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Until the Cows Come Home: Ancillary Probate Reform is Needed Across the Country to Better Serve Farmers and Ranchers

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**UNTIL THE COWS COME HOME: ANCILLARY PROBATE REFORM IS NEEDED
ACROSS THE COUNTRY TO BETTER SERVE FARMERS AND RANCHERS**

Emily K. Daniel[†]

Abstract

Property law has long established a difference between real and personal property. When an individual dies, if they owned real property in another state, they may be subject to the other state's probate or estates code. This means that the decedent's beneficiaries may have to probate the estate again in the secondary state's courts if the statutes state that is a requirement. This secondary probate proceeding is called ancillary probate. This Article aims to show the negative effects that ancillary probate has on certain people and industries. Specifically, ancillary probate is a problem that negatively affects farmers and ranchers across the nation due to increased costs and time, problems with estate planning, and the effects it has on the individual needs of families. Because farming and ranching is a vital industry to the survival of the United States, reform is needed to increase uniformity across state codes. This Article demonstrates why uniformity will better serve those who farm and ranch when they own land in another state at the time of death. The original contribution to scholarship is showing how the effects of ancillary probate affect farmers and ranchers and proposing that states should adopt an estates code that mimics the Texas Estates Code. This Article urges states to not only adopt a code provision that better serves the farming and ranching industry but to adopt a provision that mimics Texas Estate Code sections. This Article shows why ancillary probate is an increasing problem for farmers and ranchers while also showing why this group is important to the country. It displays the importance of this group of people and why measures should be taken to protect their ability to be on the land and to farm. Lastly, this Article aims to encourage states to adopt a new provision by showing the negative effects that the current system has on this industry by highlighting necessities that are the product of this industry.

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I. INTRODUCTION

“Probate is about death, but also about caring for the living.”¹

Joe is a farmer in Iowa but also owns and operates land in Illinois that he uses for his farming operation.² He and his family, including his wife and two children, have been farming a variety of crops for the past 60 years and the land has been in Joe’s family since his grandfather was young.³ Joe also runs a couple hundred head of cattle that get rotated

1. John H. Langbein, *Richard Wellman and The Reform of American Probate Law*, 40 GA. L. REV. 1093, 1095 (2006).

2. Author’s own hypothetical.

3. *Id.*

from land in Iowa to land in Illinois.⁴ Joe and his wife have created a simple will and have not created a trust with the land and other assets in it. Joe and his family are not only unaware that is an option for them, but they also are not aware that the land located in Illinois may be subject to extra probate proceedings upon his or his wife's death.⁵ When he passes, his wife Carrol, or any other person authorized to probate the will, may have to probate the estate in Iowa and in Illinois due to Illinois state probate laws that govern probate proceedings.⁶ They will have to go through the probate process two times to be able to continue their crop production in both states because they have to clear the title in the land that Joe left behind for them.⁷

Secondary probate proceedings are a common problem across the United States.⁸ In fact, many states have adopted their own code provisions to govern the procedures of this area.⁹ Furthermore, a uniform code has also been promulgated to provide guidance and laws for states in this area as well as other probate-related matters.¹⁰ While on its face ancillary probate may not seem a consequential problem, these secondary proceedings have negative repercussions when considering their effects on certain groups in the country, particularly farmers and ranchers.¹¹ Ancillary probate costs can be very high and create financial hardships for families and individuals.¹² Forcing people to go through the probate process for a second time runs up costs for the beneficiaries of the decedents.¹³ Additionally, ancillary probate also increases the time that it takes to settle estates.¹⁴ Lastly, ancillary probate also creates problems when farmers and ranchers do attempt to plan their estate, whether that be through a will, trust, some combination of the two documents, or some other avenue.¹⁵ Complications due to estate planning

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. See Steven D. Lerner, *The Need For Reform in Multistate Estate Administration*, 55 TEX. L. REV. 303, 309–11 (1977).

9. See *id.*

10. See *id.*; see also TEX. EST. CODE ANN. § 501.001 (West, Westlaw through 2023).

11. See Garrett Couts, *Ancillary Probate: 'Anci-what-now?'*, PROGRESSIVE CATTLE (May 24, 2022), <https://www.agproud.com/articles/55215-ancillary-probate-anci-what-now> [<https://perma.cc/6WJG-ABVH>].

12. See Julie Garber, *How Much Does Probate Cost?*, THE BALANCE (June 3, 2022), <https://www.thebalancemoney.com/how-much-does-probate-cost-3505268> [<https://perma.cc/H9EM-U2HF>].

13. See *id.*

14. See *id.*

15. *Infra* Section II.A.3

may arise from the estate itself, such as the assets included, as well as trying to encompass laws from different states into one document.¹⁶ Furthermore, complications arise when plans attempt to encompass different states' laws while also seeking to maintain the decedent's intent for their assets.¹⁷

Farmers and ranchers are a group that needs protection when it comes to ancillary probate because of their importance to the United States and other countries abroad.¹⁸ Since 1924, the United States has advanced a national policy of supporting production agriculture, including direct farm support through statutory measures such as what is commonly referred to as the "Farm Bill."¹⁹ The Farm Bill is a federal law that governs food and agricultural production.²⁰ Since its initial conception, each year it has been up for review, the Farm Bill has passed due to a bipartisan effort with the goal of providing "safe and affordable food, feed, fuel and fiber for the country and the world."²¹ The bill was initially created and passed in response to the Great Depression and Dust Bowl as a way to support agriculture during this time of hardship and economic downturn.²² Initially, the first Farm Bill was passed to support farmers that were struggling during the Great Depression as a way to support commodity programs, but it has since grown to support a variety of segments of the agriculture industry, including food and nutrition programs.²³ Some regard the Farm Bill as one of the most important pieces of legislation due to the support it provides agriculture.²⁴

16. Daniel Bigelow & Todd Hubbs, *Land Acquisition and Transfer in U.S. Agriculture*, USDA ECON. RSCH. SERV. (Aug. 25, 2016), <https://www.ers.usda.gov/amber-waves/2016/august/land-acquisition-and-transfer-in-us-agriculture/> [<https://perma.cc/8N5U-DCZQ>].

17. *Infra* Section III.B.2.

18. See Anne B. W. Effland, *U.S. Farm Policy: The First 200 Years*, AGRIC. OUTLOOK 21, 25 (Mar. 2000), https://www.ers.usda.gov/media/fregl5ap/us-farm-policy_the-first-200-years.pdf?locale=en [<https://perma.cc/4Z5W-68DM>].

19. *Id.* at 21.

20. Renée Johnson & Jim Monke, *Farm Bill Primer: What is the Farm Bill?*, CONG. RSCH. SERV. (Feb. 22, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF12047> [<https://perma.cc/JA8Z-JDSJ>].

21. Shelby Myers, *What is the (Food and) Farm Bill and Why Does It Matter?*, MKT. INTEL (July 20, 2022), <https://www.fb.org/market-intel/what-is-the-food-and-farm-bill-and-why-does-it-matter> [<https://perma.cc/GVA7-LQTC>].

22. *Id.*

23. *Id.*

24. Andrew Eversden & Abby Livingston, *U.S. House Passes Farm Bill to Relief of Texas Farmers, SNAP Proponents*, THE TEX. TRIB. (Dec. 12, 2018, 3:00 PM), <https://www.texastribune.org/2018/12/12/us-house-passes-farm-bill-relief-texas-farmers-snap-proponents/> [<https://perma.cc/8XE4-CTY9>].

The Farm Bill has evolved over the years, but its role has remained important.²⁵ During the height of the Great Depression in the 1930s and continuing to this day, Farm Bill legislation has “enable[d] all Americans, from producers to consumers, to enjoy stable food prices at the grocery store, even after disasters like the 2012 drought and Superstorm Sandy.”²⁶ This long-standing history displays the importance that even the federal government places on the agriculture industry, as well as the farmers and ranchers who work in it.²⁷

When looking at individual farmers, “farm price and income support programs have been the core of agricultural policy in the United States” since the Farm Bill first passed in 1933 as the Agriculture Adjustment Act.²⁸ The problems farmers and ranchers faced during the Great Depression were exacerbated due to fewer off-farm labor opportunities reducing the other sources of income that these families relied on.²⁹ The act’s goals were to relieve farmers experiencing hardship while also giving them more purchasing power during the Great Depression.³⁰

Farm Bill payments help not only with overproduction but also help farmers afford the land needed to farm and ranch.³¹ In addition to the value attributed to the land, “[a] 2009 study found that between 15 and 30 percent of the value of farmland may be explained by farm program payments.”³² That means that these farmers and ranchers are using these payments to buy the land that they use when producing crops and livestock.³³ This not only displays the importance that the Farm Bill has for farmers but also shows the importance that the federal government

25. Rachael Dubinsky & Rebecca Frank, *Why Should Young People Care About The Farm Bill?*, U.S. DEPT. OF AGRIC. (Dec. 7, 2012), <https://www.usda.gov/media/blog/2012/12/07/why-should-young-people-care-about-farm-bill> [<https://perma.cc/6C4E-CKLR>].

26. *Id.*

27. *See id.*

28. Carolyn Dimitri et al., *The 20th Century Transformation of U.S. Agriculture and Farm Policy*, USDA ECON. RSCH. SERV. 1, 9 (June 2005), https://www.ers.usda.gov/webdocs/publications/44197/13566_eib3_1_pdf?v=1459.2. [<https://perma.cc/X2KH-REY6>].

29. *Id.*

30. Wayne D. Rasmussen et al., *A Short History of Agricultural Adjustment, 1933-75*, USDA ECON. RSCH. SERV. 1, 2 (Mar. 25, 1976), <https://naldc.nal.usda.gov/download/CAT87210025/PDF> [<https://perma.cc/3LUZ-YF5Z>].

31. Christopher Burns et al., *Farmland Values, Land Ownership, and Returns to Farmland, 2000–2016*, USDA ECON. RSCH. SERV. 1, 9 (Feb. 2018), <https://www.ers.usda.gov/webdocs/publications/87524/err-245.pdf?v=0>. [<https://perma.cc/A769-73ES>].

32. *Id.*

33. *See id.*

has placed on agriculture, further illustrating why this group should be afforded protections.³⁴

Despite not supporting every part of the bill when it comes up every five years, elected officials understand the importance of the bill and the effect that it has on farmers and ranchers.³⁵ Because of this, the bill still passes each time under a bipartisan vote.³⁶ Farmers, and other groups who are affected by the Farm Bill, support the legislation because it provides certainty and predictability in an industry that cannot always provide that to those who participate.³⁷ Because of the bill, “[f]amilies are able to put dinner on the table thanks to nutrition assistance programs.”³⁸ It is important that families are able to put food on the table and that the people of the United States have access to food and other materials that are of good quality.³⁹

With approximately 330 million people in the United States that require food to eat, clothes to wear, and other basic necessities, agriculture plays a vital role.⁴⁰ Because of the number of people that the farming and ranching industry has to feed, there is great support for large-scale production in the agriculture industry.⁴¹ Modern trends in the agriculture industry include figuring out how to get food from the farms where the food is grown to the cities where larger numbers of people live.⁴² Because of the growing trend of people moving to cities, some scholars believe that agriculture will have to be produced by fewer people and further away from those who will consume it.⁴³

American agriculture is also positioned as an exporter due to the excess farmers and ranchers are able to produce.⁴⁴ This also sets up other countries for success because “agricultural trade benefits the global poor and further liberalization could lift millions out of poverty while improving food security.”⁴⁵ Therefore, while protecting

34. *See supra* notes 31–33 and accompanying text.

35. Eversden & Livingston, *supra* note 24.

36. *Id.*

37. *What is the (Food and) Farm Bill and Why Does It Matter?*, *supra* note 21.

38. *Id.*

39. *Id.*; *Food Security Status of U.S. Households in 2021*, USDA ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/key-statistics-graphics/> [https://perma.cc/HLD2-KY9D].

