

REPTL, Me e t T-REP. T-REP, Me e t REPTL

The 2023 Te xa s Esta te a nd Trust Le g isla tive Up d a te

(Inc lud ing De c e d e n t s' Esta t e s, Gua r d i a n s h i p s, T r u s t s,
P o w e r s o f A t t o r n e y, a n d O t h e r R e l a t e d M a t t e r s)

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O s b o r n e , H e l m a n , S c o t t, K n i s e l y & S t a n t o n

T-REP Le g isla tive A f f a i r s C h a i r a n d P r i n c i p a l P r e s e n t e r:

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O s b o r n e , H e l m a n , S c o t t, K n i s e l y & S t a n t o n

This ve r s i o n w a s l a s t s u b s t a n t i v e l y u p d a t e d **June 19, 2023**. REPTLmembers can check for a more recent version on the REPTL website's [Estate and Trust Legislative Update page](#).

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

Note: This 2023 Te xa s Esta te a nd Trust Le g isla tive Up d a te h a s b e e n p r e p a r e d b y T-REP
a n d p r o v i d e d t o R E P T L m e m b e r s b y a g r e e m e n t b e t w e e n t h e t w o o r g a n i z a t i o n s.

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Legal Experience

Bill Pargaman joined the Austin law firm of Brink Bennett Pargaman Atkins + Sanchez in July of 2021. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and is 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 REPTL's Chair for the 2015-2016 baryear, 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 REPTL'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

- Saunders, Norval, Pargaman & Atkins, LLP., 2012-2021
- Brown McCarrall, LLP. (now Husc h 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 (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, 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
- Texas NAELA Summer Conference
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

William D. Pargaman (cont.)

- 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
- Tarrant County Probate Bar Association
- 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, Houston, Lubbock, San Antonio, and Tyler
- Austin Association of Life Underwriters

Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow, 1994-Present
- State Bar of Texas
 - Real Estate, Probate and Trust Law Section (REPIL), Member (Chair, 2015-2016)
 - REPIL 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
 - Continuing Legal Education Committee, 2018-Present
 - Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997
- Texas Real Estate and Probate Institute (TREP) (Board Member, 2022-Present)
- Estate Planning Council of Central Texas, Member, 1981-2019 (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® (2019 & 2023 Trusts & Estates “Lawyer of the Year” in Austin, TX)
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in The Best Lawyers in Austin (Austin Monthly)

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EDUCATION

- University of Houston Law Center, Houston, Texas (LL.M. in Tax, 2012)
- Samford University Cumberland School of Law, Birmingham, Alabama (J.D., 2011)
- Washington & Lee University, Lexington, Virginia (B.A. in Politics, 2008)

CERTIFICATIONS AND ADMISSIONS

- Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
- Admitted to Practice: State Bar of Texas; United States Tax Court

PROFESSIONAL ACTIVITIES AND HONORS

- The College of the State Bar of Texas, Member
- Real Estate, Probate, and Trust Law Section of the State Bar of Texas, Member
 - Decedents' Estates Committee, 2022-Present
 - Leadership Academy, 2018-2019
- Tax Section of the State Bar of Texas, Member
- Austin Bar Association Estate Planning and Probate Section, Member
- Estate Planning Council of Central Texas, Member
- Texas Super Lawyers Rising Star, 2021-2023

PUBLICATIONS AND PRESENTATIONS

- Co-Author, "Face Masks, Zoom, and Quarantinis" Welcome to...The 2021 Texas Estate and Trust Legislative Update" State Bar of Texas, Advanced Estate Planning and Probate Course (2021)
- Presenter/Co-Author, "Teaching the ABCs to Your Trustees: How to Provide Practical Instructions to New Trustees," State Bar of Texas, Handling Your First (or Next) Trust Course (2021)
- Co-Author, "Language to Include in Your Estate Planning Documents: Suggestions from Trust and Estate Litigators," State Bar of Texas, Estate Planning and Probate Drafting (2020)
- Co-Author, "Transfer Restrictions in Business Entities," State Bar of Texas, Advanced Estate Planning & Probate Course (2020)
- Co-Author, "How to Request (and Get) a PLR," *Texas Tax Lawyer*, Spring 2013, Vol. 40, No. 2

