A NONSUBSTANTIVE REVISION
OF THE TEXAS PROBATE CODE
STATUTES RELATING TO DURABLE
POWERS OF ATTORNEY, GUARDIANSHIPS,
AND ALTERNATIVES TO GUARDIANSHIP

Submitted to the 82nd Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
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FOREWORD

The Texas Legislative Council is required by law (Section 323.007, Government Code) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable. The stated purpose of this process is to make the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the classification scheme adopted by the council, the statutes will eventually consist of 27 codes. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (which was a substantive revision), Estates Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Property Code, Special District Local Laws Code, Tax Code (Title 1 of which was a substantive revision), Transportation Code, Utilities Code, and Water Code. The council staff also assisted the state bar in the Business Organizations Code, Penal Code, and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions as Title 2 of the Code of Criminal Procedure.

Enacted in 2009 and taking effect in 2014, the council's Estates Code project represents a nonsubstantive revision and redesignation of the operative provisions of the Texas Probate Code. H.B. 2502, Acts of the 81st Legislature, Regular Session, 2009, enacted the organizational structure of the code and represented a nonsubstantive revision of the general provisions of the Texas Probate Code and the provisions of that code relating to decedents' estates, with the exception of certain statutes governing jurisdiction, venue, and independent administration. These statutes, along with the statutes relating to durable powers of attorney, guardianships, guardianship-related proceedings, and alternatives to guardianships that also were not revised by H.B. 2502, were transferred to the Estates Code and redesignated as provisions of that code.

This revisor's report reflects the statutes revised in Subtitle P, Title 2, and Title 3, Estates Code, as enacted by the passage of H.B. 2759, Acts of the 82nd Legislature, Regular Session, 2011. Subtitle P, Title 2, Estates Code, represents a nonsubstantive revision of the Durable Power of Attorney Act. Title 3, Estates Code, represents a nonsubstantive revision of the statutes relating to guardianships, guardianship-related proceedings, and alternatives to guardianships. Provisions relating to scope, jurisdiction, and venue for guardianship proceedings, and a provision relating to payment for certain professional services in guardianship proceedings, have been redesignated without revision as Subtitles Y and Z of Title 3,
The Estates Code is divided into titles, subtitles, chapters, subchapters, and sections. With the exception of certain provisions that were transferred from the Texas Probate Code and redesignated but not revised, the sections of the Estates Code are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Note that gaps in chapter and section numbering are for future expansion.

The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the revised law is derived. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance in the source law is revised in the revised law or the reason for its omission is explained in a revisor's note.

Note that, to provide all affected parties adequate time to more closely review the revision, the Estates Code, including the portion enacted by the 81st Legislature, will not take effect until January 1, 2014.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful to refer to the source law as printed in the Texas Probate Code as it existed before the revision (so that the quoted source law may be seen in its former context) and to the disposition table (showing where the former statutes appear, as revised or redesignated, in the code). The disposition table is printed as Appendix D to the revisor's report.

The revision required conforming amendments to several statutes. These conforming amendments were enacted into law by the passage of H.B. 2759 and are printed in Appendix A to the revisor's report.

As noted, various Texas Probate Code provisions relating to guardianship proceedings were redesignated as provisions of the Estates Code but were not revised. These redesignations were also enacted into law by the passage of H.B. 2759. The relevant sections of that bill are printed in Appendix B to the revisor's report. Appendix B also includes a section listing the laws repealed effective January 1, 2014, and a section stating the legislature's intent that the code be a nonsubstantive revision.

In reviewing the revisor's report to the Estates Code, the reader should keep in mind the following:

(1) Except as provided by Section 21.002, 22.027, or 1002.023, Estates Code, the Code Construction Act (Chapter 311, Government Code) applies to the Estates Code. The Code Construction Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The act is printed as Appendix C to the revisor's report.

(2) The proposed code is written in modern American English. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this project was to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity was preserved.
This project was under the direction of Anne Peters, Legislative Counsel, of the council staff. Questions may be directed to her at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 463-1155.
ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF ATTORNEY

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

[Chapters 753-1000 reserved for expansion]

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1001. PURPOSE AND CONSTRUCTION

CHAPTER 1002. DEFINITIONS

[Chapters 1003-1030 reserved for expansion]

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

[Chapters 1031-1050 reserved]

SUBTITLE C. PROCEDURAL MATTERS

CHAPTER 1051. NOTICES AND PROCESS IN GUARDIANSHIP PROCEEDINGS IN GENERAL

CHAPTER 1052. FILING AND RECORDKEEPING

CHAPTER 1053. OTHER COURT DUTIES AND PROCEDURES

CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

CHAPTER 1055. TRIAL AND HEARING MATTERS

CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

CHAPTER 1057. CHANGE AND RESIGNATION OF RESIDENT AGENT OF GUARDIAN FOR SERVICE OF PROCESS

[Chapters 1058-1100 reserved for expansion]

SUBTITLE D. CREATION OF GUARDIANSHIP

CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

CHAPTER 1103. PROCEDURE TO APPOINT GUARDIAN FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS AS ADULTS

CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN

CHAPTER 1105. QUALIFICATION OF GUARDIANS

CHAPTER 1106. LETTERS OF GUARDIANSHIP

[Chapters 1107-1150 reserved for expansion]
SUBTITLE E. ADMINISTRATION OF GUARDIANSHIP

CHAPTER 1151. RIGHTS, POWERS, AND DUTIES UNDER GUARDIANSHIP

CHAPTER 1152. GUARDIANSHIP PENDING APPEAL OF APPOINTMENT

CHAPTER 1153. NOTICE TO CLAIMANTS

CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

CHAPTER 1156. EDUCATION AND MAINTENANCE ALLOWANCES PAID FROM WARD’S ESTATE

CHAPTER 1157. PRESENTMENT AND PAYMENT OF CLAIMS

CHAPTER 1158. SALE OR PARTITION OF WARD’S PROPERTY

CHAPTER 1159. RENTING ESTATE PROPERTY

CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES

CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

[Chapters 1165-1200 reserved for expansion]