40. Ted Nordhaus & Dan Blaustein-Rejto, *Big Agriculture Is Best*, FOREIGN POLICY (Apr. 18, 2021, 6:00 am), <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/> [https://perma.cc/7VRG-SKQV].

41. *Id.*

42. *Id.*

43. *Id.*

44. *See id.*

45. *Id.*

agriculture would benefit American citizens, it would also benefit those in other countries by providing them with food, clothing, and other basic necessities.⁴⁶

Agriculture plays an important role in increasing food security and reducing poverty.⁴⁷ In 2021, 89.8% of households were food secure, meaning they had access to enough food for all household members to live an active and healthy lifestyle.⁴⁸ This is important because “[g]rowth in the agriculture sector has been found, on average, to be at least twice as effective in reducing poverty as growth in other sectors.”⁴⁹ Furthermore, “[a]ccess to quality, nutritious food is fundamental to human existence.”⁵⁰ By focusing on this industry and providing protections when applicable, not only would farmers and ranchers be protected from ancillary probate, but citizens of the United States would also benefit through food security and access to quality food and other products.⁵¹

Farmers and ranchers should be afforded protections where they can be offered because they are the individuals who provide food for the table, fibers for clothing, and materials for shelter, and they face many financial obstacles already.⁵² Currently, farmers and ranchers are experiencing higher input prices.⁵³ Higher input prices mean the prices of the goods that they produce are higher.⁵⁴ This leads to higher costs for consumers when they purchase the good at stores or other locations.⁵⁵ Current price increases are expected in food groups such as dairy, meat, cereal, and bread products.⁵⁶ While these costs are not directly related to the ancillary probate costs, farmers only receive “about 18 cents of every dollar consumers spend at the grocery store” and only about “3 cents for every dollar spent on food eaten away from home.”⁵⁷ More

46. *See id.*

47. *Importance of Global Food Security*, USDA NAT’L INST. FOOD & AGRIC., <https://www.nifa.usda.gov/topics/global-food-security> [https://perma.cc/73UB-UR7P].

48. *Food Security Status of U.S. Households in 2021*, *supra* note 39.

49. *Importance of Global Food Security*, *supra* note 47.

50. *Id.*

51. Jacqui Fatka, *High Farm, Supply Chain Costs Underpin Consumer Food Inflation, Analysts Say*, AGRIPULSE (Nov. 23, 2022, 6:29 AM), <https://www.agri-pulse.com/articles/18526-high-farm-supply-chain-costs-will-underpin-consumer-food-prices-analysts-say> [https://perma.cc/23UA-QLPN].

52. *See Nordhaus & Blaustein-Rejto*, *supra* note 40.

53. Fatka, *supra* note 51.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

should be done to protect farmers' and ranchers' monetary interests because they make less than half of the final price in profit on the food that they provide American citizens.⁵⁸

Furthermore, farmers who sell goods that are classified as commodities do not get to choose the prices at which they sell their products.⁵⁹ Products classified as commodities include eggs, wheat, and corn.⁶⁰ This system means that farmers cannot control the price at which they sell their goods in order to attempt to make more of a profit on their operations for their families.⁶¹ Because of the importance of farmers and ranchers to American citizens and the characteristics of their industry, farmers and ranchers should have their financial interests protected more because of the economic problems that already face the industry.⁶²

Farmers and ranchers face many problems that may cause the operation to experience financial hardship; therefore, it is not uncommon for farming and ranching operations to face financial distress.⁶³ When considering whether a farm is in danger of financial problems, "[a] farm is considered to be in the 'critical zone,' indicating potential financial problems, if operating profits comprise less than 10 percent of the farm's gross cash farm income (GCFI) from the sale of commodities and other farm-related goods and services, together with Government payments."⁶⁴ In 2013, 69% of farms were considered part of the OPM critical zone.⁶⁵ That means that more than half of the farms used to provide food to American citizens had potential financial problems.⁶⁶ Additionally, in the United States, "[w]hen crop margins are high, livestock margins are usually low and vice versa."⁶⁷ This inverse relationship means that at any given time, either sector of the industry could be facing issues with making a profit on their crops or livestock.⁶⁸ With more than half of the farms being in the critical zone and the inverse relationship of farming and ranching, there will usually be a group of people in the

58. *See id.*

59. *Id.*

60. *Id.*

61. *See id.*

62. *Id.*

63. *See id.*; see also Robert A. Hoppe, *Profit Margin Increases With Farm Size*, USDA ECON. RSCH. SERV. (Feb. 2, 2015), <https://www.ers.usda.gov/amber-waves/2015/januaryfebruary/profit-margin-increases-with-farm-size/> [<https://perma.cc/P7AY-8RQX>].

64. Hoppe, *supra* note 63.

65. *Id.*

66. *Id.*

67. Chad Hart & Lee L. Schulz, *Searching for Profitable Margins*, CARD AGRIC. POL'Y REV. (2015), https://www.card.iastate.edu/ag_policy_review/article/?a=37 [<https://perma.cc/LX3J-73VM>].

68. *Id.*

industry that are struggling financially.⁶⁹ Because many farms and ranches may be struggling financially, farmers and ranchers deserve protection when it comes to where they may have to spend their money.⁷⁰

Ancillary probate affects farmers and ranchers across the country because of the complexity that comes with probating a farming or ranching estate, as well as certain characteristics that are unique to the industry.⁷¹ Because farming and ranching are vitally important for human survival and because these individuals and families are negatively affected by ancillary probate, this Article aims to reform ancillary probate by displaying why other states' administration processes should seek to mimic the Texas Estates Code in this area to better serve farmers and ranchers.⁷² This Article looks to break new ground and takes a new approach to ancillary probate by posing a new solution to negative effects on farmers and ranchers across the country.⁷³ Part II will discuss the current types of statutes that are in place in some states, as well as the different problems they create for farmers and ranchers.⁷⁴ Part III will discuss the reasons why this change is needed by comparing other states' code sections to the Texas Estates Code and showing how this further affects farmers and ranchers and the effects this may have on Americans.⁷⁵

II. STATES LACK A UNIFORM PROCESS OR PROCEDURE TOWARDS ANCILLARY ADMINISTRATION PROCEDURES

Ancillary administration, or ancillary probate, is "the judicial process by which a non-resident decedent's property located in this state is administered in parallel with original probate at the decedent's domicile."⁷⁶ When a decedent dies in their home state, their will, if they have one, will go through the probate process according to the laws of the state in which they died.⁷⁷ If the decedent has certain types of property, such as real property, remaining in a different state, that property may

69. *Id.*; Hoppe, *supra* note 63.

70. *See* Hoppe, *supra* note 63; *see also* Hart & Schulz, *supra* note 67.

71. Author's original thought.

72. Author's original thought.

73. *See infra* Part III.

74. *See infra* Part II.

75. *Infra* Part III.

76. Lorraine N. Anastasio & Gayle B. Wilhelm, *A Guide to Ancillary Probate in Connecticut*, 2 CONN. PROB. L.J. 173, 173 (1987).

77. Grayson M. P. McCouch, *Probate Law Reform and Nonprobable Transfers*, 62 U. MIAMI L. REV. 757, 758 (2008).

need to go through that secondary state's probate process in order for clean title to pass to the beneficiary.⁷⁸ The second process is subject to the secondary state's laws.⁷⁹ While the most common form of property to go through ancillary probate is real estate, "ancillary probate may also be necessary for property such as a car or boat registered and titled out of state, livestock, or oil, gas, or mineral rights attached to an out-of-state property."⁸⁰ Some states, such as Texas, only require the executor to show that the original will was valid when the person was domiciled in another state.⁸¹ On the other hand, other states may require much more complicated proceedings, such as requiring the will to go through the probate process for a second time.⁸²

Real estate is one of the most important and valuable assets when it comes to farmers and ranchers.⁸³ A farm's real estate value is more than 82% of the value of the farm sector assets.⁸⁴ As a consequence, land value is an important indicator of the industry's health.⁸⁵ Increasing land value drives land sales and rental prices up, which means that it can be harder to acquire land either through rental or through purchases because of the price increase.⁸⁶ Currently, in some areas around the country, the appreciation of the land is falling due to falling commodity prices and a decrease in farm income.⁸⁷ This decline in commodity prices and farm income affects farmers and ranchers differently because it depends on the amount of land they rent versus own.⁸⁸ The effects on farmers and ranchers are also different because "cropland appreciates faster than farmland."⁸⁹ This is the value of the land, though, and not the cash they have on hand to be able to pay for things.⁹⁰ Furthermore, this asset has special implications when it comes to ancillary probate.⁹¹ Because real estate owned in another state may prompt the need for additional proceedings, land in farming and ranching raises additional

78. *Id.*

79. *See* Anastasio & Wilhelm, *supra* note 76, at 174.

80. *Ancillary Probate*, JUSTIA, <https://www.justia.com/probate/probate-administration/ancillary-probate/> [<https://perma.cc/H4D2-SJAJ>].

81. *See* TEX. EST. CODE ANN. § 501.001 (West, Westlaw through 2023).

82. *Compare id.*, with CAL. PROB. CODE § 12512 (West, Westlaw through 2023).

83. Burns, *supra* note 31, at 1.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *See id.*

91. *See id.*

problems and considerations on top of their liquidity issues.⁹² These issues will be addressed later in this Article.⁹³

While looking at the cash and more liquid assets that farmers have, “[n]et cash farm income has dropped 36 percent since its peak in 2012.”⁹⁴ Furthermore, “[f]arm real estate values have not similarly fallen, but they flattened out in 2015–16 at the national level and have begun to fall in some regions, particularly the Corn Belt and Northern Plains.”⁹⁵ Therefore, farmers and ranchers do not have much cash on hand to pay for things.⁹⁶ Their value is tied up in land and can only be accessed by selling the land should they want a more liquid asset.⁹⁷

A. *Ancillary Probate Reform is Needed to Better Serve Farmers and Ranchers*

Ancillary administration procedures across the United States lack uniformity.⁹⁸ State code sections vary from simple, to complex, to non-existent in this area of estate and probate law.⁹⁹ Because of these code differences, probate choices made in the home state may also be affected as parties try to plan for the differences.¹⁰⁰ On top of trying to plan for the differences, the proceedings themselves can create problems for farmers and ranchers.¹⁰¹ Ancillary probate proceedings can negatively affect farmers and ranchers through longer waiting periods, higher court costs or attorney fees, or added time to have clear title and full access to the land they were bequeathed.¹⁰²

This requirement of ancillary probate is due to the United States adopting the “situs approach” when it comes to real property jurisdiction.¹⁰³ The situs approach to probating a will is one reason that ancillary probate is a problem because it grants probate power to the state

92. *See id.*

93. *See id.*

94. *Id.*

95. *Id.*

96. *See id.*

97. *See id.*

98. Coutts, *supra* note 11.

99. *Id.*

100. *Id.*

101. *See id.*

102. *Id.*

103. Kaylee Harmon, *Estate Law – Balancing the Competing Interests of Efficiency, Finality, and Freedom of Disposition in Ancillary Administration Proceedings: Lon V. Smith Foundation v. Devon Energy Corp.*, 2017 WY 121, 403 P.3D 997 (Wyo. 2017), 18 WYO. L. REV. 379, 384 (2018).

where the land is located.¹⁰⁴ The situs approach applies when there is real property being probated in another jurisdiction other than the one in which the decedent died.¹⁰⁵ This approach means that another jurisdiction has the power to enforce its own laws to either require probate of that property in the secondary jurisdiction or not, depending on the estate and probate laws the state has adopted.¹⁰⁶ Real property utilizes this approach, but personal property operates differently as it is probated and distributed under the state laws where the decedent lived at the time of the death.¹⁰⁷ This means that a decedent's real and personal property may be subject to two different sets of laws, thus creating complexities for the property owner and their beneficiaries upon their death.¹⁰⁸ This can lead to estate planning complications, as well as complications when two different state laws are integrated into the will.¹⁰⁹ There can also be complications if the individual dies intestate without a will.¹¹⁰

The repercussion of the situs approach as applied to ancillary probate of real property is that title for real property in another state may not be conveyed properly unless additional probate proceedings are held within the other state.¹¹¹ These proceedings are held in addition to the original probate proceedings that took place in the state where the decedent died.¹¹² This additional proceeding in the second state is known as an ancillary probate proceeding.¹¹³ Ancillary probate is conducted adjacent to or after the probate proceedings in the state where the death occurred and is used to distribute the property in a state other than the one the decedent is domiciled in at the time of death.¹¹⁴

This situs approach is not universally applied throughout the world.¹¹⁵ For example, some countries around the world have done away with the situs approach, but the United States "strongly advocated for retention of situs laws based on economic, political, social, and

104. *See id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *ancillary probate*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/ancillary_probate [<https://perma.cc/ZE66-B463>].