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EDUCATION

- Baylor University School of Law, Waco, TX (J.D., 2007)
- Rhodes College, Memphis, TN (B.A. in International Studies, Minor in Spanish, Phi Beta Kappa, cum laude, 2001)

PROFESSIONAL ACTIVITIES & HONORS

- Chair, Legislative Affairs Committee, Texas Real Estate & Probate Institute, 2022-Present
- Chair, Legislative Affairs Committee, State Bar of Texas, Real Estate, Probate & Trust Law Section, 2021
- Co-Chair, Legislative Affairs Committee, State Bar of Texas, Real Estate, Probate & Trust Law Section, 2019-2021
- Council Member, State Bar of Texas, Real Estate Probate & Trust Law Section, 2016-2020
- Chair, Fiduciary Litigation Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2017-2021
- Texas Rising Star, Texas Monthly Magazine and Texas Rising Star Magazine: 2016 – 2018
- Trust Code Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2011 – 2013
- Texas Bar Foundation
- Texas Bar College

CLE PRESENTATIONS AND PAPERS

- *Venue and Jurisdiction in Probate Proceedings*, Estate Planning & Community Property Law Journal, Texas Tech University School of Law, Author, June, 2022
- *Standing and Capacity in Trusts and Estates*, State Bar of Texas, Advanced Estate Planning and Probate Course, Speaker and Author, June 2022
- *Venue and Jurisdiction in Probate Proceedings*, State Bar of Texas, Fiduciary Litigation, Author and Speaker, December 2021
- *Legislative Update*, State Bar of Texas, Advanced Estate Planning and Probate Course, Speaker, June 2021
- *What Every Planner Needs to Know About Fiduciary Litigation*, State Bar of Texas, Advanced Estate Planning Strategies, Panelist, March 2021
- *Alternatives to Tortious Interference with Inheritance*, Estate Planning & Community Property Law Journal, Texas Tech University School of Law, Co-Author, March 1, 2021
- *Legislative Update*, Elder Law Section of San Antonio Bar Association, January 2021
- *Alternatives to Tortious Interference with Inheritance*, State Bar of Texas, Advanced Estate Planning & Probate, Panelist, June 2020
- *Legislative Update*, Corpus Christi Estate Planning Council, Speaker, September 2019
- *Strategies for Suing and Defending Fiduciary Decision Making*, State Bar of Texas Fiduciary Litigation Course, Author and Speaker, December 2018
- *Case Development Strategies*, State Bar of Texas, Fiduciary Litigation Course, Panelist, December 2016
- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, Tarrant County Probate Litigation Seminar, Author and Speaker, September 2016

LAUREN DAVIS HUNT (cont.)

- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, Fiduciary Litigation Course, Author and Speaker, December 2015
- *The Client is Incapacitated – What do you do next?*, State Bar of Texas, Advanced Estate Planning and Probate Course, Author and Speaker, June 2014
- *Decanting with No Sour Grapes*, State Bar of Texas, Estate Planning & Probate Drafting Course, Panelist, October 2013
- *Capacity, Standing and Jurisdiction*, State Bar of Texas, Advanced Estate Planning and Probate Course, Author and Speaker, June 2013
- *Informal Demand or Formal Discovery: The Debate on Obtaining Information from Fiduciaries Under Their Duty to Disclose*, State Bar of Texas, Fiduciary Litigation, Moderator, 2011
- *Exculpatory Clauses*, State Bar of Texas, Trial of a Fiduciary Litigation Case, Co-Author and Co-Speaker, December 2009

REPTL, Meet T-REP. T-REP, Meet REPTL

The 2023 Texas Estate and Trust Legislative Update

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

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The 2023 Texas Estate and Trust Legislative Update

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

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1. The Preliminaries.

