontestamentary Transfers.....	37
11.1	Disclosure of Insurance Beneficiary to Funeral Director (Ins. Code Secs. 1103.201-1103.202).....	37
11.2	Notice to Life Insurance Policy Owner (Ins. Code Sec. 1101.351).....	37
12.	Exempt Property.....	37
12.1	Sale of Non-Homestead Property by Individual to Entity (Prop. Code Sec. 42.0022).....	37
12.2	Rules for Expedited Assertion of Exemptions (Gov’t Code Sec. 22.0042).....	37
13.	Jurisdiction and Venue.....	37
13.1	Venue for Probate of Wills (Sec. 33.1011).....	37
13.2	Jurisdiction of County and Justice Courts.....	38
14.	Court Administration.....	38
14.1	Remote Technology.....	38
(a)	Probate and Guardianship Proceedings (Secs. 53.108 & 1053.106).....	38
(b)	All Proceedings (Gov’t Code Secs. 21.009 & 21.013).....	38
14.2	Qualification of Judges (Gov’t Code Secs. 24.001, 25.0014 & 25.0033).....	38
14.3	Appointment of Deputy Clerk in Statutory Probate Court (Gov’t Code Sec. 25.017).....	38
14.4	Eligibility of Former Statutory Probate Judge as Visiting Judge (Gov’t Code Sec. 74.055).....	38
14.5	Composition of Courts of Appeals.....	38
14.6	Creation of New “Texas Court of Appeals.”.....	39
14.7	Effect of Supreme Court Rules on Procedural Statutes (Gov’t Code Sec. 22.004(c)).....	39
14.8	Recovery of Attorney’s Fees.....	39
(a)	Just “Organizations.”.....	39
(b)	“Other Type of Corporate Entity.”.....	39
(c)	“Other Legal Entity.”.....	39
(d)	“Another Person.”.....	39
15.	Selected Family Law Issues.....	39
15.1	Who Can (or Can’t) Get Married.....	39
(a)	Minimum Marriage Age (Fam Code Sec. 2.009).....	39
(b)	Same-Sex Marriages.....	39
15.2	Who May Conduct Marriage Ceremonies (Fam. Code Sec. 2.02).....	39
(a)	Conduct of Marriage Ceremonies by <i>Any</i> Judge (Fam. Code Sec. 2.02).....	39
(b)	Governor, Lt. Governor, or Legislator.....	39
(c)	A Muslim Imam.....	39
15.3	Marriage by Zoom.....	40
15.4	How May (or Must) Marriages Be Ended.....	40
(a)	Date of Marriage in Divorce Decree.....	40
(b)	Concealed Divorce.....	40
(c)	Fraud, Duress, or Force.....	40
(d)	Impotency as Grounds for Annulment.....	40
16.	Stuff That Doesn’t Fit Elsewhere.....	40
16.1	Pandemic Disaster Legislative Oversight Committee (New Gov’t Code Chs. 329 & 418A).....	40

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1. The Preliminaries.

1.1 Introduction and Scope. The 87th Regular Session of the Texas Legislature spans the 140 days beginning January 12, 2021, and ending May 31, 2021. 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 I¹ 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:

- We'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. (I don't think such rumors have started about Meredith.)
- In addition, some of the descriptions in this paper admittedly border on editorial opinion, in which case the opinion is my/our own, and not necessarily that of REPTL, Craig Hopper, Lauren Hunt, 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!). Craig Hopper has informed me that he's also happy to accept donations of Scotch. (I don't yet know Meredith's adult beverage of choice.)
- As companion bills make their way through the legislative process, we usually base descriptions on the most recently approved version in either chamber. In the case of REPTL bills, we 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 1.7 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 7 on page 7**.

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/2021LegislativeUpdate

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 "2021" in the URL.

¹ In this paper, "I" refers to Bill Pargaman, the author of this legislative update since the 2009 legislative session. However, this year, Meredith McIver has provided invaluable assistance in preparing not only the initial draft of this paper

but also many revisions as the status or descriptions of bills change. Therefore, when we use "we," that refers to both of us.

1.5 Where You'll Be Able to Find the Statutory Language After the Session's Over. Beginning with the 2019 update, in an effort to be green (for anyone getting a hard copy), we published an entirely separate supplement containing the actual statutory language that's changing, or being added, rather than adding it as attachments to this paper itself. Sometime after the 2021 session is over, you'll be able to find that supplement containing the changed or added statutory language – or at least the language we deem worthy to include –by pointing your browser to:

www.snpalaw.com/resources/2021LegislativeSupplement

Be sure to check for an updated paper and supplement shortly after the Governor's June 20th deadline for signing or vetoing bills passed late in the session. In an even later version, we'll add session law chapter numbers to the acts.

1.6 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 over 9,000 members, has been active in proposing legislation in this area for more than four decades. During the year 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, Co-Chair, Estate and Trust Legislative Affairs Committee; principal presenter of this paper; and Chair-Elect/Secretary of REPTL
- Lauren Hunt of Austin, Co-Chair, Estate and Trust Legislative Affairs Committee; Chair, Fiduciary Litigation Committee
- Reid Wilson, Chair of REPTL
- Eric Reis of Dallas, Immediate Past Chair of REPTL
- Greg Kimmel of Tyler, Chair, Decedents' Estates Committee
- Dyann McCully of Fort Worth, Chair, Guardianship Committee
- Gene Wolf of El Paso, Chair, Trusts Committee
- Don Totusek of Dallas, Chair, Powers of Attorney and Advance Directives (PAADs) 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. You'll note the names of our authors and sponsors.² in the parenthetical following the first mention of a bill in this paper. These are the legislators who have volunteered their time and effort to help REPTL get its bills passed. 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.

1.7 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 2021 regular legislative session that spans from January through May is "87(R) – 2021"). Select the Bill Number button, and then type your bill number in the box below. So, for example, if you wanted to find the House version of the 2021 Decedents' Estates bill prepared by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas ("REPTL"), you'd type "HB 2182" 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 See Sec. 2.5 on page 3 if you want to learn the difference between an author and a sponsor.

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Title search: Legislative Update

Also available as part of the eCourse

[2021 Estate Planning, Guardianship, and Elder Law eConference](#)

First appeared as part of the conference materials for the
23rd Annual Estate Planning, Guardianship and Elder Law Conference session
"Legislative Update"