115. Harmon, *supra* note 103, at 384.

conflict resolution considerations.”¹¹⁶ Because of this, the situs approach is still used in the United States today.¹¹⁷ While the United States as a whole utilizes the situs approach, there are further complications in the United States because individual states do not have laws that are uniform to govern estates and probate proceedings.¹¹⁸ Each state has been able to determine its own estate or probate laws, thus, leading to laws that can be different across the board.¹¹⁹

These issues involving ancillary probate, as derived from the situs approach, arise under various circumstances and vary in levels of complexity.¹²⁰ While some statutes have very simple requirements, others require additional waiting periods or other types of limitations that stem from the probate process.¹²¹ One of these limitations is whether there must be additional probate proceedings initiated for the will in general, which has the effect of forcing the will to go through the probate process for a second time, depending on where the land is owned.¹²² Furthermore, some statutes are not clear about the extent that the statutes can even be applied.¹²³ The results reached by courts have also varied when applying these statutes.¹²⁴ These variances create issues when it comes to the ability to plan an estate, and when it comes to the ability to ensure that the title of the property has passed is clear.¹²⁵

B. *Ancillary Probate Law in States That Need Reform*

States have specific statutes that cover the individual state’s requirements for ancillary administrative proceedings.¹²⁶ While the Uniform Probate Code (UPC) has been promulgated in some states, other states have opted not to adopt the UPC.¹²⁷ Other states have chosen to model their statutes after it with some changes.¹²⁸ While the goal of the

116. *Id.* at 385.

117. *Id.*

118. *Infra* Part II.

119. *Infra* Part II.

120. See Thomas E. Atkinson, *The Uniform Ancillary Administration and Probates Acts*, 67 HARV. L. REV. 619, 620 (1954).

121. See *id.*

122. See *id.* at 628–29; see also Lerner, *supra* note 8, at 312.

123. Atkinson, *supra* note 120, at 620.

124. *Id.* at 620–21.

125. See *id.* at 619.

126. See CAL. PROB. CODE § 12512 (West, Westlaw through 2023); see also TEX. EST. CODE ANN. § 501.001 (West, Westlaw through 2023).

127. See Roger W. Andersen, *The Influence of the Uniform Probate Code in Nonadopting States*, 8 UNIV. OF PUGET SOUND L. REV. 599, 601 (1985).

128. See *id.*

Uniform Probate Code was to promulgate uniformity among probate proceedings, it has been largely rejected, with less than half of the states opting to adopt the code provisions, particularly the proposed ancillary probate proceedings.¹²⁹ Some states, such as Texas, allow for the original probate proceeding to be adopted, which is a relatively simple proceeding, while other states, such as California, Illinois, and Florida, require additional proceedings that are more formal.¹³⁰ Some states also have no provisions that cover this area.¹³¹ Differences in state codes create a lack of uniformity and make it more complicated for farmers and ranchers to achieve a smooth, cost-free probate process for real estate owned in another state.¹³²

1. Uniform Probate Code States

Some states have opted to adopt the Uniform Probate Code, either in its entirety or with minimal changes.¹³³ The UPC was approved in 1969.¹³⁴ The goal of the UPC was to achieve statutory reform with states either adopting the UPC as a whole or modeling their own statutes after it.¹³⁵ Put another way, the goal of the UPC was to “simplify and clarify inheritance laws and related matters, to give effect to the intent of the decedent, and to provide versatility and efficiency in distributing the decedent’s estate.”¹³⁶ The UPC was intended to provide uniformity to make estate planning and probate of estates run much smoother.¹³⁷ The writers sought to persuade some states to adopt the UPC by creating a code that would appeal to a variety of states.¹³⁸

The UPC did not receive the adulation that the writers sought when they created it.¹³⁹ The Uniform Probate Code has been adopted piecemeal in the United States by several states, and fewer than 20 states have adopted the code provisions in whole.¹⁴⁰ The states that have adopted the Uniform Probate Code, either in part or in whole, are Idaho,

129. *See id.* at 599, 601.

130. *See* Coutts, *supra* note 11; *see also* Lerner, *supra* note 8, at 309–10.

131. Coutts, *supra* note 11.

132. *See id.*

133. *See* Andersen, *supra* note 127, at 608–09.

134. UNIF. PROB. CODE (NAT’L CONF. COMM’RS UNIF. STATE L., amended 2019).

135. *See* Andersen, *supra* note 127, at 601.

136. Dale F. Gardiner & Michael A. Neider, *Article II and III of The Uniform Probate Code As Enacted in Utah*, 2 *BYU L. REV.* 425, 425 (1976).

137. *See id.* at 426.

138. Andersen, *supra* note 127, at 601.

139. *Id.* at 600–01.

140. *Id.*

Alaska, Arizona, Colorado, Minnesota (on two separate occasions), Montana, Nebraska, South Dakota, New Mexico, Utah, Michigan, Maine, Pennsylvania, South Carolina, Hawaii, North Dakota, New Jersey, and Massachusetts.¹⁴¹ When looking at geographical areas that have adopted the code provisions, six out of the seven Rocky Mountain states have adopted the UPC.¹⁴² These states include Arizona, Colorado, Idaho, Montana, New Mexico, and Utah.¹⁴³ Other than this apparent trend, there is no other trend or easy explanation for whether a state has adopted the UPC.¹⁴⁴

The UPC failed to achieve the uniformity the writers sought but instead has merely been used more as a guide for states and courts, thus, failing to bring uniformity to ancillary probate.¹⁴⁵ While it has not been adopted in full by all the states, some states have used it as a model for their own estates code.¹⁴⁶ Furthermore, courts have also used the UPC to help them determine how to navigate common law and statutory construction problems.¹⁴⁷ It has been used more as a guide for solving specific issues than as an overall reform for the probate system across the country.¹⁴⁸

The UPC is broken down into articles that cover different topics of the probate system.¹⁴⁹ Article III of the UPC covers provisions that affect non-residents.¹⁵⁰ Article IV covers ancillary probate and the process of adopting a personal representative.¹⁵¹ This section has been adopted by Arkansas, Delaware, Indiana, Massachusetts, Missouri, New Jersey, and Oregon.¹⁵² There is the idea that this set up provides a “sensible solution to traditional problems” while giving a framework that allows for other statutes to fill in the gaps that the UPC may leave out.¹⁵³ Following this set up a means that states must still pass their own code provisions in order to supplement the UPC.¹⁵⁴ Adherents to this idea suggest that the

141. UNIF. PROB. CODE (NAT'L CONF. COMM'RS UNIF. STATE L., amended 2019).

142. Andersen, *supra* note 127, at 601.

143. *Id.*

144. *Id.*

145. *See id.*

146. *Id.* at 600.

147. *Id.*

148. *See id.* at 601.

149. UNIF. PROB. CODE art. I–IV (NAT'L CONF. COMM'RS UNIF. STATE L., amended 2019).

150. *Id.* at art. III.

151. *Id.* at art. IV.

152. Anderson, *supra* note 127, at 606–07.

153. *Id.* at 608.

154. *See id.*

UPC does not provide all the provisions that a state needs to adequately serve citizens of that state.¹⁵⁵

Courts have shown a willingness to reference and utilize the UPC in two distinct ways.¹⁵⁶ First, the UPC has been used in a secondary authority capacity.¹⁵⁷ This is similar to the way that restatements are used.¹⁵⁸ Second, courts have used the UPC to interpret legislative history when a jurisdiction has considered specific UPC provisions.¹⁵⁹ Therefore, if the state has not considered the UPC provisions before, courts will be less likely to consider the provisions when they interpret legislative history.¹⁶⁰ They will more likely look to their own meaning, thus straying further away from uniformity.¹⁶¹

The aim of the adoption of the UPC was to make the probate system fit the needs of individuals uniformly.¹⁶² Articles III and IV, the sections that affect non-residents, “are designed to coerce respect for domiciliary procedures and administrative acts to the extent possible.”¹⁶³ The goal of the UPC is to allow for “as little or as much by way of procedural adjudicative safeguards as may be suitable under varying circumstances.”¹⁶⁴ While this was the goal, by only promulgating piecemeal actions that must be filled in by the states, the UPC failed to provide the uniformity that is needed.¹⁶⁵

2. States That Require Additional Probate Proceedings

Some states have not adopted the UPC, nor have they modeled their codes after the UPC.¹⁶⁶ California, Illinois, and Florida are some of the states that require there to be additional formal probate proceedings during ancillary administration.¹⁶⁷ These states do not accept proceedings from another state and instead require the administration process to be done over again in their probate courts.¹⁶⁸

155. *See id.*

156. *Id.* at 609.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Cf. id.*

162. UNIF. PROB. CODE art. IV. (NAT’L CONF. COMM’RS UNIF. STATE L., 2019).

163. UNIF. PROB. CODE art. IV. gen. cmt.

164. UNIF. PROB. CODE art. III, gen. cmt.

165. Andersen, *supra* note 127, at 608.

166. Lerner, *supra* note 8, at 309.

167. *Id.*

168. *Id.*

In California, title to the property does not transfer unless the property is probated through California court administration.¹⁶⁹ In the California Probate Code, someone who dies outside the state with property in California is subject to “the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.”¹⁷⁰ As described later, this may be a long and costly process for someone to go through.¹⁷¹ Despite the fact that California still recognizes the will as a valid instrument, the statutory requirements demand that the foreign will go through virtually the same process as a will that belonged to someone who was domiciled in the state at the time of their death.¹⁷² The steps involved with the probate process that are required for residents at the time of death include various filings, notices, and a petition for letters of administration to be issued.¹⁷³ Furthermore, these steps do not include the procedural steps that the executor or personal representative must perform or the accounting that must be performed.¹⁷⁴ These steps create additional costs and procedural steps for those who have already probated their estate and must do so again because they own land in California.¹⁷⁵

The California statutes also require additional steps for those who are conducting ancillary probate proceedings within the state.¹⁷⁶ These additional requirements include “all other provisions of this code concerning the administration of the decedent’s estate, including, but not limited to, opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.”¹⁷⁷ On top of these court costs, California also requires foreign wills to establish a new personal representative from the state.¹⁷⁸ These additional requirements increase costs and time limits for those who must conduct an extra proceeding simply because they owned land in another state.¹⁷⁹

169. *Id.* at 310.

170. CAL. PROB. CODE § 12512 (West, Westlaw through 2023).

171. Lerner, *supra* note 8, at 310.

172. *Id.*

173. *Id.*

174. *Id.*

175. *See id.*

176. *Id.*

177. CAL. PROB. CODE § 12530 (West, Westlaw through 2023).

178. *Id.* § 12510.

