

State Bar of Texas Women and the Law Section  
Other Sections' Legislative Proposals

The issue is whether our section opposes any of the other sections' legislative proposals.

Some of the proposals involve non-substantive changes, while others involve more substantive ones. For more information on each proposal, please go to this webpage, which links to all of the materials:

<https://www.texasbar.com/Content/NavigationMenu/AboutUs/GovernmentalRelations/LegProgram1.htm>.

Number	Section	Proposal
1.	Business Law Section	Proposing to eliminate erroneous cross-references in the Texas Securities Act ("TSA"). The drafting errors have the effect of creating six new private civil causes of action. The cross-references are to TSA provisions that actually impose no duties on private actors. At best, this may cause confusion among judges and litigators. At worst, it may create new causes of action that the Texas legislature did not intend to create.
2.	Entertainment and Sports Law Section	Proposing that websites substantially engaged in the business of distributing commercial sound recordings or audiovisual recordings disclose their true name, address, telephone number and email address, just as disclosure of origin is required on physical goods. The disclosure requirements included in the Proposed Bill are garden variety informational items that are commonly disclosed by any legitimate website.
3.	Family Law Section	Proposing to (1) establish consistent qualifications, powers, and duties of a court-appointed amicus attorney, (2) require that a specific order be entered which sets out the duties the court requires of an amicus attorney, and (3) outline the basis for conflicts and determining bias.
4.	Family Law Section	Proposing to add statutory language requiring a court, when rendering a judgment terminating a marriage, to state the date that the court finds the parties were married, thereby providing certainty of this date in the event of future litigation.

5.	Family Law Section	Proposing to make a court reporter record of a proceeding the “default” position with respect to the record (which can be changed by agreement of the parties), in an effort to protect parties, including the proliferating number of self-represented litigants.
6.	Family Law Section	Proposing that a default protective order may be rendered if the defaulting respondent was served with notice of the hearing and proof of service was filed before the time the hearing was scheduled, thereby resolving a conflict in caselaw in favor of the underlying Family Code policy of expeditious resolution of family violence claims.
7.	Family Law Section	Proposing to clarify that a jury may impose a geographic restriction when a parent has been designated a joint managing conservator or a sole managing conservator.
8.	Family Law Section	Proposing that a qualified domestic relations order (QDRO) be used for the payment and collection of both child support and spousal maintenance, as has been done for years under federal law.
9.	Family Law Section	Proposing to (1) rewrite a Texas Family Code section to state guiding principles and factors to be considered by a court in making decisions which establish rights of possession and access to children under age 3, and (2) expressly incorporate another section that authorizes a party to request written findings regarding the court’s order governing possession of and access to a child under age 3.
10.	Family Law Section	Proposing to (1) establish a process for obtaining service on parties who are subject to an existing order providing for the nondisclosure of a party’s address, and (2) provide that any party who obtains an order that their contact information be excluded from a final order must designate a registered agent for service.
11.	Family Law Section	Proposing to allow a party to seek a modification to increase spousal maintenance up to the original amount and time frame ordered.
12.	Family Law Section	Proposing to replace “standard order” with the defined term “standard possession order” to eliminate ambiguity.