CHAPTER 1201. EVALUATION OF GUARDIANSHIP

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN; APPOINTMENT OF SUCCESSOR

CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

[Chapters 1205-1250 reserved for expansion]

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTER 1251. TEMPORARY GUARDIANSHIPS

CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

CHAPTER 1253. INTERSTATE GUARDIANSHIPS

[Chapters 1254-1300 reserved for expansion]

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

CHAPTER 1301. MANAGEMENT TRUSTS

CHAPTER 1302. POOLED TRUST SUBACCOUNTS

[Chapters 1303-1350 reserved for expansion]
SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO
GUARDIANSHIP

CHAPTER 1351. SALE OF PROPERTY OF CERTAIN INCAPACITATED PERSONS

CHAPTER 1352. MORTGAGE OF MINOR'S INTEREST IN RESIDENCE HOMESTEAD

CHAPTER 1353. MANAGEMENT AND CONTROL OF INCAPACITATED SPOUSE'S
PROPERTY

CHAPTER 1354. RECEIVERSHIP FOR ESTATES OF CERTAIN INCAPACITATED
PERSONS

CHAPTER 1355. PAYMENT OF CERTAIN CLAIMS WITHOUT GUARDIANSHIP

CHAPTER 1356. COURT APPROVAL OF CERTAIN ARTS AND ENTERTAINMENT,
ADVERTISEMENT, AND SPORTS CONTRACTS

[Subtitles J-X reserved for expansion]

SUBTITLE Y. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND VENUE

PART 1. GENERAL PROVISIONS

SUBPART A. PROCEEDINGS IN REM

[Reserved for expansion]

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART A. JURISDICTION

[Reserved for expansion]

SUBPART B. VENUE

[Reserved for expansion]

SUBPART C. DUTIES AND RECORDS OF CLERK

[Reserved for expansion]

SUBTITLE Z. TEXAS PROBATE CODE: ADDITIONAL GUARDIANSHIP
PROVISIONS

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

[Reserved for expansion]

TITLE 2. ESTATES OF DECEDEENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF
ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE ................................. 5
Sec. 751.002. DEFINITION OF DURABLE POWER OF ATTORNEY

Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION

Sec. 751.004. DURATION OF DURABLE POWER OF ATTORNEY

Sec. 751.005. EXTENSION OF PRINCIPAL’S AUTHORITY TO OTHER PERSONS

Sec. 751.006. RIGHTS CUMULATIVE

[Sections 751.007-751.050 reserved for expansion]

SUBCHAPTER B. EFFECT OF CERTAIN ACTS ON EXERCISE OF DURABLE POWER OF ATTORNEY

Sec. 751.051. EFFECT OF ACTS PERFORMED BY ATTORNEY IN FACT OR AGENT DURING PRINCIPAL’S DISABILITY OR INCAPACITY

Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE

Sec. 751.053. EFFECT OF PRINCIPAL’S DIVORCE OR MARRIAGE ANNULMENT IF FORMER SPOUSE IS ATTORNEY IN FACT OR AGENT

Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER; GOOD-FAITH ACTS

Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF TERMINATION OF POWER OR OF DISABILITY OR INCAPACITY; GOOD-FAITH RELIANCE

Sec. 751.056. NONLIABILITY OF THIRD PARTY ON GOOD-FAITH RELIANCE

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING

Sec. 751.058. EFFECT OF REVOCATION OF DURABLE POWER OF ATTORNEY ON THIRD PARTY

[Sections 751.059-751.100 reserved for expansion]

SUBCHAPTER C. DUTY TO INFORM AND ACCOUNT

Sec. 751.101. FIDUCIARY DUTIES

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL

Sec. 751.103. MAINTENANCE OF RECORDS

Sec. 751.104. ACCOUNTING
Sec. 751.001. SHORT TITLE. This subtitle may be cited as the Durable Power of Attorney Act. (Tex. Prob. Code, Sec. 481.)

Source Law
Sec. 481. This chapter may be cited as the Durable Power of Attorney Act.

Revisor's Note
Section 481, Texas Probate Code, refers to "this chapter," meaning Chapter XII, Texas Probate Code. Throughout this subtitle the revised law substitutes "this subtitle" for "this chapter" because Chapter XII, Texas Probate Code, is revised as this subtitle.

Revised Law
Sec. 751.002. DEFINITION OF DURABLE POWER OF ATTORNEY. A "durable power of attorney" means a written instrument that:

(1) designates another person as attorney in fact or agent;
(2) is signed by an adult principal;
(3) contains:
   (A) the words:
      (i) "This power of attorney is not affected
by subsequent disability or incapacity of the principal"; or

(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that show the principal's intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal before an officer authorized under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths. (Tex. Prob. Code, Sec. 482.)

Source Law

Sec. 482. A "durable power of attorney" means a written instrument that:

(1) designates another person as attorney in fact or agent;

(2) is signed by an adult principal;

(3) contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective on the disability or incapacity of the principal," or similar words showing the principal's intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state or any other state.

Revised Law

Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform the law with respect to the subject of this subtitle among states enacting these provisions. (Tex. Prob. Code, Sec. 506.)

Source Law

Sec. 506. This chapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.
Sec. 751.004. DURATION OF DURABLE POWER OF ATTORNEY. A durable power of attorney does not lapse because of the passage of time unless the instrument creating the power of attorney specifically states a time limitation. (Tex. Prob. Code, Sec. 483.)

Sec. 483. A durable power of attorney does not lapse because of the passage of time unless the instrument creating the power of attorney specifically states a time limitation.

Sec. 751.005. EXTENSION OF PRINCIPAL'S AUTHORITY TO OTHER PERSONS. If, in this subtitle, a principal is given an authority to act, that authority includes:

(1) any person designated by the principal;
(2) a guardian of the estate of the principal; or
(3) another personal representative of the principal.

(Tex. Prob. Code, Sec. 489B(i).)