179. Lerner, *supra* note 8, at 308.

Similar to California, Illinois also requires the admission of a foreign will to the Illinois probate system.¹⁸⁰ In order to probate a will for an out-of-state decedent in Illinois, “the procedure for the admission to probate of a domestic will govern the procedure for the admission to probate of a foreign will sought to be admitted to probate as provided by this Article.”¹⁸¹ Illinois has many of the same complications that California has due to the requirement of Illinois probate for foreign wills, however, they do have some avenues to bypass some of the mandatory court supervision.¹⁸² One of these instances is when the will grants the power of sale to the executor.¹⁸³ When this occurs, “the executor can convey title without the subsequent issuance of letters testamentary.”¹⁸⁴ The sale will also be authorized absent Illinois letters testamentary when the probate court from the other state has issued letters testamentary and the sale has been authorized.¹⁸⁵ In a third circumstance, an estate may post a bond in the place of probate to indemnify transferees against potential claims.¹⁸⁶ While these provide a way around court supervision, these avenues may not be suitable for all kinds of estates.¹⁸⁷ Furthermore, estate administrators may not know that they have these options, especially if they do not know that they need to conduct ancillary probate proceedings.¹⁸⁸ Thus, these exceptions do not adequately provide relief for farmers and ranchers because they may not be applicable, or they may not know about these exceptions.¹⁸⁹

Lastly, Florida has many of the same statutes that impose additional requirements.¹⁹⁰ In Florida, the estates code applies the same to residents and nonresidents alike.¹⁹¹ Put more succinctly, “[a]ncillary administration shall be commenced as provided by the Florida Probate Rules.”¹⁹²

While Florida has these statutes in place requiring additional proceedings, they also provide exceptions similar to Illinois.¹⁹³ Florida

180. See 755 ILL. COMP. STAT. ANN. 5/7-1.

181. *Id.* 5/7-2.

182. Lerner, *supra* note 8, at 311.

183. *Id.*

184. *Id.*

185. *Id.*

186. *See id.*

187. *Id.*

188. *See id.* at 304.

189. *Id.* at 315.

190. *Id.* at 312.

191. *Id.*

192. FLA. STAT. § 734.102 (2002).

193. Lerner, *supra* note 8, at 312.

statutes provide two exceptions for parties to bypass the probate system for a secondary proceeding.¹⁹⁴ First, the code allows for a family administration procedure which eliminates steps in the process, but it does not relieve the family of the entire process.¹⁹⁵ However, a family administration procedure is only allowed for estates that do not exceed \$60,000, excluding income, and the beneficiaries must only be the spouse or lineal descendants of the decedent.¹⁹⁶ Property values in the state of Florida can exceed this threshold for families easily and therefore bar the use of this exception.¹⁹⁷

The second exception is that recording the will in the correct real property records three years after the death will pass title without a probate proceeding; this means the title will not pass until after the decedent has been dead for three years.¹⁹⁸ This exception takes time, that the family may not have, to conduct.¹⁹⁹ While these exceptions do exist, and provide more flexibility than the prior states, they are still narrow in their application and may not be useful for farmers or ranchers in this state.²⁰⁰

Despite some exceptions created to make probate easier, states like California, Illinois, and Florida have created a lack of uniformity and, furthermore, have probate codes that create hardships on individuals such as farmers and ranchers.²⁰¹ In these states, even though the specific language of the statute may state that parties have to perform probate again, they may have other provisions in their estate and probate codes that affect estates differently from another state.²⁰² These hardships can be even harder on farming and ranching families because they may not have access to some of the exceptions and may pose more financial complications that others do not have.²⁰³

194. *Id.*

195. *Id.*

196. *Id.*

197. *See Florida Agriculture Overview and Statistics*, FLA. DEP'T OF AGRIC. & CONSUMER SERV., <https://www.fdacs.gov/Agriculture-Industry/Florida-Agriculture-Overview-and-Statistics> [<https://perma.cc/5K7Z-ADRL>].

198. Lerner, *supra* note 8, at 312.

199. *Id.*

200. *Id.*

201. *See id.*

202. *See id.* at 313.

203. *See id.* at 312.

C. *Texas Ancillary Administration Procedures*

Texas has not adopted the UPC and instead has opted to adopt its own provisions.²⁰⁴ While the states mentioned in the previous section have also opted not to adopt the UPC, Texas's code provisions do not harm farmers and ranchers, because they do not require foreign wills to go through ancillary probate proceedings.²⁰⁵ In 1977, the Texas Probate Code was deemed to be better than the UPC because “[w]hile the Uniform Probate Code offer[ed] two methods of administration—supervised and unsupervised . . . the Texas Probate Code, in combination with common law, offered . . . [at least] seventeen possib[le] [methods of administration], depending on the individual needs of the estate.”²⁰⁶ The flexibility that the drafters saw in the Texas Probate Code was what the drafters of the estates code in Texas sought and wanted to maintain, as it applied to Texans and those who would be subjected to the code provisions.²⁰⁷

As it stands today, Texas has very few provisions overseeing the ancillary probate proceedings within the state.²⁰⁸ The Estates Code in Texas has only two provisions within the section governing whether a decedent's will may be deemed valid when the decedent was domiciled in another state at the time of their death.²⁰⁹ These provisions are that (1) “the will would affect any property in this state” and (2) “proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.”²¹⁰ Compared to other states, especially the states mentioned above, the process is much simpler and does not require the estate to go through another set of court proceedings.²¹¹ This reduces the costs that estates, including those of farmers and ranchers, must spend to conduct and conclude the probate process.²¹² Because of these minimal proceedings, the Texas Estates Code better serves farmers and ranchers who must conduct ancillary probate for land that they own in Texas despite passing away in another state.²¹³

204. See William D. Pargaman, *The Story of the Texas Estates Code*, 6 EST. PLAN. & CMTY. PROP. L. J. 323, 332 (2014).

205. See *id.* at 328.

206. *Id.* at 332.

207. *Id.* at 324.

208. See TEX. EST. CODE ANN. § 501.001 (West, Westlaw through 2023).

209. *Id.*

210. *Id.*

211. See *id.*

212. See *id.*; see also Lerner, *supra* note 8, at 313.

213. See *id.*

III. STATES SHOULD ADOPT THE TEXAS PROCESS AND PROCEDURES FOR
ANCILLARY PROBATE PROCEEDINGS TO PROVIDE MORE UNIFORMITY

There is a lack of uniformity in states' codes for ancillary probate that needs to be reformed. These states should adopt code provisions that mimic Texas's because their current method negatively affects farmers' and ranchers' ability to plan and administer their estates upon their passing.²¹⁴ This group of people makes up an important industry that provides not only Americans but people all over the world with food, clothing, and other necessities.²¹⁵ Therefore, estate codes need to be updated to better serve and protect farmers and ranchers, given the importance these codes play in their lives.²¹⁶

The farmer and rancher population is growing.²¹⁷ This growing population means there are more and more individuals who may be affected by these adverse code provisions.²¹⁸ The number of producers across the country increased by 6.9% from 2012–2017.²¹⁹ While they may not all own land in more than one state, the possibility of them owning land in different states is present and increased.²²⁰ Additionally, farmers' and ranchers' average age continues to trend upward.²²¹ The average age of a farmer in 2017 was 57.5, which was a 1.2 year increase from 2012.²²² Furthermore, farmers that are 65 and older are almost equal to those who are 55 and under.²²³ This average age is expected to continue to rise.²²⁴ As these farmers increase in age, there will inevitably be more

214. Author's original thought.

215. Matt Hargreaves, *Farmers and Ranchers Working to Make Every Day 'Earth Day'*, UTAH FARM BUREAU FED'N (Apr. 22, 2022), <https://www.utahfarmbureau.org/Article/Farmers-and-ranchers-Working-to-Make-Every-Day-Earth-Day> [<https://perma.cc/KY76-RXJF>].

216. *See Farm Producers*, USDA NASS, 2017 Census of Agric. 1, 1 (2019), https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf [<https://perma.cc/2K9R-S7GN>].

217. *Id.*

218. *Id.*

219. *Id.*

220. *See id.*

221. *Id.* at 2.

222. *Id.*

223. Carl Zulauf, *Age of US Farmers: Is the Wrong Issue Being Addressed?*, FARMDOC DAILY (Feb. 26, 2020), <https://farmdocdaily.illinois.edu/2020/02/age-of-us-farmers-is-the-wrong-issue-being-addressed.html> [<https://perma.cc/PQ37-ZNP4>].

224. Ed Maxiner & Sara Wyant, *Big Changes Ahead in Land Ownership and Farm Operators?*, AGRIPULSE (Feb. 05, 2019 12:41 PM), <https://www.agri-pulse.com/articles/11869-big-changes-ahead-in-land-ownership-and-farm-operators> [<https://perma.cc/249L-XTHE>].

transfers of land as they pass on.²²⁵ These findings of an average increase in age and an increase in total producers together show that there are older and more farmers in the industry who may own land that would be subject to ancillary probate proceedings.²²⁶ Because of this trend of aging farmers and ranchers, more should be done to better serve them as they plan their estates and as estates start to be administered due to death.²²⁷ Because of the importance that their industry plays for Americans through the production of food and necessary goods, these assets and proceedings need to pass as smoothly as possible so that they can remain in the hands of those who will produce goods.²²⁸

Better estate and probate codes in the realm of estate planning should be adopted for farmers and ranchers because the goods that they provide for people, coupled with the complexity of their estates, makes them a unique group who are affected differently than people who maybe only own a vacation home in another state.²²⁹ Farm and ranch estates can be much more complex than an average person's because these people may own land, livestock, equipment, or even a business entity that owns the farm or ranch.²³⁰ The farming and ranching estate can be further complicated if they want to keep the land undivided in the family, available for farming and ranching operations, or any combination of these desires.²³¹ Many farmers want to keep the land within the family, whether that be for production, as mentioned above, or for sentimental reasons.²³² The average size of a farm in the United States is 445 acres which can make keeping the land undivided and in the family a difficult task due to the sheer quantity of land at issue.²³³ Furthermore, there may be other costs that need to be paid, such as estate taxes, probate filing fees, and ancillary probate if applicable, further frustrating the process of keeping the land in the desired condition.²³⁴ Following that, the more complex the estate is, the more complex the will and trust combination may have to be to aid these families.²³⁵ Farmers and

225. *Id.*; Zulauf, *supra* note 223.

226. *Farm Producers*, *supra* note 216, at 1.

227. Zulauf, *supra* note 223.

228. *Id.*

229. Author's original thought.

230. *Wills*, CTR. FOR AGRIC & FOOD SYS.: FARMLAND ACCESS LEGAL TOOLKIT, [https://farmlandaccess.org/wills/_\[https://perma.cc/5M\]6-6XUN](https://farmlandaccess.org/wills/_[https://perma.cc/5M]6-6XUN)].

231. *Id.*

232. Maxiner & Wyant, *supra* note 224.

233. 021 FARMS AND LAND IN FARMS SUMMARY, USDA NASS 1, 4 (Feb. 2022).

234. *See id.* at 4–5.

235. *Wills*, *supra* note 230.

ranchers are prime targets for being affected by ancillary probate as they are increasing in number, aging, and may own land in other states when they have specific desires for that land.²³⁶

This land transfer trend is a generational wealth transfer that started during the generations of World War II and the Korean War.²³⁷ These families that own the land have owned it for a long time, and the family legacy can be very important to them; therefore, they seek to keep the land in the family when they pass on.²³⁸ This further leads to large tracts of land that are owned by these families.²³⁹ Land transfers and farmland are an important consideration when considering ancillary probate because “land accounted for 81 percent of total asset value on U.S. farms in 2014.”²⁴⁰ Despite options for the estate plan, land is one of the largest assets and can also carry a sentimental value.²⁴¹

While reform has been slow, and the uniform solution proposed has generally been rejected, the Texas Estate Code provisions for ancillary probate should serve as a model for states to follow and apply to their own estates and probate codes when considering ancillary probate.²⁴² By adopting the probate proceedings from the state where the decedent died, coupled with the other statutes Texas has adopted, the Texas Estates Code provides a simple and more cost-efficient way for farmers and ranchers to probate their estate by not mandating a secondary proceeding.²⁴³

Texas has a booming agriculture industry that provides food and other materials for American citizens.²⁴⁴ In January 2022, there was approximately 13 million head of cattle, 800,000 goats, 700,000 sheep, 1.09 million hogs, and 706.6 million chickens in Texas alone.²⁴⁵ Texas is the nation’s leader in the number of farms and ranches, with 248,416 farms and ranches that cover 127 million acres of land in the state.²⁴⁶

236. *Farm Producers*, *supra* note 216.