1.1 Introduction and Scope. The 88th Regular Session of the Texas Legislature spans the 140 days beginning January 10, 2023 and ending May 29, 2023. 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, we are 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/our own, and not necessarily that of REPTL, T-REP, 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!). Meredith occasionally enjoys a cold beer while making evening additions to this paper.
- 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 T-REP 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 1.6 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 8 on page 8**.

1.4 A Note About Linking to the Electronic Version. The primary location where this paper will be posted is [the REPTL Estate & Trust Legislative Update page](#). I would recommend using the following link to find the most recent version of the paper:

www.reptl.org/Private/DrawOnePage.aspx?PageID=119

You'll find the current and previous legislative updates going as far back as 1983 (although I'm only responsible for the updates beginning in 2009). Once you click on the link to an update, you should open a new browser tab with a PDF version of this paper. However, **don't** copy that URL, because it will only be a link to that particular version of the paper, and will only work so long as that version remains posted.

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

¹ In this paper, "I" refers to Bill Pargaman, the author of this legislative update since the 2009 legislative session. However, starting in the 2021 legislative session, 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.

attachments to this paper itself. Later, I revised the 2009-2017 updates also to move the statutory language to separate supplements. Sometime after the 2023 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 on the same [REPTL Estate & Trust Legislative Update page](#).

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 2023 regular legislative session that spans from January through May is “88(R) – 2023”). 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 2023 Decedents' Estates bill prepared by T-REP, you'd type “HB 2821” 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. In years past, the Real Estate, Probate & Trust Law Section of the State Bar of Texas (“REPTL”) was active in proposing legislation. However, starting with the 88th Legislative Session, the Texas Real Estate and Probate Institute, or T-REP, will take the lead on legislative initiatives. The reason this legislative role has moved from REPTL to T-REP is discussed in detail in **Part 3 beginning on page 3.** (*We strongly encourage you to read Part 3.*)

Despite REPTL's reduced role in the legislative process, it will continue to educate its members on important legislative changes in the areas of real estate, decedents' estates, trusts, and other areas of interest. Additionally, with its more than forty-year history and breadth of

expertise in developing legislative packages and working to get them enacted, REPTL provides guidance to T-REP that is worthy of acknowledgment. REPTL's officers during the session were:

- Denise Cheney of Austin, Chair
- Melissa Willms of Houston, Chair-Elect/Secretary
- Richard Crow of Houston, Treasurer
- Craig Hopper, Immediate Past Chair

Following REPTL's annual section meeting on July 13, 2023, assuming nothing unexpected happens, REPTL's officers will be:

- Melissa Willms of Houston, Chair
- Richard Crow of Houston, Chair-Elect/Secretary
- Lora Davis of Dallas, Treasurer
- Denise Cheney of Austin, Immediate Past Chair

2.2 T-REP. Following the July, 2021, 5th Circuit ruling in *McDonald v. Sorrells*, REPTL essentially terminated all of its legislative activities. While *McDonald* permits REPTL to support legislation that is “germane to the practice of law,” the scope of germane legislation is extremely limited, so that “permission” is of limited value. In the summer of 2022, T-REP was formed as an independent entity by a group of practitioners who had previously had substantial involvement in the legislative process (many through REPTL) so that there would still be some entity promoting the type of legislation that REPTL had previously worked on.

2.3 The Statutory Probate Judges. The vast majority of probate and guardianship cases are heard by the judges of the Statutory Probate Courts (19 of them in 10 of Texas' 15 largest 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.

2.4 The Bankers. There are two groups of bankers that T-REP 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.

2.5 The Texas Legislative Council. Among other duties, the Texas Legislative Council² provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by Leg. Council

² We usually refer to the Texas Legislative Council as simply “Leg. (pronounced “ledge”) Council.”

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