(i) Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

Section 489B(i), Texas Probate Code, provides that authority to act given to the principal "shall include not only the principal but also any person designated by the principal" and certain other persons. The revised law omits the reference to the inclusion of a principal because the authority given to the principal includes a principal by its own terms. Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption...
that components not expressed are excluded.

Revised Law
Sec. 751.006. RIGHTS CUMULATIVE. The rights set out under this subtitle are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and are not in derogation of those rights. (Tex. Prob. Code, Sec. 489B(j).)

Source Law
(j) The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

Revisor's Note
Section 489B(j), Texas Probate Code, refers to rights "set out in this section and chapter," meaning Section 489B and Chapter XII, Texas Probate Code, respectively. The revised law omits the reference to "this section" as unnecessary, since Section 489B is part of Chapter XII, Texas Probate Code, which is revised as this subtitle. The revised law is drafted accordingly.

[Sections 751.007-751.050 reserved for expansion]

SUBCHAPTER B. EFFECT OF CERTAIN ACTS ON EXERCISE OF DURABLE POWER OF ATTORNEY

Revised Law
Sec. 751.051. EFFECT OF ACTS PERFORMED BY ATTORNEY IN FACT OR AGENT DURING PRINCIPAL'S DISABILITY OR INCAPACITY. Each act performed by an attorney in fact or agent under a durable power of attorney during a period of the principal's disability or incapacity has the same effect, and inures to the benefit of and binds the principal and the principal's successors in interest, as if the principal were not disabled or incapacitated. (Tex. Prob. Code, Sec. 484.)

Source Law
Sec. 484. All acts done by an attorney in fact or agent pursuant to a durable power of attorney during
any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were not disabled or incapacitated.

Revised Law

Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate. The attorney in fact or agent shall:

(1) deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the attorney in fact or agent; and

(2) account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law. (Tex. Prob. Code, Sec. 485.)

Source Law

Sec. 485. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate, and the attorney in fact or agent shall deliver to the guardian of the estate all assets of the estate of the ward in the attorney's or agent's possession and shall account to the guardian of the estate as the attorney or agent would to the principal had the principal terminated his powers.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in
fact or agent on the qualification of the temporary
guardian of the estate until the date on which the term
of the temporary guardian expires.

(c) Subsection (b) of this section may not be
construed to prohibit the application for or issuance
of a temporary restraining order under applicable law.

Revised Law

Sec. 751.053. EFFECT OF PRINCIPAL'S DIVORCE OR MARRIAGE
ANNULMENT IF FORMER SPOUSE IS ATTORNEY IN FACT OR AGENT. Unless
otherwise expressly provided by the durable power of attorney, if,
after execution of a durable power of attorney, the principal is
divorced from a person who has been appointed the principal's
attorney in fact or agent or the principal's marriage to a person
who has been appointed the principal's attorney in fact or agent is
annulled, the powers of the attorney in fact or agent granted to the
principal's former spouse terminate on the date the divorce or
annulment of marriage is granted by a court. (Tex. Prob. Code, Sec.
485A.)

Source Law

Sec. 485A. If, after execution of a durable
power of attorney, the principal is divorced from a
person who has been appointed the principal's attorney
in fact or agent or the principal's marriage to a
person who has been appointed the principal's attorney
in fact or agent is annulled, the powers of the
attorney in fact or agent granted to the principal's
former spouse shall terminate on the date on which the
divorce or annulment of marriage is granted by a court,
unless otherwise expressly provided by the durable
power of attorney.

Revised Law

Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER; GOOD-FAITH
ACTS. (a) The revocation by, the death of, or the qualification of
a guardian of the estate of a principal who has executed a durable
power of attorney does not revoke or terminate the agency as to the
attorney in fact, agent, or other person who acts in good faith
under or in reliance on the power without actual knowledge of the
termination of the power by:

(1) the revocation;
(2) the principal's death; or
(3) the qualification of a guardian of the estate of
the principal.
(b) The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date the divorce is granted, or the annulment of the marriage of a principal and a person who has been appointed the principal's attorney in fact or agent before the date the annulment is granted, does not revoke or terminate the agency as to a person other than the principal's former spouse if the person acts in good faith under or in reliance on the power of attorney.

(c) An action taken under this section, unless otherwise invalid or unenforceable, binds the principal's successors in interest. (Tex. Prob. Code, Sec. 486.)

Source Law

Sec. 486. (a) The revocation by, the death of, or the qualification of a guardian of the estate of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the termination of the power by revocation, by the principal's death, or by the qualification of a guardian of the estate of the principal, acts in good faith under or in reliance on the power.

(b) The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date on which the divorce is granted or the annulment of the marriage of a principal and a person who has been appointed the principal's attorney in fact or agent before the date the annulment is granted does not revoke or terminate the agency as to a person other than the principal's former spouse if the person acts in good faith under or in reliance on the power.

(c) Any action taken under this section, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

Revisor's Note

Section 486(b), Texas Probate Code, refers to acts in good faith under or in reliance on "the power."

The revised law substitutes "the power of attorney" for "the power" for clarity because it is apparent from the context that the reference is to the power of attorney.

Revised Law

Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF TERMINATION OF POWER OR OF DISABILITY OR INCAPACITY; GOOD-FAITH
RELIANCE. (a) As to an act undertaken in good-faith reliance on a
durable power of attorney, an affidavit executed by the attorney in
fact or agent under the durable power of attorney stating that the
attorney in fact or agent did not have, at the time the power was
exercised, actual knowledge of the termination of the power by
revocation, the principal's death, the principal's divorce or the
annulment of the principal's marriage if the attorney in fact or
agent was the principal's spouse, or the qualification of a
 guardian of the estate of the principal, is conclusive proof as
between the attorney in fact or agent and a person other than the
principal or the principal's personal representative dealing with
the attorney in fact or agent of the nonrevocation or
nontermination of the power at that time.