237. Maxiner & Wyant, *supra* note 224.

238. *Id.*

239. *Id.*

240. Bigelow & Hubbs, *supra* note 16.

241. *See id.*

242. Paul E. Basye, *Streamlining Administration under the New Texas Probate Code*, 35 TEX. L. REV. 165, 165 (1956); Committee on Administration and Distribution of Decedent’s Estates, *Ancillary Administration and the Uniform Probate Code*, 4 PROB. & TR. J. 242, 242 (1969).

243. Basye, *supra* note 242.

244. *See 2021 State Agriculture Overview*, USDA, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=TEXAS [<https://perma.cc/TZY4-UGGD>].

245. *Id.*

246. *Texas Ag Stats*, TEXAS DEPARTMENT OF AGRICULTURE,

This is just one state; there are many others that have a role in the agricultural industry.²⁴⁷ Reform in other states is needed when it comes to ancillary probate because of the effects that it has on this industry, as well as other states that also play a vital role in the national agriculture industry.²⁴⁸ While Texas may be one of the largest crop and livestock-producing states, many states have flourishing agricultural industries that must be protected.²⁴⁹ Because of the importance of the industry, reform is needed to better serve the families and individuals that farm and ranch across the country.²⁵⁰

There is a need for probate reform because it is not uncommon for farmers and ranchers to have land that is in another state.²⁵¹ This is especially true for areas like the Texas Panhandle, which borders Oklahoma.²⁵² Because states have varying methods for ancillary probate, it can be difficult for heirs to probate an estate of the decedent as they may need to apply to another state's probate court on top of the state where the decedent was domiciled in when the decedent passed away.²⁵³ This process can statutorily require another attorney to be hired from that state which can drive the costs of the probate up even further.²⁵⁴ Attorney costs may further be increased as attorneys must learn and apply the laws of the secondary state.²⁵⁵ These ancillary probate proceedings raise costs for families that must undergo these proceedings through additional court fees.²⁵⁶

Many farms and ranches are owned and operated by families and other individuals.²⁵⁷ Just more than 60% of U.S. farmland is owner operated, with 45% of that being in small family farms that own the

<https://www.texasagriculture.gov/About/Texas-Ag-Stats> [<https://perma.cc/QW3S-2QDS>].

247. *Number of Farms by State*, IOWA CMTY. INDICATORS PROGRAM, <https://www.icip.iastate.edu/tables/agriculture/farms-by-state> [<https://perma.cc/P8J3-RVWL>].

248. *See* Couts, *supra* note 11.

249. *See Texas Ag Stats*, *supra* note 246.

250. Author's original thought.

251. *See* Couts, *supra* note 11.

252. *Id.*

253. *Id.*

254. *See id.*

255. Lerner, *supra* note 8, at 313.

256. Harmon, *supra* note 103, at 384.

257. *Farmland Ownership and Tenure*, USDA ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farm-land-ownership-and-tenure/> [<https://perma.cc/FF4F-SA2L>].

entirety of that land.²⁵⁸ Only 4% of all farmland is nonfamily-owned.²⁵⁹ From 2015–2019, 10% of the land was expected to be transferred.²⁶⁰ Of that land, 62% is expected to be transferred through gifts, trusts, or wills.²⁶¹ The survey also expects that sales between family members will make up 14% of transfers.²⁶² In contrast, less than 1% of farmland transactions will be sold in the open market.²⁶³ There are projections that 40% of 991 million acres across 48 states will change hands from 2015–2035.²⁶⁴ This land transfer trend, especially those through wills, will be affected in some way by ancillary probate.²⁶⁵

The issue with ancillary probate is the requirement of court approval for wills that are probated outside of the state when they are trying to pass title to real property that is located in the state.²⁶⁶ These statutes can affect farmers and ranchers during situations when there are cattle or other livestock outside the home state for temporary grazing purposes, or that graze on land that is situated in another state, along with cropland that is located in other states.²⁶⁷ The same principles may also apply to bank accounts and farm equipment.²⁶⁸ If only personal property exists in the other state, the issue does not arise, but the effect this process has on real property gives rise to issues as it requires the will to go back through the probate process again, thus increasing the time and costs it takes for the process to be completed.²⁶⁹

A. *The Advantages of Modeling After Texas*

Because Texas does not require additional probate proceedings to take place, the costs of probating an estate properly are reduced, and farmers and ranchers can create a better estate plan for their property.²⁷⁰ Uniformity would promote faster and cheaper proceedings, and create an easier process for individuals to plan their estate to represent

258. *Id.*

259. *Id.*

260. *Id.*; see also Maxiner & Wyant, *supra* note 224.

261. *Farmland Ownership and Tenure*, *supra* note 257; see also Maxiner & Wyant, *supra* note 224.

262. Maxiner & Wyant, *supra* note 224.

263. *Id.*

264. *Id.*

265. *See id.*

266. Lerner, *supra* note 8, at 305.

267. *See Couts*, *supra* note 11.

268. *Id.*

269. Lerner, *supra* note 8, at 304.

270. *Id.* at 305.

their full intent due to similar laws and procedures across the country.²⁷¹ Furthermore, the UPC was never intended to cover the whole process; it was merely put in place to fill in the gaps.²⁷² By adopting a code provision that mimics Texas's, states will have a much more comprehensive code to serve farmers and ranchers.²⁷³ A comprehensive code that is similar across the country will provide faster and cheaper probate proceedings and better planning mechanisms for farmers and ranchers.²⁷⁴

1. Ancillary Probate Would Be Faster and Cheaper Due to Uniformity If States Adopted The Texas Approach

A major consideration for the probate process is the expenses that result from conducting probate proceedings.²⁷⁵ Court fees can range from several hundred dollars to several thousand dollars.²⁷⁶ Families may also have to pay for executor fees, attorney fees, accounting fees, and many more fees that are associated with the process.²⁷⁷ While this may be manageable for one proceeding, a required ancillary proceeding means that the decedent's family would have to pay for at least two sets of court fees and probate costs as they must pay for the original proceedings in addition to the costs from the ancillary proceedings.²⁷⁸

Under Section 501.001 of the Texas Estates Code, a will is admitted for ancillary probate in Texas if it affects property in the state and with proof the will was probated or established in another United States jurisdiction.²⁷⁹ In Texas, once the foreign will is filed and recorded under Chapter 501 of the Texas Estates Code, the will is considered admitted to probate as a foreign will.²⁸⁰ This is a relatively simple and easy way to conduct ancillary probate compared to other states.²⁸¹ Because of the ease of the process that Texas requires, the costs are reduced to the few

271. *Id.*

272. Andersen, *supra* note 127, at 608.

273. *See id.*; *see also* Lerner, *supra* note 8, at 305.

274. *See id.*

275. Garber, *supra* note 12.

276. *Id.*

277. *Id.*

278. Julie Garber, *What Is Ancillary Probate?*, THE BALANCE (Mar. 20, 2022), <https://www.thebalancemoney.com/what-is-ancillary-probate-3505223> [<https://perma.cc/G9CZ-NAL2>].

279. TEX. EST. CODE ANN. § 501.005 (West, Westlaw through 2023).

280. *Id.*

281. *See id.*; *see also* Lerner, *supra* note 8, at 312.

required court fees and not much more.²⁸² Anyone who is trying to pass title to property owned by the decedent in Texas will not have to pay the additional costs and fees to probate an estate in its entirety.²⁸³ While they may have filing fees, these fees will not be near the amount it would cost to probate the entire estate again.²⁸⁴

Ancillary probate also increases other costs when the proceedings are required.²⁸⁵ When additional proceedings are required, attorney costs may be raised because the attorney may have to research not only the state laws on ancillary probate but also local probate court procedures and case law for the applicable procedures and laws of that jurisdiction.²⁸⁶ Because some states may require that you hire another attorney that is located within the state, ancillary probate, under some measures, creates larger attorney fees for the estate to pay at the end of the process under this circumstance.²⁸⁷ After the research costs are instituted, costs are also imposed during the proceedings that occur after the will has been admitted and the probate proceeding has commenced.²⁸⁸ Because Texas has a flexible approach that allows for avoidance of probate, even for foreign wills, this allows estates to avoid higher costs as they are only required to pay the minimum amount of costs to settle the estate.²⁸⁹

Furthermore, because the administrator of the foreign state is usually from the state where the decedent died, the administrator also has an incentive to probate the decedent's estate in a way that is financially beneficial to that foreign state, thus creating policy problems between the states and the goals of probate.²⁹⁰ At least a third of states hold that the ancillary administrator cannot be from out of state.²⁹¹ Texas further allows for the executor named in the foreign will to receive the ancillary letters testamentary if three requirements are met:

- (1) the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established;
- (2) the executor is not disqualified from serving in that capacity in this state; and
- (3) if the will is admitted to ancillary

282. *See* Est. § 501.005.

283. *See id.*; Garber, *supra* note 12.

284. *See* Garber, *supra* note 12.

285. *See* Lerner, *supra* note 8, at 305.

286. *See id.*

287. *See* Coutts, *supra* note 11.

288. Lerner, *supra* note 8, at 305.

289. *Id.*

290. Committee on Administration and Distribution of Decedent's Estates, *supra* note 242, at 244.

291. *Id.*

probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.²⁹²

These three requirements show the ease at which a foreign will can be probated due to the relaxed requirements for administrators for foreign estates.²⁹³ In states that have heightened requirements, institutional executors who either must find someone in the ancillary state or take the time to figure it out face further issues.²⁹⁴

These heightened costs have negative implications for farmers and ranchers.²⁹⁵ Working capital as a measure of liquidity for farmers and ranchers is expected to fall 2.6% relative to 2021.²⁹⁶ This means that liquidity is expected to fall for farmers and ranchers, meaning there will be less cash on hand for them to be able to pay for these costs.²⁹⁷ Land makes up roughly 81% of farming and ranching assets.²⁹⁸ This means that the so-called "wealth" of these individuals and families is tied up in real property and not liquid cash.²⁹⁹ Because of the prevalence of real property assets, the lack of cash can pose a difficulty in being able to pay these court costs and other fees that may occur through these extraneous proceedings.³⁰⁰

Court probate proceedings are also time-consuming.³⁰¹ While they may not present complications in the overall length of time in which the title for the property is cleared, this time length for states that require there to be court proceedings can lead to the higher costs that were mentioned before.³⁰² Because of these higher costs and lengthened court processes, states must adopt Texas's approach to ancillary probate.³⁰³

292. TEX. EST. CODE ANN. § 501.006 (West, Westlaw through 2023).

293. *See id.*

294. Lerner, *supra* note 8, at 316.

295. *See Assets, Debt, and Wealth*, USDA ECON. RSCH. SERV. (Sept. 1, 2022), <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/assets-debt-and-wealth/> [<https://perma.cc/ZKX6-SE59>].