13.	Family Law Section	Proposing to allow a party to seek modification of one issue (which requires the allegation of a material and substantial change) without such allegation resulting in an admission of a material and substantive change regarding another issue.
14.	Family Law Section	Proposing to (1) require the party seeking a writ of entry and retrieval to disclose to the court the existence of domestic relations litigation and to present the writ application to the court having domestic relations jurisdiction, and (2) expand the list of property types subject to the writ.
15.	Juvenile Law Section	Proposing to give counties that do not have attorney judges presiding over juvenile courts the option to have a licensed attorney appointed to serve as the juvenile court judge in place of the county judge. The substitution would be limited to a fellow member of the county commissioners court.
16.	LGBT Law Section	Proposing a constitutional amendment to repeal the unconstitutional provision of the state constitution (1) providing that marriage in this state consists only of the union of one man and one woman, and (2) prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage.
17.	LGBT Law Section	Proposing (1) statutory changes to reflect and address same-sex marriages and parenting relationships, and (2) the removal of certain statutory language regarding the criminality or unacceptability of homosexual conduct.
18.	Real Estate, Probate and Trust Law Section	<u>Real Estate</u>  Proposing non-substantive revisions to sections of the Texas Property Code referencing Vernon's Texas Civil Statutes. (Common Interest Communities).
19.	Real Estate, Probate and Trust Law Section	<u>Real Estate</u>  Proposing non-substantive revisions to sections of the Property Code referencing Vernon's Texas Civil Statutes. There are references to pre-codified statutes (since codified), and these revisions would update the references. (Property Code Clean-Up).

20.	Real Estate, Probate and Trust Law Section	<p><u>Real Estate</u></p> <p>Proposing non-substantive revisions to sections of the Property Code removing archaic references and clarifying delivery by tenant of a forwarding address. (Landlord Tenant).</p>
21.	Real Estate, Probate and Trust Law Section	<p><u>Trusts</u></p> <p>Proposing to (1) conform certain homestead-related language in Texas Property Code with homestead-related language in Texas Tax Code, (2) clarify that Texas follows the Restatement Second of Property (Donative Transfers) approach on creditor exposure for assets subject to a testamentary general power of appointment after the death of the donee of the power, (3) clarify that, when decanting a trust, the second trust can take on the same name and, if permitted by applicable law, the tax ID number of the first trust, and (4) provide guidance to courts, conforming with the current standard in practice, in determining when to appoint an attorney ad litem to a trust proceeding.</p>
22.	Real Estate, Probate and Trust Law Section	<p><u>Guardianships</u></p> <p>Proposing to (1) add an additional item as “relating to a guardianship proceeding” to expand jurisdiction for county courts at law, (2) provide for the usage of unsworn declarations in guardianship proceedings, (3) clarify that only a court investigator or guardian ad litem may be appointed to investigate a complaint relating to modification or termination of a guardianship, which is consistent with current statutory procedures, (4) provide that the proper newspaper to be used for notice of a guardianship proceeding is a newspaper of general circulation in the county, instead of requiring notice to be posted in a newspaper <i>printed in</i> the county, (5) clarify the court’s authority in a way that is consistent with other statutory language regarding the payment of costs in a guardianship, (6) amend statute regarding sales of personal property in a guardianship to be consistent with similar changes proposed to the legislature regarding decedents’ estates and consistent with recent changes regarding the sale of real property in decedents’ estates (to clarify sale by public auction versus private contract), (7) amend statute regarding sales of real property in a guardianship to be consistent with similar changes enacted in 2019 regarding the sale of real property in decedents’ estates (same), (8) correct outdated</p>