(b) As to an act undertaken in good-faith reliance on a
durable power of attorney, an affidavit executed by the attorney in
fact or agent under the durable power of attorney stating that the
principal is disabled or incapacitated, as defined by the power of
attorney, is conclusive proof as between the attorney in fact or
agent and a person other than the principal or the principal's
personal representative dealing with the attorney in fact or agent
of the principal's disability or incapacity at that time.

(c) If the exercise of the power of attorney requires
execution and delivery of an instrument that is to be recorded, an
affidavit executed under Subsection (a) or (b), authenticated for
record, may also be recorded.

(d) This section and Section 751.056 do not affect a
provision in a durable power of attorney for the termination of the
power by:

(1) expiration of time; or
(2) the occurrence of an event other than express
revocation. (Tex. Prob. Code, Secs. 487(a), (b), (c), (d).)

Source Law
Sec. 487. (a) As to acts undertaken in
good-faith reliance on the durable power of attorney,
an affidavit executed by the attorney in fact or agent
under a durable power of attorney stating that the
attorney in fact or agent did not have at the time of
exercise of the power actual knowledge of the
termination of the power by revocation, by the
principal's death, by the principal's divorce or the
annulment of the marriage of the principal if the
attorney in fact or agent was the principal's spouse,
or by the qualification of a guardian of the estate of
the principal is conclusive proof as between the
attorney in fact or agent and a person other than the
principal or the principal's personal representative
dealing with the attorney in fact or agent of the
nonrevocation or nontermination of the power at that
time.

(b) As to acts undertaken in good-faith reliance
on the durable power of attorney, an affidavit
executed by the attorney in fact or agent under a
durable power of attorney stating that the principal
is disabled or incapacitated, as defined by the power,
is conclusive proof as between the attorney in fact or
agent and a person other than the principal or the
principal's personal representative dealing with the
attorney in fact or agent of the disability or
incapacity of the principal at that time.

(c) If the exercise of the power of attorney
requires execution and delivery of any instrument that
is to be recorded, an affidavit executed under
Subsection (a) or (b) of this section, when
authenticated for record, may also be recorded.

(d) This section does not affect any provision
in a durable power of attorney for its termination by
expiration of time or occurrence of an event other than
express revocation.

Revised Law

Sec. 751.056. NONLIABILITY OF THIRD PARTY ON GOOD-FAITH
RELIANCE. If a durable power of attorney is used, a third party who
relies in good faith on the acts of an attorney in fact or agent
performed within the scope of the power of attorney is not liable to
the principal. (Tex. Prob. Code, Sec. 487(e).)

Source Law

(e) When a durable power of attorney is used, a
third party who relies in good faith on the acts of an
attorney in fact or agent within the scope of the power
of attorney is not liable to the principal.

Revised Law

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. (a) The
filing of a voluntary or involuntary petition in bankruptcy in
connection with the debts of a principal who has executed a durable
power of attorney does not revoke or terminate the agency as to the
principal's attorney in fact or agent.

(b) Any act the attorney in fact or agent may undertake with
respect to the principal's property is subject to the limitations
and requirements of the United States Bankruptcy Code (11 U.S.C.
Section 101 et seq.) until a final determination is made in the bankruptcy proceeding. (Tex. Prob. Code, Sec. 487A.)

Source Law

Sec. 487A. After execution of a durable power of attorney, the filing of a voluntary or involuntary petition in bankruptcy in connection with the principal's debts does not revoke or terminate the agency as to the principal's attorney in fact or agent. Any act the attorney in fact or agent may undertake with respect to the principal's property is subject to the limitations and requirements of the United States Bankruptcy Code until a final determination is made in the bankruptcy proceeding.

Revisor's Note

Section 487A, Texas Probate Code, refers to the "United States Bankruptcy Code." For the convenience of the reader, the revised law includes a reference to the United States Code citation for the bankruptcy code.

Revised Law

Sec. 751.058. EFFECT OF REVOCATION OF DURABLE POWER OF ATTORNEY ON THIRD PARTY. Unless otherwise provided by the durable power of attorney, a revocation of a durable power of attorney is not effective as to a third party relying on the power of attorney until the third party receives actual notice of the revocation. (Tex. Prob. Code, Sec. 488.)

Source Law

Sec. 488. Unless otherwise provided by the durable power of attorney, a revocation of a durable power of attorney is not effective as to a third party relying on the power of attorney until the third party receives actual notice of the revocation.

[Sections 751.059-751.100 reserved for expansion]

SUBCHAPTER C. DUTY TO INFORM AND ACCOUNT

Revised Law

Sec. 751.101. FIDUCIARY DUTIES. An attorney in fact or agent is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney. (Tex. Prob. Code, Sec. 489B(a).)

Source Law

Sec. 489B. (a) The attorney in fact or agent is
a fiduciary and has a duty to inform and to account for
actions taken pursuant to the power of attorney.

Revised Law
Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The
attorney in fact or agent shall timely inform the principal of each
action taken under the power of attorney.
(b) Failure of an attorney in fact or agent to timely
inform, as to third parties, does not invalidate any action of the
attorney in fact or agent. (Tex. Prob. Code, Sec. 489B(b).)

Source Law
Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The
attorney in fact or agent shall timely inform the principal of all actions taken pursuant to
the power of attorney. Failure of the attorney in fact or agent to inform timely, as to third parties, shall
not invalidate any action of the attorney in fact or agent.

Revised Law
Sec. 751.103. MAINTENANCE OF RECORDS. (a) The attorney in
fact or agent shall maintain records of each action taken or
decision made by the attorney in fact or agent.
(b) The attorney in fact or agent shall maintain all records
until delivered to the principal, released by the principal, or
discharged by a court. (Tex. Prob. Code, Secs. 489B(c), (f).)

Source Law
Sec. 751.103. MAINTENANCE OF RECORDS. (a) The attorney in
fact or agent shall maintain records of each action taken or
decision made by the attorney in fact or agent.
(c) The attorney in fact or agent shall maintain records of each action taken or decision made by the
attorney in fact or agent.
(f) The attorney in fact or agent shall maintain all records until delivered to the principal, released
by the principal, or discharged by a court.