296. *Id.*

297. *Id.*

298. Bigelow & Hubbs, *supra* note 16.

299. *See id.*

300. *See id.*

301. Lerner, *supra* note 8, at 315.

302. *Id.*

303. Andersen, *supra* note 127, at 608.

2. Reform Would Create Codes That Would be More Suitable to the Individual Needs of Each Estate Being Probated

As mentioned above, in 1977, the Texas Probate Code, now titled the Texas Estates Code, was deemed to be better than the UPC by legislatures analyzing Texas code provisions.³⁰⁴ This was in part due to the seventeen methods of administration that the Texas Probate Code provided for the specific needs of individual estates that are being administered.³⁰⁵ This approach allows individuals and families to utilize methods of probate and will distribution that best suit the needs of the estate they are probating.³⁰⁶ The Texas Estates Code offers “flexibility and simplicity” as well as a “scheme for dealing with real property of a nonresident decedent makes it possible to fit the scope of court action to the needs of the particular estate.”³⁰⁷ During this analysis, legislatures also thought the probate process was something that should be done if absolutely necessary.³⁰⁸ This determination was made for the entire code, meaning the ancillary probate proceedings were also deemed to be better than the UPC when this decision was made in 1977.³⁰⁹ Because Texas views the administration process as something that should only be undergone if necessary, the Estates Code has provided areas to circumnavigate the probate process.³¹⁰ This comes from valuing the families and individuals that must undergo this process.³¹¹

When comparing the UPC to the Texas Code, there are some differences that make the Texas Estates Code better equipped to serve farmers and ranchers when they own land in another state.³¹² One of the reasons that the UPC has not been widely adopted, and does not serve as a good alternative for farmers and ranchers, is that it changes traditional practices in its goal to provide probate uniformity and reform.³¹³ By adopting their own code provisions that mimic the Texas Estates Code, states can keep their valued traditional practices by only making changes that would better serve farmers and ranchers.³¹⁴ Some states that adopted the UPC had already changed the provisions outlined in the

304. Pargaman, *supra* note 204, at 332.

305. *Id.*

306. *See id.*

307. Lerner, *supra* note 8, at 306, 308.

308. Basye, *supra* note 242, at 165.

309. *See* Pargaman, *supra* note 204, at 332.

310. Basye, *supra* note 242, at 165.

311. *Id.*

312. *See* Lerner, *supra* note 8, at 306.

313. Gardiner & Neider, *supra* note 136, at 426.

314. *See id.*

Code that specifically cover ancillary probate when they applied them to their own estates or probate code section in order to better fit the needs of their state citizens.³¹⁵ Yet, still, some states, such as California, Illinois, and Florida, have refused to adopt the UPC at all with regard to ancillary probate, nor have they taken measures to simplify the process.³¹⁶

Texas provides other benefits for those probating a will within the state.³¹⁷ While not directly related to ancillary probate, one of the benefits of the way that Texas conducts probate that is that Texas allows a muniment of title to count for a probate proceeding.³¹⁸ Farming and ranching families can choose to use the will as a muniment of title or probate the will if the estate is large or complex.³¹⁹ Because Texas allows administrators to use a muniment of title, this process may prove harder to probate in another state because there are no executors, administrators, or letters of testamentary or administration, thus, making it harder to show that title has passed properly to the beneficiaries.³²⁰ Because of the document type, there is not much to show that the original probate has happened.³²¹ Due to these issues, a muniment of title may not be valid in another state, despite it being a valid and best option for a family in Texas.³²² While Texas allows the muniment of title, other states should consider adopting less stringent ancillary probate codes so that other states may also accept other types of administration as a valid form of probate, and grant users of this method access to an easier system.³²³

Comparing Texas law to Florida law, one of the two exceptions listed in the Florida code provisions is for a family administration.³²⁴ Even if the family that owned the farm or ranch met the “family” requirements of the statute, they could still have difficulty in meeting the \$60,000 maximum threshold required by law.³²⁵ In 2021, the average cost of land per acre was \$6,100.³²⁶ That means that any ranch that is ten acres or more

315. *See id.*

316. *Id.*; *see also* Lerner, *supra* note 8, at 310–12.

317. Coutts, *supra* note 11.

318. *Id.*

319. Lerner, *supra* note 8, at 306.

320. Coutts, *supra* note 11.

321. *Id.*

322. *Id.*

323. *See id.*

324. Lerner, *supra* note 8, at 312.

325. *Id.*; *Rural Land Prices for Texas*, TEX. REAL EST. RSCH. CTR., <https://www.re-center.tamu.edu/data/rural-land/#!/state/Texas> [<https://perma.cc/3PV7-4XQW>].

326. Bo Lang, *How Much Money Is an Acre of Land in Florida?*, THE FLAT (Dec. 14, 2021),

would not meet the family exception requirement to bypass the required ancillary probate administration.³²⁷ This calculation just considers the land value, not any houses or barns on the property.³²⁸ Furthermore, the size of the property is likely to be over the ten acres mentioned above because the average farm size in 2020 was 204 acres; 204 acres is considerably greater than the ten acres used in the calculation above.³²⁹ In 2020, more than 5,000 farms and ranches sold for more than \$100,000.³³⁰ While this may not be every farmer and rancher in Florida, it still affects a significant number of farmers and ranchers in the state.³³¹ While this may seem inconsequential, Florida is home to 47,400 farms and ranches across 9.7 million acres of land.³³² This can have a consequential effect on goods that are used and needed across the country.³³³

Farmers and ranchers in these states also participate in vital agricultural production practices that affect the rest of the country.³³⁴ For example, more than half (51%) of the U.S. orange production comes from Florida, and 42% of the overall United States citrus production comes from this state.³³⁵ The remaining 54% of the citrus used by the United States comes from California, another state that requires ancillary probate.³³⁶ In terms of ranching, compared to the United States, Florida is tenth in beef cattle production.³³⁷ Florida has great importance in the agriculture industry and does not have adequate protections for their farmers and ranchers under their current code.³³⁸ By adopting an approach that follows the way Texas approaches ancillary probate, Florida would better serve these families by granting them ease through the probate system.³³⁹

<https://theflatbkny.com/united-states/how-much-money-is-an-acre-of-land-in-florida/> [https://perma.cc/38SE-SYTH].

327. *Id.*

328. *See id.*

329. *Florida Agriculture Overview and Statistics*, *supra* note 197.

330. *Id.*

331. *See id.*

332. *Id.*

333. *See id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. Author original thought.

3. Farmers and Ranchers Would Be Able to Better Plan Their Estates with Reform

By having ancillary administration proceedings that are vastly different across states, people are not able to plan their estates efficiently or properly when they own land or other property subject to ancillary probate in another state.³⁴⁰ This poses a problem as drafting a will can be expensive for families and individuals.³⁴¹ In terms of cash inflow to these farms, the “median total farm household income is forecast to increase in 2022 to \$94,794 from \$92,239 in 2021.”³⁴² However, the off-farm median income was forecasted at \$88,140 in 2022.³⁴³ This represents an increase of 6.5% from \$82,809 in 2021.³⁴⁴ Furthermore, the increase in the forecasted income is “due to expected increases (8.1 percent) in median unearned income—income from interest, investments, pension and retirement accounts, unemployment compensation and other public transfers.”³⁴⁵ While these numbers may seem adequate, the increases in their income are not coming from their farming and ranching operations, but from other measures that they have taken to ensure that they have an income to be able to feed their families and run their operations.³⁴⁶ This means that if these “off-farm income areas disappear, so will a considerable amount of the income that this industry receives.”³⁴⁷

In addition to considering costs from ancillary proceedings, costs may also increase for other reasons when planning an estate to minimize the effects of ancillary probate.³⁴⁸ The ancillary probate process may increase costs for those creating a will through attorney fees upon hiring a professional to plan their estate.³⁴⁹ Hiring an attorney to draft a will can cost anywhere from \$300 to more than \$1,000.³⁵⁰ While individuals can draft their wills themselves, a lawyer has expertise in the area that

340. Lerner, *supra* note 8, at 312.

341. David Dierking, *What's the Average Cost of Making a Will?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/033116/what-average-cost-making-will.asp> [https://perma.cc/XL7B-VGFR].

342. *Highlights from the December 2022 Farm Income Forecast*, USDA ECON. RSCH. SERV. (Dec. 1, 2022), <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/highlights-from-the-farm-income-forecast/> [https://perma.cc/SY98-NAZL].

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. Lerner, *supra* note 8, at 305.

349. Dierking, *supra* note 341.

350. *Id.*

the person may not have in order to adequately portray the testator's intent, and make sure the testator's assets are included in the document in a way that correctly transfers the property when the testator passes on.³⁵¹ Because hiring a lawyer to draft the will is the best method for many people, the costs increase each time they need to create another will or make an addition to their current will.³⁵² For example, these costs are further increased if the will may need to be updated because the testator has purchased land they want to do something different with and other assets after the first will was drafted.³⁵³ They may also want to add people as beneficiaries, as well as other considerations.³⁵⁴

Because of nuanced rules for local probate courts and other states' statutes covering probate proceedings, it may be difficult to draw up a plan that would encompass all the rules that would affect a will or other estate plan when trying to draft a plan for farmers or ranchers whose property lies in more than one state.³⁵⁵ This would also factor into expense planning for the client, as hiring an attorney to draft the will would drive up costs even further.³⁵⁶ Because these expenses would be driven up for the attorney to figure out a plan in another state, this does not reduce the costs for people who are trying to navigate owning land in multiple states. The plan creates its own type of increased costs for these individuals.³⁵⁷ Trying to create a comprehensive plan can also affect other areas, such as *inter vivos* gifts and other estate planning devices that may be required to circumvent the ancillary probate process in states such as California, Illinois, and Florida.³⁵⁸

One way to bypass probate proceedings is to create a trust, but that may also further drive up costs for farmers and ranchers.³⁵⁹ When considering what to do in place of a will, trusts can prove beneficial.³⁶⁰ Trusts bypassing the probate system also applies to ancillary probate proceedings, thus, allowing beneficiaries to avoid the second probate proceedings.³⁶¹ There are many types of trusts for people to take

351. *Id.*

352. *See id.*

353. *See id.*

354. *See id.*

355. Lerner, *supra* note 8, at 314.

356. *See id.*

357. *See id.*

358. *Id.* at 313–14.

359. *See 5 potential benefits of setting up a trust*, U.S. BANK, <https://www.us-bank.com/wealth-management/financial-perspectives/trust-and-estate-planning/benefits-of-setting-up-a-trust.html> [<https://perma.cc/ACJ8-6ZZQ>].

360. *Id.*

361. *Probate and Planning*, THE OFF. OF MINN. ATT'Y GEN. KEITH ELLISON,

advantage of that may provide different types of benefits to individuals based on their needs.³⁶² For example, revocable trusts do not have to follow the probate process, they can provide tax benefits, and they may also impose specific restrictions on what may be done with the assets within the trust.³⁶³ Some other types of trusts allow for more flexibility when it comes to amending the parameters applicable to the assets within the trust.³⁶⁴ By circumnavigating the probate process, time can also be saved when distributing the assets of the decedent that were in the trust.³⁶⁵

Trusts can provide other benefits for those who use them.³⁶⁶ When considering the speed of these devices, another benefit of the revocable trust is that the beneficiaries receive the trust assets quicker than if they had to wait for the estate to go through the probate system.³⁶⁷ Waiting for access to the trust assets can be detrimental to the beneficiaries because it can take weeks to months for a hearing to happen on the estate.³⁶⁸ This time period only accounts for the period after the statutory waiting period has concluded; thus, the total time before the beneficiaries can access the assets is much longer.³⁶⁹

While some benefits may come from creating a trust, some drawbacks to creating a revocable living trust fund include the high costs and added complexity of distributing the estate.³⁷⁰ Furthermore, trusts may not be the entirety of an estate plan but rather should only be part of the overall plan governing the decedent's estate.³⁷¹ Another drawback to some types of trusts is that they can be permanent.³⁷² These trusts cannot be revoked or substantially changed once they are finalized and

<https://www.ag.state.mn.us/consumer/handbooks/probate/CH3.asp>
[<https://perma.cc/P5LP-8C7P>].

362. *See id.*

363. *5 potential benefits of setting up a trust, supra* note 359.

