

[Insert Catchy Title Here]

2015 Texas Estate and Trust Legislative Update

(Including Probate, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

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“2015 Texas “Estate and Trust” Legislative Update.”

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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



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Legal Experience

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

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 Husc h Blac kwe ll LLP), 1981 – 2012

Speeches and Publications

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

- State Bar of Texas (Texas BarCLE) – 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, 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
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

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- 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

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[Insert Catchy Title Here]

2015 Texas Estate and Trust Legislative Update

(Including Probate, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

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1. The Preliminaries.

1.1 Introduction and Scope. The 84th Regular Session of the Texas Legislature spans the 140 days beginning January 13, 2015, and ending June 1, 2015. 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.

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!).
- Finally, the descriptions contained in this paper, while hopefully accurate at the time they were written, 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 1.5 on page 2 below 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,¹ you'll find it beginning with **Part 6 on page 6 below**.

1.4 Acknowledgments. A lot of the effort in every legislative session comes from the **Real Estate, Probate, and Trust Law** Section of the State Bar of Texas. REPTL, with its 8,000+ members, has been active in proposing legislation in this area for more than three 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. Thanks go to:

- Craig Hopper of Austin, Chair, Estate and Trust Legislative Affairs Committee; and principal presenter of this paper
- Lisa Jamieson of Fort Worth, Immediate Past Section Chair
- Bill Pargaman of Austin, Section Chair-Elect/Secretary; Immediate Past Chair, Estate and Trust Legislative Affairs Committee; and principal author of this paper²
- Eric Reis of Dallas, Chair, Decedents' Estates Committee
- Laura Upchurch of Brenham, Chair, Guardianship Committee
- Marjorie Stephens of Dallas and Jeffrey Myers of Fort Worth, Co-Chairs, Trusts Committee
- Kristi Elsom of Houston, Chair, Designated Agents and Directives Committee
- Clint Hackney of Austin, Lobbyist

¹ Presumably because you've read it in one of my previous legislative updates, and not because you find my writing somewhat less than scintillating.

² Yes, I'm thanking myself!

- 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 excellent 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 (George Bruns of San Antonio, Chair, Michael Milich of Houston, Governmental Relations Chair, and Celeste Embrey, Executive Director).

Last, but of course not least, are the legislators and their capable staffs. In the 2015 session, sponsors of REPTL legislation include Rep. Senfronia Thompson of Houston, Rep. John Wray of Waxahachie, Sen. José Rodríguez of El Paso, Sen. Judith Zaffirini of Laredo, and Sen. Joan Huffman of Houston.

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.

1.5 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 2015 regular legislative session that spans from January through May is "84(R) - 2015). 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. The Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting through its Council. Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL-carried 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.

2.3 The Bankers. There are two groups of bankers that REPTL deals with. One is the Wealth Management and Trust Division of the Texas Bankers Association ("TBA"), which tends to represent the larger corporate fiduciaries, while the other is the Independent Bankers Association of Texas ("IBAT"), which tends to represent the smaller corporate fiduciaries, although the distinctions are by no means hard and fast.

2.4 The Texas Legislative Council. Among other duties, the Texas Legislative Council provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by the Legislative Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision program, the Legislative Council was the primary drafter of the Texas Estates Code, a nonsubstantive revision of the Texas Probate Code.

2.5 The Authors and Sponsors. All legislation needs an author, the Representative or Senator who

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