Revised Law
Sec. 751.104. ACCOUNTING. (a) The principal may demand an
accounting by the attorney in fact or agent.
(b) Unless otherwise directed by the principal, an
accounting under Subsection (a) must include:
(1) the property belonging to the principal that has
come to the attorney in fact's or agent's knowledge or into the
attorney in fact's or agent's possession;
(2) each action taken or decision made by the attorney
in fact or agent;
a complete account of receipts, disbursements, and other actions of the attorney in fact or agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(4) a listing of all property over which the attorney in fact or agent has exercised control that includes:
   (A) an adequate description of each asset; and
   (B) the asset's current value, if the value is known to the attorney in fact or agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the attorney in fact or agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the attorney in fact or agent shall also provide to the principal all documentation regarding the principal's property. (Tex. Prob. Code, Secs. 489B(d), (e).)

(d) The principal may demand an accounting by the attorney in fact or agent. Unless otherwise directed by the principal, the accounting shall include:

(1) the property belonging to the principal that has come to the attorney in fact's or agent's knowledge or into the attorney in fact's or agent's possession;

(2) all actions taken or decisions made by the attorney in fact or agent;

(3) a complete account of receipts, disbursements, and other actions of the attorney in fact or agent, including their source and nature, with receipts of principal and income shown separately;

(4) a listing of all property over which the attorney in fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney in fact or agent;

(5) the cash balance on hand and the name and location of the depository where the balance is kept;

(6) all known liabilities; and

(7) such other information and facts known to the attorney in fact or agent as may be necessary to a full and definite understanding of the exact
condition of the property belonging to the principal.

(e) Unless directed otherwise by the principal, the attorney in fact or agent shall also provide to the principal all documentation regarding the principal's property.

Revised Law

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the attorney in fact or agent to deliver the accounting or the assets; or

(2) terminate the power of attorney. (Tex. Prob. Code, Sec. 489B(g).)

Source Law

(g) If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suit to compel the attorney in fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

Revisor's Note

Section 489B(g), Texas Probate Code, refers to "the accounting" that the attorney in fact or agent fails or refuses to deliver within 60 days or a longer or shorter period. Section 489B(d), Texas Probate Code, provides that a principal may demand an accounting by the attorney in fact or agent. That section is revised in this chapter as Section 751.104. The revised law adds a reference to Section 751.104 for the convenience of the reader.

Revised Law

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS. This subchapter does not limit the right of the principal to terminate the power of attorney or to make additional requirements of or to give additional instructions to the attorney in fact or
agent. (Tex. Prob. Code, Sec. 489B(h).)

Source Law

(h) This section shall not limit the right of
the principal to terminate the power of attorney or to
make additional requirements of or to give additional
instructions to the attorney in fact or agent.

Revisor's Note

Section 489B(h), Texas Probate Code, provides
that "[t]his section" does not limit certain rights of
a principal. The revised law substitutes "this
subchapter" for "this section" because the pertinent
parts of Section 489B, Texas Probate Code, are revised
as this subchapter.

[Sections 751.107-751.150 reserved for expansion]

SUBCHAPTER D. RECORDING DURABLE POWER OF ATTORNEY FOR CERTAIN REAL
PROPERTY TRANSACTIONS

Revised Law

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS
REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power
of attorney for a real property transaction requiring the execution
and delivery of an instrument that is to be recorded, including a
release, assignment, satisfaction, mortgage, security agreement,
deed of trust, encumbrance, deed of conveyance, oil, gas, or other
mineral lease, memorandum of a lease, lien, or other claim or right
to real property, must be recorded in the office of the county clerk
of the county in which the property is located. (Tex. Prob. Code,
Sec. 489.)

Source Law

Sec. 489. A durable power of attorney for a real
property transaction requiring the execution and
delivery of an instrument that is to be recorded,
including a release, assignment, satisfaction,
mortgage, security agreement, deed of trust,
encumbrance, deed of conveyance, oil, gas, or other
mineral lease, memorandum of a lease, lien, or other
claim or right to real property, shall be recorded in
the office of the county clerk of the county in which
the property is located.
CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

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CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS REGARDING STATUTORY DURABLE POWER OF ATTORNEY

Revised Law

Sec. 752.001. USE, MEANING, AND EFFECT OF STATUTORY DURABLE POWER OF ATTORNEY. (a) A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters.

(b) A power of attorney in substantially the form prescribed by Section 752.051 has the meaning and effect prescribed by this subtitle. (Tex. Prob. Code, Sec. 490(a) (part).)

Source Law

(a) . . . A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. . . .

Revisor's Note

Section 490(a), Texas Probate Code, refers to a power of attorney "in substantially the following form," meaning the form prescribed by that section. Throughout this chapter, the revised law substitutes a reference to a "form prescribed by Section 752.051" because the provisions of Section 490(a) that prescribe the form are revised as Section 752.051 of this chapter.

Revised Law

Sec. 752.002. VALIDITY NOT AFFECTED. A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

(1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are struck; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent. (Tex. Prob. Code, Sec. 490(a) (part).)
(a) The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

Sec. 752.003. PRESCRIBED FORM NOT EXCLUSIVE. The form prescribed by Section 752.051 is not exclusive, and other forms of power of attorney may be used. (Tex. Prob. Code, Sec. 490(a) (part).)

(a) The following form is not exclusive, and other forms of power of attorney may be used.

Sec. 752.004. LEGAL SUFFICIENCY OF STATUTORY DURABLE POWER OF ATTORNEY. A statutory durable power of attorney is legally sufficient under this subtitle if:

(1) the wording of the form complies substantially with the wording of the form prescribed by Section 752.051;

(2) the form is properly completed; and

(3) the signature of the principal is acknowledged.

(Tex. Prob. Code, Sec. 490(b).)