364. *Id.*

365. *Probate and Planning, supra* note 361.

366. *See* Arielle M. Prangner, *Just a Will Won't Cut It: Planning For The Transfer of Non-Probate Assets at Death*, 14 *EST. PLAN. J.* 55, 98–101 (2022).

367. *Id.* at 99–100.

368. *Id.* at 100.

369. *Id.*

370. E. Napoletano, *Trust Funds: They're Not Just For The Wealthy*, *FORBES*, <https://www.forbes.com/advisor/investing/financial-advisor/trust-fund/>
[<https://perma.cc/K4PU-TCRF>].

371. *Id.*

372. *Id.*

applicable.³⁷³ While some jurisdictions allow minor changes, this should not be relied on because allowing changes is not a uniform practice.³⁷⁴

Creating a trust does not mean that the estate does not also require a will.³⁷⁵ Specifically, “a living trust can almost never totally avoid probate, and a simple will is needed to ‘pour over’ to the trust any property that has not been transferred to the trust during your lifetime.”³⁷⁶ This would require additional costs to not only create the trust but to create the will to pour over the remaining assets.³⁷⁷ In this instance, the will would still have to go through the additional probate process, and now the family must pay for these costs, as well as the additional costs to create the will and trust.³⁷⁸ Therefore, just because a trust is created does not mean that a will would not be created.³⁷⁹ These families and individuals are in no better position than before they make a trust when attempting to bypass ancillary probate proceedings.³⁸⁰ The need for the trust should be weighed against the cost of transferring the assets to the trust.³⁸¹ There is also a need to get the assets into the trust before the person dies.³⁸² Because of these nuances, farmers and ranchers are not always better off one way or another, and they still must consider the costs these devices require, as well as the nuanced rules that may be at play.³⁸³

Implementing less strict ancillary probate proceedings across the United States would better serve farmers and ranchers because the affected parties would not have to use trusts to convey their property without probate.³⁸⁴ Farmers and ranchers could use a will to adequately convey their property upon their death by implementing less strict ancillary probate proceedings.³⁸⁵ While these devices would be needed in states like California, Illinois, and Florida that do not have a desirable probate system, if more states adopted an estates code that mimics

373. *Id.*

374. *Id.*

375. See *The Probate Process*, AM. BAR ASS’N, [https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/the_probate_process/\[https://perma.cc/72LN-NBN8\]](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/the_probate_process/[https://perma.cc/72LN-NBN8]).

376. *Id.*

377. See *id.*

378. See Napoletano, *supra* note 370.

379. *Id.*

380. See *id.*

381. Prangner, *supra* note 366, at 98.

382. *Id.* at 101.

383. See Napoletano, *supra* note 370.

384. See Prangner, *supra* note 366, at 97–98.

385. See *id.*

Texas's, the need for these added costs and procedures could be avoided.³⁸⁶

While trusts have some benefits, there are still several other issues to consider for farmers and ranchers when moving real property into the trust that makes reform more desirable than the use of these devices.³⁸⁷ Relevant to trusts, testators must also consider homestead exemptions.³⁸⁸ Other issues include mortgage issues, method of transfer of the assets, actions taken after the transfer, interests in closely held businesses, and lastly, property outside of the state.³⁸⁹ Furthermore, individuals create revocable trusts to avoid ancillary probate in a state that requires it; beneficiaries may still be required to pay additional inheritance or estate taxes or perform other procedures to comply with that state's statutes.³⁹⁰

While estate plans such as trusts can be beneficial in avoiding the probate system and laws have been put in place that ask courts to look towards the testator's intent, these alternate plans may still not accurately represent the testator's intent for their property upon their death.³⁹¹ Planned succession attempts to account for the decedent's intent and wishes, but in order to effectuate the goals based on the laws in these devices, the intent may be lost.³⁹² Because the true intent of the testator is difficult to achieve under these other types of plans, these individuals are not better off.³⁹³ If farmers and ranchers must relinquish their intent to bypass the probate system, then the system is failing them.³⁹⁴ In order to allow farmers and ranchers to adequately transfer their property based on laws and their intent, ancillary probate proceedings must be relaxed to allow them to transfer their property in the way that they

386. *Id.* at 98; Lerner, *supra* note 8, at 314.

387. See Prangner, *supra* note 366, at 100-01.

388. *Id.* at 101; *Homestead Exemptions by State 2022*, WORLD POPULATION REV, <https://worldpopulationreview.com/state-rankings/homestead-exemptions-by-state> [<https://perma.cc/B2PX-CAJR>].

389. See Prangner, *supra* note 366, at 101-09.

390. *Id.* at 104.

391. See Lerner, *supra* note 8, at 314; see also *Interpreting A Will - The Primary Consideration*, TEX. PROB. LITIG. BLOG (Sept. 27, 2021), <https://www.txprobatelitigation.com/blog/interpreting-a-will-the-primary-consideration> [<https://perma.cc/FRJ2-NVTM>].

392. *Estate Planning Basics for Farmers*, IOWA STATE UNIV. CTR. FOR AGRIC. L. & TAX'N, <https://www.calt.iastate.edu/estate-planning-basics-farmers> [<https://perma.cc/2F67-S48M>].

393. See Lerner, *supra* note 8, at 314.

394. See *id.* at 314-15.

want.³⁹⁵

B. *While Other States Have Codes in Place, Texas's Code is Much Better Equipped to Serve Farmers and Ranchers*

While some states have adopted the UPC, many states have adopted their own estates or probate code that they think will serve that state's citizens the best.³⁹⁶ States pass the laws that they think will best serve the individuals in that state; thus, many states may think that the code they have promulgated is the best one for their citizens.³⁹⁷ The UPC offers a similar approach to that Texas does but with some complications; however, other states, such as California, Illinois, and Florida, as mentioned above, have taken their own approach because they thought it would be best to serve the people who live in that state.³⁹⁸ While these states have the goal of serving the people who live in these states in the best way possible, states would better serve their citizens by adopting a probate code that mimics Texas's as it provides ease, as well as a reduced cost.³⁹⁹

1. *While States Have Their Citizens in Mind, Reform Would Better Serve Farmers and Ranchers*

While states think they have the best interest of their citizens in mind, many states currently have statutes in place that negatively affect those citizens that are farmers or ranchers.⁴⁰⁰ For example, in Colorado, the UPC provision regarding bona fide purchasers and title transfer had to be amended because it posed some problems as it was not meant to cover all applicable areas but rather was promulgated to provide a baseline.⁴⁰¹ This further shows that there is a need for reform past what the UPC has to offer states.⁴⁰² While states such as California, Illinois, and Florida may think that their ancillary probate statutes may best serve residents within the state, they are actually hurting those who are in the farming and ranching industry.⁴⁰³ This is not to mention that the family

395. *See id.*

396. Coutts, *supra* note 11.

397. *See* Lerner, *supra* note 8, at 308.

398. *Id.*

399. *Id.*

400. *See generally id.* at 313.

401. *See* Lerner, *supra* note 8, at 309; *see* Andersen, *supra* note 127, at 608.

402. *See* Andersen, *supra* note 127, at 608.

403. *See generally id.* at 312.

may lose access to the land while it must go through the probate process.⁴⁰⁴ By requiring families to go through another probate process, the system requires these individuals to spend money and time on an additional probate proceeding rather than making sure their agricultural production is enough to provide a living for their own families while also producing food and other raw materials that are necessities for American citizens.⁴⁰⁵

Because the code that Texas follows is the most desirable, reform is needed under two principles.⁴⁰⁶ First is the idea of doing away with close court supervision in routine and uncontested probate cases.⁴⁰⁷ The second principle is to better support the non-probate system.⁴⁰⁸ This is desirable because the rest of the Texas probate system would also allow individuals to bypass the probate system.⁴⁰⁹ Because of these principles, states should adopt provisions in their codes that mimic that of Texas.⁴¹⁰ The Texas Estates Code supports both of those principles in a way that adequately supports farmers and ranchers and allows the industry to prosper.⁴¹¹

2. States with Fewer Ranches Should Still Consider Reform Due to the Importance of Agriculture

In some states, farming and ranching practices are not as common.⁴¹² These states include Alaska, Rhode Island, Nevada, New Hampshire, Delaware, and the District of Columbia.⁴¹³ These states have less than 5,000 farms within the state.⁴¹⁴ For comparison, Texas has approximately 248,000 farming operations within the state.⁴¹⁵ Because of the importance of the farming and ranching industry across the United States, even if there are fewer farms and ranches in the state, these families still need to be protected through ancillary probate reform.⁴¹⁶

404. Prangner, *supra* note 366, at 100.

405. Byron R. Batres, *Everything You Need to Know about Probate Fees*, TR. & WILL, <https://trustandwill.com/learn/probate-fees> [<https://perma.cc/2CP7-TQCP>].

406. See Langbein, *supra* note 1, at 1093.

407. *Id.*

408. *Id.* at 1094.

409. *Id.* at 1093.

410. See TEX. EST. CODE § 501.005 (West, Westlaw through 2023).

411. See *id.*

412. *Number of Farms by State*, *supra* note 247.

413. *Id.*

414. *Id.*

415. *Id.*

416. See generally *40 Surprising Products that Come from Farms*, TENN. HOME & FARM (June 1, 2019), <https://tnhomeandfarm.com/agriculture/farm-facts/farm-products/>

While Alaska may have a smaller population of farmers and ranchers, what they do produce is important.⁴¹⁷ These farmers and ranchers also have to face challenges based on the historical climate of the state.⁴¹⁸ Because of the climate, farmers and ranchers face frosts during the growing seasons.⁴¹⁹ These frosts can damage crops and set the farmers back in their production.⁴²⁰ If this were to occur in a year that someone may have to probate an estate in a state that requires ancillary probate proceedings, the costs could become more than they could bear as they tried to navigate the costs from the frost, as well as the costs from the proceedings.⁴²¹ Farmers in Alaska also have to deal with pests, hungry animals, long supply chains that increase costs, and soils that need plenty of fertilizer.⁴²² Because of these added costs to the farming industry, these families should be afforded protections in the ancillary administration arena.⁴²³

Nevada does not have a vast number of farms and ranches compared to other states; however, they play a vital role in exports of the products they do grow.⁴²⁴ Nevada's exports in 2019 totaled \$320 million and were sent to places such as other regions in North America, Asia, Central America, South America, and the Middle East.⁴²⁵ While there are smaller farms that are centered in the northern part of the state, this state still plays an important role in the agriculture industry.⁴²⁶ While these states have few farms, what they provide American citizens is still important, and they should still be afforded reform in the area of ancillary probate.⁴²⁷

[<https://perma.cc/3T2G-H9F8>] (listing various consumer goods that come from farms).

417. See *2022 State Agriculture Overview*, U.S. DEP'T AGRIC., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=ALASKA [<https://perma.cc/NB62-TF8E>].

418. *Agriculture in Alaska*, U.S. DEP'T OF AGRIC., <https://www.climatehubs.usda.gov/hubs/northwest/topic/agriculture-alaska> [<https://perma.cc/Z4SD-ZVSN>].

419. *Id.*

420. *Id.*

421. See Batres, *supra* note 405.

422. *Agriculture in Alaska*, *supra* note 418.

423. *Id.*

424. *2021 State Agriculture Overview*, NAT'L AGRIC. STAT. SERV., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=NEVADA [<https://perma.cc/2RV5-QET8>]; see also Heidi Knapp Rinella, *Agriculture Can Be a Challenge in Nevada, but It's Still Big Business*, LAS VEGAS REV.-J. (Feb. 26, 2022), <https://www.reviewjournal.com/entertainment/food/agriculture-can-be-a-challenge-in-nevada-but-its-still-big-business-2536095/> [<https://perma.cc/X4CJ-GM3F>].

