

CHAPTER 138 - APPOINTMENT OF PERSONAL REPRESENTATIVES

SECTION 138.010	Powers of personal representative before issuance of letters.
SECTION 138.020	Qualifications of executor; letters with will annexed.
SECTION 138.040	Executor not specifically named may be appointed.
SECTION 138.045	Appointment of substitute executors and coexecutors.
SECTION 138.050	Successor to corporate executor.
SECTION 138.060	Objections to appointment.
SECTION 138.070	Executor of deceased executor; account of deceased personal representative.
SECTION 138.080	Failure to appoint all named executors.
SECTION 138.090	Administrators with will annexed: Order of appointment.

SECTION 138.010 Powers of personal representative before issuance of letters.

1. If a will has been admitted to probate, the court shall direct letters thereon to issue to the personal representative named in the will, who shall appear and qualify.
2. No person has any power as a personal representative until he qualifies, except that, before letters are issued, he may pay the funeral charges and take necessary measures for the preservation of the estate.

SECTION 138.020 Qualifications of executor; letters with will annexed.

1. No person is qualified to serve as an executor who, at the time the will is probated:
 - (a) Is under the age of majority;
 - (b) Has been convicted of a **Category A offense** relating to the position of an executor;
 - (c) Upon proof, is adjudged by the court disqualified to execute the duties of executor by reason of conflict of interest, drunkenness, improvidence or lack of integrity or understanding; or
2. If a disqualified person is named as the sole executor in a will, or if all persons so named are disqualified or renounce their right to act, or fail to appear and qualify, letters of administration with the will annexed must issue.

SECTION 138.040 Executor not specifically named may be appointed. If it appears by the terms of a will that it was the intention of the testator to commit the execution of the will and the administration of the estate of the testator to any person as executor, that person, although not named executor, is entitled to letters testamentary in like manner as if that person had been named executor.

SECTION 138.045 Appointment of substitute executors and coexecutors.

1. A person who is named as executor under a will, either alone or with another or others, who is otherwise qualified to act under [SECTION 138.020](#), may appoint a substitute if:
 - (a) The person named in the will is unwilling or unable to undertake or continue the execution of the will; and
 - (b) The testator has not designated an alternate to serve in place of the named executor, or the alternate designated in the will is unwilling or unable to serve.
2. A person named as alternate executor who is not disqualified under [SECTION 138.020](#) may appoint a substitute if:
 - (a) The named alternate is unwilling or unable to undertake or continue the execution of the will; and
 - (b) A named executor is disqualified or has not designated a substitute within 30 days after being notified that the named alternate is unwilling or unable to serve.
3. A qualified person who alone is named as the executor under a will may appoint a coexecutor if:
 - (a) The person named is unwilling or unable to undertake or continue the sole execution of the will; and
 - (b) The testator has not designated an alternate to serve in place of the named executor, or the named alternate is unwilling or unable to serve.
4. The substitute or coexecutor, unless otherwise disqualified under this chapter, is entitled to letters testamentary in like manner as if the substitute or coexecutor had been named in the will.

SECTION 138.050 Successor to corporate executor. If the executor named in the will is a corporation or national banking association that has sold its business and assets to, or has consolidated or merged with, or is in any manner provided by law succeeded by, another corporation or national banking association authorized and qualified to act as executor, the court may issue letters thereon to the successor corporation or association as if the successor were named in the will.

SECTION 138.060 Objections to appointment.

1. An interested person may file objections in writing to the granting of letters testamentary to the person or persons named as executors, or any of them, and those objections must be heard and determined by the court.

2. A petition may also be filed for the issuance of letters of administration, with the will annexed, in all proper cases.

SECTION 138.070 Executor of deceased executor; account of deceased personal representative.

1. No executor of the will of a deceased executor, as such, is authorized to administer the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed of the estate of the first testator left unadministered must be issued. If no executor is named in the will, or if the sole executor or all the executors named therein are dead or incapacitated, or neglect or fail to apply for letters, or to appear and qualify, or die after the issuance of letters and before the completion of the administration, letters of administration with the will annexed must be granted.

2. The account of a deceased personal representative may be settled, duties may be terminated, and sureties may be released of liability subsequently incurred, upon the petition of either the attorney who represented the deceased personal representative in the probate or administration or upon the petition of any of the sureties, and upon such notice as the court directs.

SECTION 138.080 Failure to appoint all named executors. If all the persons named as executors are not appointed by the court, those appointed have the same authority to perform every act and discharge every duty required by the will, and their acts are effectual for every purpose as if all had been appointed.

SECTION 138.090 Administrators with will annexed: Order of appointment.

1. Administrators with the will annexed have the same authority as the executor named in the will would have had if the executor had qualified, and their acts are as effectual for every purpose, but if the power or authority conferred upon the executor is discretionary, and is not conferred by law, it is not conferred upon an administrator with the will annexed.

2. Persons and their nominees and appointees are entitled to appointment as administrators with the will annexed in the same order of priority as in the appointment of administrators, except that, as to foreign letters, an interested person has priority over one who is not.