(b) A statutory durable power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with Subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

Section 490(b), Texas Probate Code, refers to a form that "complies substantially with Subsection (a) of this section." The revised law substitutes "complies substantially with the wording of the form prescribed by Section 752.051" for the quoted language because the provision of Section 490(a), Texas Probate Code, with which a form could substantially comply is
the wording of the form revised as Section 752.051 of this chapter.

[Sections 752.005-752.050 reserved for expansion]

SUBCHAPTER B. FORM OF STATUTORY DURABLE POWER OF ATTORNEY

Revised Law

Sec. 752.051. FORM. The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, __________ (insert your name and address), appoint __________ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;
Tangible personal property transactions;
Stock and bond transactions;
Commodity and option transactions;
Banking and other financial institution transactions;
Business operating transactions;
Insurance and annuity transactions;
Estate, trust, and other beneficiary transactions;
Claims and litigation;
Personal and family maintenance;
Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
Retirement plan transactions;
Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL
BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY
AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO
PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I
WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of
the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my
property to make gifts, except that the amount of a gift to an
individual may not exceed the amount of annual exclusions allowed
from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS
LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS
EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent
disability or incapacity.

(B) This power of attorney becomes effective upon my
disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.
IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician’s medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: __________.

Signed this _____ day of __________, ____________

___________________________
(your signature)

State of _______________________
County of ______________________
This document was acknowledged before me on __________(date) by ______________________
(name of principal)
THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
RESPONSIBILITIES OF AN AGENT. (Tex. Prob. Code, Sec. 490(a)
(part).)

Source Law

Sec. 490. (a) The following form is known as a
"statutory durable power of attorney." . . .
STATUTORY DURABLE POWER OF ATTORNEY
NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD
AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER
OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF
YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN
COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE
DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF
ATTORNEY IF YOU LATER WISH TO DO SO.

I, __________ (insert your name and address),
appoint __________ (insert the name and address of the
person appointed) as my agent (attorney-in-fact) to
act for me in any lawful way with respect to all of the
following powers except for a power that I have crossed
out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH
POWER WITHHELD.
Real property transactions;
Tangible personal property transactions;
Stock and bond transactions;
Commodity and option transactions;
Banking and other financial institution
transactions;
Business operating transactions;
Insurance and annuity transactions;
Estate, trust, and other beneficiary
transactions;
Claims and litigation;
Personal and family maintenance;
Benefits from social security, Medicare,
Medicaid, or other governmental programs or civil or
military service;
Retirement plan transactions;
Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS
DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A
GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN
FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR
UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I
WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:
Special instructions applicable to gifts
(initial in front of the following sentence to have it
apply):
I grant my agent (attorney in fact) the power to
apply my property to make gifts, except that the amount
of a gift to an individual may not exceed the amount of
annual exclusions allowed from the federal gift tax
for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

______.

Signed this ___ day of _______, 19____

__________________________
(your signature)

State of _______________________

County of ______________________

This document was acknowledged before me on ________________(date) by ________________________

(name of principal)

______________________________
(signature of notarial officer)

(printed name)

My commission expires: ________

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR
ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY
AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Revisor's Note

Section 490(a), Texas Probate Code, establishes a
form for a statutory durable power of attorney. The
form has been updated in the following ways:

(1) the reference to Chapter XII, Texas
Probate Code, has been changed to Subtitle P, Title 2,
Estates Code, because Chapter XII is revised as
Subtitle P in this code;

(2) the reference to "attorney-in-fact"
has been changed to "attorney in fact" for consistency
in terminology; and

(3) the reference to "19__" has been
omitted from the date reference in the signature line
in the form to reflect the fact that the form will be
executed after the expiration of the 20th century.

[Sections 752.052-752.100 reserved for expansion]

SUBCHAPTER C. CONSTRUCTION OF POWERS RELATED TO STATUTORY DURABLE
POWER OF ATTORNEY

Revised Law

Sec. 752.101. CONSTRUCTION IN GENERAL. By executing a
statutory durable power of attorney that confers authority with
respect to any class of transactions, the principal empowers the
attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action,
or otherwise any money or other thing of value to which the
principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or
other thing of value received on behalf of the principal for the
purposes intended;

(3) contract in any manner with any person, on terms
agreeable to the attorney in fact or agent, to accomplish a purpose
of a transaction and perform, rescind, reform, release, or modify
that contract or another contract made by or on behalf of the
principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney in fact or agent considers desirable to accomplish a purpose of a transaction;

(5) with respect to a claim existing in favor of or against the principal:

(A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or

(B) intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for an expenditure made in exercising the powers granted by the durable power of attorney; and

(11) in general, perform any other lawful act that the principal may perform with respect to the transaction. (Tex. Prob. Code, Sec. 491.)

Source Law

Sec. 491. The principal, by executing a statutory durable power of attorney that confers authority with respect to any class of transactions, empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;
(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(5) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for expenditures made in exercising the powers granted by the durable power of attorney; and

(11) in general, do any other lawful act that the principal may do with respect to a transaction.

Revisor's Note

Section 491, Texas Probate Code, authorizes, in certain circumstances, an "attorney in fact or agent" to execute, acknowledge, seal, and deliver instruments "the agent" considers desirable. The revised law substitutes "attorney in fact or agent" for the term "agent" for accuracy and consistency of terminology. Similar changes are made throughout this chapter.

Revised Law

Sec. 752.102. REAL PROPERTY TRANSACTIONS. The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an
interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate, by, for example:

(i) entering into a lease for oil, gas, and mineral purposes;

(ii) making contracts for development of the mineral estate; or

(iii) making pooling and unitization agreements;

(5) use, develop, alter, replace, remove, erect, or
install structures or other improvements on real property in which
the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to
real property or a legal entity that owns an interest in or right
incident to real property, receive and hold shares of stock or
obligations received in a plan or reorganization, and act with
respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares
or obligations;

(B) exercising or selling an option, conversion,
or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or
by proxy;

(7) change the form of title of an interest in or right
incident to real property; and

(8) dedicate easements or other real property in which
the principal has or claims to have an interest to public use, with
or without consideration. (Tex. Prob. Code, Sec. 492.)