425. Rinella, *supra* note 424.

426. *Id.*

427. See *40 Surprising Products That Come From Farms*, *supra* note 416.

C. *Farming and Ranching Affect Every Person in the Country*

Farmers and ranchers should be afforded special considerations because they provide people with essentials such as food, clothing, housing, and other goods classified as necessities.⁴²⁸ Animals that are part of livestock operations also benefit people by eating scraps and foods that are not suitable for human consumption, thus reducing waste apart from providing a food source themselves.⁴²⁹ There are a number of products, other than food and clothing, that would not be possible without agriculture.⁴³⁰ These products include detergents, crayons, and X-Ray films.⁴³¹ Other products often used include drywall, shoes, tires, bio-fuels, books, and ink.⁴³² These products are just a few that are in existence because of agriculture.⁴³³

While it is great to have a home garden to grow fruits or vegetables for personal consumption, many people live in cities where they do not have the ability to grow gardens or raise livestock.⁴³⁴ Even if it were possible for people to have the opportunity to grow a home garden, not everyone has the expertise to be able to do it correctly.⁴³⁵ Furthermore, even if people were able to grow crops in their backyards, they would not have the space to grow the variety of fruits and vegetables that the grocery store has.⁴³⁶ Lastly, there are crops such as cotton that are used for clothing that would not be grown in a home garden.⁴³⁷

States that require ancillary probate proceedings make up important sectors of the agriculture industry.⁴³⁸ When considering California's effect on agriculture, "over a third of the country's vegetables and three-quarters of the country's fruits and nuts are grown in California."⁴³⁹

428. Hargreaves, *supra* note 215.

429. Laura H. Bennett, *Cattle Ranching Benefits Us in Many Ways Beyond Beef*, SE. AG NET RADIO NETWORK (Oct. 5, 2020), <https://southeastagnet.com/2020/10/05/cattle-ranching-benefits-beef/> [perma.cc/8ZG4-5QZ8].

430. *40 Surprising Products That Come From Farms*, *supra* note 416.

431. *Id.*

432. *Id.*

433. *Id.*

434. Jessica Domel, *Why Do We Need Farmers and Ranchers?*, TEX. TABLE TOP (Feb. 9, 2016), <https://tabletop.texasfarmbureau.org/2016/02/why-do-we-need-farmers-and-ranchers/> [https://perma.cc/Z78T-NCNS].

435. *Id.*

436. *Id.*

437. *Id.*

438. *California Agricultural Production Statistics*, CAL. DEP'T OF FOOD & AGRI., <https://www.cdfa.ca.gov/Statistics/> [https://perma.cc/GEA5-SFFB].

439. *Id.*

California is home to 69,000 farms that operate on 24.2 million acres.⁴⁴⁰ Comparatively, Illinois also has 70,900 farms in operation covering 27 million acres of land.⁴⁴¹ Seventy-five percent of Illinois is farmland.⁴⁴² Illinois leads the country in the production of soybeans, corn, and swine.⁴⁴³ In Illinois, family farms are still greater than other ownership models, despite some of these farms incorporating.⁴⁴⁴ Farmers that operate these farms and ranches are also generally over 50 years of age.⁴⁴⁵ Furthermore, Florida has great importance in the citrus sector.⁴⁴⁶ The states that require ancillary probate have great importance in the industry, and the farmers and ranchers who make this happen should be afforded special protections.⁴⁴⁷

While these products are important, there are other factors to consider when looking at agriculture and how they may shape the future of this industry.⁴⁴⁸ The farming sector is shrinking in the United States in terms of Gross Domestic Product (GDP), as well as other economic areas and indicators.⁴⁴⁹ This trend is due to the efficiency of producing crops and other agricultural products.⁴⁵⁰ The increase in efficiency stems from technological innovation and changing market conditions present in the industry.⁴⁵¹ These changes in the overall economy stem from changes within farms and farm households.⁴⁵² Also, the number of farms in the United States is decreasing, but the size of the farms is increasing.⁴⁵³ Furthermore, farms are becoming increasingly specialized, focusing on one output at a time, as compared to farmers and ranchers in the past, focusing on five outputs on average in the past.⁴⁵⁴ All of these

440. *California Agricultural Statistics Review 2021-2022*, CAL. DEPT'T OF FOOD & AGRI., 2021-2022, at 2, https://www.cdfa.ca.gov/Statistics/PDFs/2022_Ag_Stats_Review.pdf [<https://perma.cc/FA42-VMSV>].

441. *Facts About Illinois Agriculture*, ILL. DEP'T OF AGRI., <https://www2.illinois.gov/sites/agr/About/Pages/Facts-About-Illinois-Agriculture.aspx> [<https://perma.cc/5HP4-AMDR>].

442. *Id.*

443. *Id.*

444. *Id.*

445. *Id.*

446. *See Florida Agriculture Overview and Statistics*, *supra* note 197.

447. *See Id.*; *see also California Agricultural Production Statistics*, *supra* note 438; *see also Facts About Illinois Agriculture*, *supra* note 441.

448. *See Dimitri et al.*, *supra* note 28, at 6.

449. *Id.* at 2.

450. *Id.*

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.*

changes have come about with the amount of land being farmed remaining constant.⁴⁵⁵

There are also considerations to be made when looking at where farmers and ranchers get their money from.⁴⁵⁶ There are more people in the industry looking to work off the farm as more opportunities in outlying cities and more urban areas increase.⁴⁵⁷ The increase is exemplified by the fact that “93% of farms earned off-farm income” by the year 2000.⁴⁵⁸ Farm income did not exceed the national average until 2002, and that was only with the help of off-farm income opportunities that it was able to achieve this number.⁴⁵⁹

While there has been an increase in income earned, this money is needed for other necessities.⁴⁶⁰ With the growth in technology and drop-off in needed animal and human labor, more cash is necessary to pay for the mechanization of farm labor through machinery.⁴⁶¹ This cash comes from the off-farm work but also creates an issue with the ability to have this cash and other profits, and if they have to spend it on ancillary probate, then they cannot spend it on equipment.⁴⁶² This issue can be summarized as, “[i]ncreasing productivity has reduced the number of people needed to work on farms and decreased profitability has reduced the number who can be supported by income from a single family farm.”⁴⁶³ This means that there are fewer jobs for people seeking to work on a farm and less income for those operating the farms.⁴⁶⁴

Land suitable for farming and ranching is also at risk of being used for other purposes.⁴⁶⁵ With populations growing in states like Texas, the rural land is at risk as cities are expanding and people are looking for places to live.⁴⁶⁶ While farming and ranching have increased by 8%, the population has increased in Texas by 48% from 1997–2017 alone.⁴⁶⁷ Furthermore, “the shift in ownership size or loss of larger ownerships through fragmentation may have potential implications for profitability

455. *Id.* at 5.

456. *Id.* at 12.

457. *Id.*

458. *Id.* at 3.

459. *Id.*

460. *Id.*

461. *Id.* at 7.

462. *Id.* at 7–25.

463. *Id.* at 25.

464. *See id.* at 25.

465. *Explore Land Trends Data*, TEX. LAND TRENDS, <https://txlandtrends.org> [<https://perma.cc/9P8T-CJU2>].

466. *See id.*

467. *Id.*

and continued stability of working lands.”⁴⁶⁸ If families must fragment the land due to the costs that come from additional ancillary administrative proceedings, this could lead to less productive land due to other uses, thus further harming agriculture production and the land.⁴⁶⁹ In this time from 1997–2017, Texas lost 2.2 million acres of working lands to nonagricultural use.⁴⁷⁰ Of the 2.2 million acres, 1.2 million were in the last five years.⁴⁷¹ As urban cities continue to grow, farms and ranches remain at risk and need protection from the possibility of having to fragment their lands to navigate the nuances and pitfalls of ancillary probate.⁴⁷²

Further, some research shows that ranching can prove to be beneficial for the environment.⁴⁷³ Human effects on the land have actually been beneficial for quite some time, and farmers and ranchers continue to work towards conservation in their everyday practices.⁴⁷⁴ While one pound of boneless beef requires 441 gallons of water, this is only a fraction of the water required to make a cotton t-shirt.⁴⁷⁵ Furthermore, the water that is used for the beef goes towards the animals drinking, pasture irrigation, crop irrigation for the food the animal eats, and processing the beef.⁴⁷⁶ While this is a lot of water, ranchers have reduced water usage by 12% as compared to usage 20 years ago.⁴⁷⁷ While they may use large quantities of water, many ranchers think about the environment and wildlife when it comes to their operations.⁴⁷⁸ While 85% of rangeland in the U.S. is unsuitable for crops, it can be used for grazing, which provides opportunities for growth in ranching.⁴⁷⁹ Ranchers seek

468. *Id.*

469. *See id.*

470. *Status Update and Trends of Texas Working Lands*, TEX. LAND TRENDS 1, 1 (2019), https://txlandtrends.org/media/qzpbz2j/texas-land-trends_status-update-and-trends-of-tx-working-lands.pdf [<https://perma.cc/T66X-M5TD>].

471. *Id.* at 14.

472. *Id.* at 4.

473. Temple Grandin, *Experts Say Ranching Done Right Improves the Environment and Wildlife Habitat*, BEEF MAG. (Feb. 26, 2015), <https://www.beefmagazine.com/pasture-range/experts-say-ranching-done-right-improves-environment-and-wildlife-habitat> [<https://perma.cc/7MD5-BRW9>].

474. *Id.*

475. *US Grain-Fed Beef Less Reliant on Water, But Drought Bites Nonetheless*, FARMERS J. (Apr. 21, 2015), <https://www.farmersjournal.ie/us-grain-fed-beef-less-reliant-on-water-but-drought-bites-nonetheless-179438> [<https://perma.cc/9NKR-6BF7>].

476. *Livestock Water Use*, US GEOLOGICAL SURV. (Mar. 1, 2019), <https://www.usgs.gov/special-topics/water-science-school/science/livestock-water-use> [<https://perma.cc/9HHS-VWZV>].

477. *Id.*

478. Hargreaves, *supra* note 215.

479. *Noble Research Institute Focuses on Regenerative Agriculture*, MORNING AGCLIPS

to use the best water practices to reduce water waste and bad practice in order to preserve the resource that is so vital to life while also producing necessities that people need to live a happy and healthy life.⁴⁸⁰

IV. CONCLUSION

Because of the importance of the agriculture industry, states should adopt code provisions that mimic those of the Texas Estates Code to better serve farmers and ranchers.⁴⁸¹ Farmers and ranchers need to be able to not only plan their estates to fully recognize their intent but should not have to pay money on top of it to probate their estate when it has already been done in a previous proceeding.⁴⁸² These court costs add up and create a burden on farming and ranching that negatively affects the industry.⁴⁸³ The number of people that are affected is only going to increase as land transfers and the age of farmers continues to rise.⁴⁸⁴

Agriculture is a vital industry, and states must resolve these issues to promote this important industry for human survival.⁴⁸⁵ By adopting new statutes, states will better serve the families that make up the agricultural industry,⁴⁸⁶ families who farm and ranch to make food for people to eat, clothes for people to wear, and all the other necessities that people in the United States need on a daily basis.⁴⁸⁷

(Feb. 18, 2021), <https://www.morningagclips.com/noble-research-institute-focuses-on-regenerative-agriculture/> [<https://perma.cc/YW28-C5DA>].

480. Cassidy Johnston, *How Ranchers are Getting by with Less Water Across the West*, THE NEW HUMANITARIAN (Aug. 16, 2018), <https://deeply.thenewhumanitarian.org/water/community/2018/08/16/how-ranchers-are-getting-by-with-less-water-across-the-west> [<https://perma.cc/753S-9TW4>].

481. Author's original thought.

482. *See supra* Section III.A.3.

483. *Id.*

484. *See Farm Producers, supra* note 216, at 2.

485. *See supra* Section III.C.

486. *See supra* Part III.

487. *See supra* Section III.C.