		<p>references to the Texas Government Code regarding the Texas Department of Aging and Disability Services and the Texas Guardianship Certification Board, (9) provide that provisions for notice when an application for creation of a management trust is filed will be the same as those for an application to create a guardianship, and specifying that an already-serving guardian shall also be served with a citation, (10) clarify available termination provisions for a guardianship management trust, including providing an option for a court to extend a guardianship management trust for an incapacitated minor until the minor's death or removal of the incapacity, (11) clarify that both a guardian of the estate and person shall receive a copy of an annual accounting, (12) amend statutes relating to the sale of property by a nonresident guardian to allow such nonresident guardian to withdraw the sales proceeds for the ward after the sale, since it is unclear under current law whether and how a nonresident guardian can withdraw sale proceeds for the ward, and (13) identify the effective date of the proposed legislation.</p>
23.	Real Estate, Probate and Trust Law Section	<p><u>Decedent's Estates</u></p> <p>Proposing to (1) expand, clean up, and modernize the definition of "person," (2) provide alternatives to registered or certified mail to meet notice requirements under the Texas Estates Code, (3) clarify which community property assets of a married couple are subject to certain creditors' claims when a spouse dies (leaving current law unchanged, (4) direct readers of a subchapter of the Texas Trust Code to other provisions (now more appropriate located) that address effects of divorce on certain trust dispositions, (5) clarify that the required listing of estate property in a heirship proceeding only applies to property that would be governed by the judgment in the proceeding, (6) allow certain persons to waive citation on behalf of a minor under the age of 16 and allow minors 16 years of age or older to waive citation in proceedings to declare heirship and in proceedings to probate a copy of a written will not produced in court, thereby modifying existing law, which requires personal service on all minors over the age of 12, (7) clarify that an affidavit of heirship described by a section of the Texas Estates Code can serve as testimony in a proceeding to declare heirship, which would allow the court to consider as evidence a sworn affidavit of heirship that has been of record for 5 or more years in the deed records of the county, (8) remove the requirement for an applicant to list the last three digits of his/her Social Security number and driver's license number in applications to probate wills and applications for letters testamentary or of administration, (9) allow courts to approve routine,</p>

		<p>uncontested probate applications by written submission, giving courts the flexibility to avoid the requirement of a hearing when there is no objection, while not requiring courts to accept applications to probate by written submission, (10) allow a person to make an unsworn declaration in lieu of taking a sworn oath in order to qualify as a personal representative, allowing greater flexibility for personal representatives to qualify if no notary or clerk is available to take the oath, or it if it is inadvisable for health reasons for the personal representative to appear in person before the notary or clerk, (11) apply existing provisions (without meaning to make substantive changes) that address the sale of real estate in a dependent administration to the sale of personal property in a dependent administration, (12) remove references to community debts and community obligations, which are meaningless and misleading in the context of an administration of a decedent's estate, and (13) identify the effective date of the proposed legislation.</p>
24.	Real Estate, Probate and Trust Law Section	<p><u>Powers of Attorney and Advanced Directives</u></p> <p>Proposing to (1) clarify that a principal who signs a durable power of attorney must be an adult "individual" rather than a "person" (a necessary change due to a past change in the definition of "person" elsewhere in the Texas Estates Code), (2) allow the principal and notary to sign a durable power of attorney with a digital signature that satisfies certain requirements for digital signatures that already are allowed for advance directives, and (3) describe the authority granted to an agent when the principal grants authority with respect to "business operation transactions" (a change intended to cover membership interests in limited liability companies, which were not widespread in use at the time relevant statutory language was enacted).</p>
25.	Real Estate, Probate and Trust Law Section	<p><u>Powers of Attorney and Advanced Directives</u></p> <p>Proposing to (1) permit certain statements regarding anatomical gifts to be acknowledged om the presence of a notary public in lieu of being witnessed by two adults, and (2) repealing a statutory chapter that was replaced by a new chapter back in 2009.</p>
26.	Real Estate, Probate and Trust Law Section	<p><u>Powers of Attorney and Advanced Directives</u></p>

		Proposing (1) direction to and protection for a health care provider if a principal has named co-agents in a medical power of attorney, (2) that the statutory form of medical power of attorney be permissible, rather than mandatory, and (3) that the effective date of this legislation be September 1, 2021.
27.	Real Estate, Probate and Trust Law Section	<u>Powers of Attorney and Advanced Directives</u>  Proposing (1) that the order and identity of persons who must consent to removal of a decedent's remains from a cemetery plot be the same as the order and identity of persons who have the right to control the initial disposition of the decedent's remains, and (2) that the effective date of this legislation be September 1, 2021.
28.	Real Estate, Probate and Trust Law Section	<u>Virtual Notarization</u>  Proposing authorization of and procedures for existing notaries to remotely notarize signatures without having to be additionally licensed under certain online notary provisions.