Sec. 492. In a statutory durable power of
attorney, the language conferring authority with
respect to real property transactions empowers the
attorney in fact or agent without further reference to
a specific description of the real property to:

(1) accept as a gift or as security for a
loan or reject, demand, buy, lease, receive, or
otherwise acquire an interest in real property or a
right incident to real property;

(2) sell, exchange, convey with or without
covenants, quitclaim, release, surrender, mortgage,
encumber, partition, consent to partitioning,
subdivide, apply for zoning, rezoning, or other
governmental permits, plat or consent to platting,
develop, grant options concerning, lease or sublet, or
otherwise dispose of an estate or interest in real
property or a right incident to real property;

(3) release, assign, satisfy, and enforce
by litigation, action, or otherwise a mortgage, deed
of trust, encumbrance, lien, or other claim to real
property that exists or is claimed to exist;

(4) do any act of management or of
conservation with respect to an interest in real
property, or a right incident to real property, owned
or claimed to be owned by the principal, including
power to:

(A) insure against a casualty,
liability, or loss;

(B) obtain or regain possession or
protect the interest or right by litigation, action,
or otherwise;
(C) pay, compromise, or contest taxes
or assessments or apply for and receive refunds in
connection with them;
(D) purchase supplies, hire
assistance or labor, or make repairs or alterations in
the real property; and
(E) manage and supervise an interest
in real property, including the mineral estate, by,
for example, entering into a lease for oil, gas, and
mineral purposes, making contracts for development of
the mineral estate, or making pooling and unitization
agreements;
(5) use, develop, alter, replace, remove,
erect, or install structures or other improvements on
real property in which the principal has or claims to
have an estate, interest, or right;
(6) participate in a reorganization with
respect to real property or a legal entity that owns an
interest in or right incident to real property,
receive and hold shares of stock or obligations
received in a plan or reorganization, and act with
respect to the shares or obligations, including:
(A) selling or otherwise disposing of
the shares or obligations;
(B) exercising or selling an option,
conversion, or similar right with respect to the
shares or obligations; and
(C) voting the shares or obligations
in person or by proxy;
(7) change the form of title of an interest
in or right incident to real property; and
(8) dedicate easements or other real
property in which the principal has or claims to have
an interest to public use, with or without
consideration.

Revised Law
Sec. 752.103. TANGIBLE PERSONAL PROPERTY TRANSACTIONS. The
language conferring general authority with respect to tangible
personal property transactions in a statutory durable power of
attorney empowers the attorney in fact or agent to:
(1) accept tangible personal property or an interest
in tangible personal property as a gift or as security for a loan or
reject, demand, buy, receive, or otherwise acquire ownership or
possession of tangible personal property or an interest in tangible
personal property;
(2) sell, exchange, convey with or without covenants,
release, surrender, mortgage, encumber, pledge, create a security
interest in, pawn, grant options concerning, lease or sublet to
others, or otherwise dispose of tangible personal property or an
interest in tangible personal property;
(3) release, assign, satisfy, or enforce by
litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) perform an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring the property or interest against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations to the property. (Tex. Prob. Code, Sec. 493.)

Source Law

Sec. 493. In a statutory durable power of attorney, the language conferring general authority with respect to tangible personal property transactions empowers the attorney in fact or agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring against casualty,
liability, or loss;
(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;
(C) paying, compromising, or receiving refunds in connection with taxes or assessments;
(D) moving from place to place;
(E) storing for hire or on a gratuitous bailment; and
(F) using, altering, and making repairs or alterations.

Revisor's Note

(1) Section 493(2), Texas Probate Code, refers to the authority to "encumber, pledge, hypothecate ... or otherwise dispose of" certain property. "Hypothecation" of an asset is a form of a pledge. Throughout this chapter, the revised law omits references to "hypothecate" where the references are used in conjunction with "pledge" because "hypothecate" is included within the meaning of "pledge."

(2) Section 493(4)(D), Texas Probate Code, refers to moving certain tangible personal property "from place to place." The revised law omits the reference to "from place to place" as unnecessary. Moving personal property by definition means that the property is moved from one place to another.

Revised Law

Sec. 752.104. STOCK AND BOND TRANSACTIONS. The language conferring authority with respect to stock and bond transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, and exchange:
   (A) stocks;
   (B) bonds;
   (C) mutual funds; and
   (D) all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes;
receive certificates and other evidences of ownership with respect to securities;

exercise voting rights with respect to securities in person or by proxy;

enter into voting trusts; and

consent to limitations on the right to vote. (Tex. Prob. Code, Sec. 494.)

Source Law

Sec. 494. In a statutory durable power of attorney, the language conferring authority with respect to stock and bond transactions empowers the attorney in fact or agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Revised Law

Sec. 752.105. COMMODITY AND OPTION TRANSACTIONS. The language conferring authority with respect to commodity and option transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange; and

(2) establish, continue, modify, or terminate option accounts with a broker. (Tex. Prob. Code, Sec. 495.)

Source Law

Sec. 495. In a statutory durable power of attorney, the language conferring authority with respect to commodity and option transactions empowers the attorney in fact or agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange and establish, continue, modify, or terminate option accounts with a broker.

