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## New Beneficiary Notice Requirements – How Does This Affect Your Planning?

Prompted by an executor's alleged misappropriation of funds from several estates, the Texas Legislature recently adopted a requirement that beneficiaries receive notice that a Will has been probated. Previously, only charities and governmental entities were required to receive notice. Now, new Section 128A of the Probate Code directs an executor to notify all Will beneficiaries and, in some cases, Living Trust beneficiaries.

Overview. The notice requirements apply to estates of decedents dying on or after September 1, 2007, but do not apply to intestate estates, guardianships, muniments of title, or trusts. However, if the executor of a Will is also a Trustee of a Living Trust which receives some or all of the probate estate, the notice requirements will apply to initial income beneficiaries of the Living Trust as well.

Each named beneficiary (including individuals, charities, and trusts) whose identity and address are known or, through reasonable diligence, can be ascertained, must be given notice, including a copy of the Will and the order admitting it to probate; notice is also required for individuals expressly disinherited or given a small or token bequest (e.g., one dollar). The executor must file all of this information with the court.

Privacy Concerns; Use of Living Trust. The notice requirements raise a number of new privacy issues because each beneficiary's name and address will become part of a public record. Such notice may raise the likelihood of a contest or other litigation by persons who will now be made aware of the probate process. In cases where privacy or litigation concerns are important, these notice requirements will make it advisable to use a Living Trust and simple "pour-over" Will. However, in order to avoid application of the notice requirements to a Living Trust, it will be necessary to appoint different persons as executor of the Will and trustee of the Living Trust – at least during the initial estate administration. Alternatively, if all of the estate assets are held in the Living Trust prior to death, there will be no need to probate the pour-over Will. Finally, in some cases where the Will is simple and clearly describes the distribution of assets, the notice requirements can be avoided by probating the Will as a muniment of title which does not involve appointment of an executor.

If you have any questions about the amendment and its implications, please contact any of the following attorneys:

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