Revised Law

Sec. 752.106. BANKING AND OTHER FINANCIAL INSTITUTION TRANSACTIONS. The language conferring authority with respect to...
banking and other financial institution transactions in a statutory
durable power of attorney empowers the attorney in fact or agent to:

1. continue, modify, or terminate an account or other
   banking arrangement made by or on behalf of the principal;
2. establish, modify, or terminate an account or
   other banking arrangement with a bank, trust company, savings and
   loan association, credit union, thrift company, brokerage firm, or
   other financial institution selected by the attorney in fact or
   agent;
3. rent a safe deposit box or space in a vault;
4. contract to procure other services available from
   a financial institution as the attorney in fact or agent considers
   desirable;
5. withdraw by check, order, or otherwise money or
   property of the principal deposited with or left in the custody of a
   financial institution;
6. receive bank statements, vouchers, notices, or
   similar documents from a financial institution and act with respect
   to those documents;
7. enter a safe deposit box or vault and withdraw from
   or add to its contents;
8. borrow money at an interest rate agreeable to the
   attorney in fact or agent and pledge as security the principal's
   property as necessary to borrow, pay, renew, or extend the time of
   payment of a debt of the principal;
9. make, assign, draw, endorse, discount, guarantee,
   and negotiate promissory notes, bills of exchange, checks, drafts,
   or other negotiable or nonnegotiable paper of the principal, or
   payable to the principal or the principal's order to receive the
   cash or other proceeds of those transactions, to accept a draft
   drawn by a person on the principal, and to pay the principal when
   due;
10. receive for the principal and act on a sight
    draft, warehouse receipt, or other negotiable or nonnegotiable
instrument;

(11) apply for and receive letters of credit, credit
cards, and traveler’s checks from a financial institution and give
an indemnity or other agreement in connection with letters of
credit; and

(12) consent to an extension of the time of payment
with respect to commercial paper or a financial transaction with a
financial institution. (Tex. Prob. Code, Sec. 496.)

Source Law

Sec. 496. In a statutory durable power of
attorney, the language conferring authority with
respect to banking and other financial institution
transactions empowers the attorney in fact or agent
to:

(1) continue, modify, or terminate an
account or other banking arrangement made by or on
behalf of the principal;

(2) establish, modify, or terminate an
account or other banking arrangement with a bank,
trust company, savings and loan association, credit
union, thrift company, brokerage firm, or other
financial institution selected by the attorney in fact
or agent;

(3) hire a safe deposit box or space in a
vault;

(4) contract to procure other services
available from a financial institution as the attorney
in fact or agent considers desirable;

(5) withdraw by check, order, or otherwise
money or property of the principal deposited with or
left in the custody of a financial institution;

(6) receive bank statements, vouchers,
notices, or similar documents from a financial
institution and act with respect to them;

(7) enter a safe deposit box or vault and
withdraw or add to the contents;

(8) borrow money at an interest rate
agreeable to the attorney in fact or agent and pledge
as security real or personal property of the principal
necessary to borrow, pay, renew, or extend the time of
payment of a debt of the principal;

(9) make, assign, draw, endorse, discount,
guarantee, and negotiate promissory notes, bills of
exchange, checks, drafts, or other negotiable or
nonnegotiable paper of the principal, or payable to
the principal or the principal's order, to receive the
cash or other proceeds of those transactions, to
accept a draft drawn by a person on the principal, and
to pay the principal when due;

(10) receive for the principal and act on a
sight draft, warehouse receipt, or other negotiable or
nonnegotiable instrument;

(11) apply for and receive letters of
credit, credit cards, and traveler's checks from a
financial institution and give an indemnity or other
agreement in connection with letters of credit; and

(12) consent to an extension of the time of
payment with respect to commercial paper or a
financial transaction with a financial institution.
Revisor's Note

(1) Section 496(3), Texas Probate Code, authorizes an attorney in fact or agent to "hire a safe deposit box or space in a vault." The revised law substitutes "rent" for "hire" because to "hire" a safe deposit box or vault space is synonymous with to "rent" a safe deposit box or space, and "rent" is more consistent with modern usage. For example, the Finance Code provides for the rental of safe deposit boxes.

(2) Section 496(8), Texas Probate Code, authorizes an attorney in fact or agent to "pledge as security real or personal property of the principal." The revised law omits the reference to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law

Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. The language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate a business interest;

(2) do the following, to the extent that an attorney in fact or agent is permitted by law to act for a principal and subject to the terms of a partnership agreement:

(A) perform a duty, discharge a liability, or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under the partnership agreement, whether or not the principal is a general or limited partner;

(B) enforce the terms of the partnership agreement by litigation, action, or otherwise; and
(C) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership;

(3) exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other similar instrument and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument;

(4) with respect to a business owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made before execution of the power of attorney with an individual, legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business;

(B) determine:

(i) the location of the business's operation;

(ii) the nature and extent of the business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business's operation;

(iv) the amount and types of insurance carried; and

(v) the method of engaging, compensating, and dealing with the business's accountants, attorneys, and other agents and employees;

(C) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the
business and control and disburse the money in the operation of the
business;
(5) put additional capital into a business in which
the principal has an interest;
(6) join in a plan of reorganization, consolidation,
or merger of the business;
(7) sell or liquidate a business or part of the
business at the time and on the terms that the attorney in fact or
agent considers desirable;
(8) establish the value of a business under a buy-out
agreement to which the principal is a party;
(9) do the following:
   (A) prepare, sign, file, and deliver reports,
    compilations of information, returns, or other papers with respect
to a business:
    (i) that are required by a governmental
    agency, department, or instrumentality; or
    (ii) that the attorney in fact or agent
    considers desirable; and
   (B) make related payments; and
(10) pay, compromise, or contest taxes or assessments
and perform any other act that the attorney in fact or agent
considers desirable to protect the principal from illegal or
unnecessary taxation, fines, penalties, or assessments with
respect to a business, including attempts to recover, in any manner
permitted by law, money paid before or after the execution of the
power of attorney. (Tex. Prob. Code, Sec. 497.)

Source Law
Sec. 497. In a statutory durable power of
attorney, the language conferring authority with
respect to business operating transactions empowers
the attorney in fact or agent to:
(1) operate, buy, sell, enlarge, reduce,
or terminate a business interest;
(2) to the extent that an agent is
permitted by law to act for a principal and subject to
the terms of the partnership agreement:
   (A) perform a duty or discharge a
liability or exercise a right, power, privilege, or
option that the principal has, may have, or claims to
have under a partnership agreement, whether or not the principal is a general or limited partner;
(B) enforce the terms of a partnership agreement by litigation, action, or otherwise; and
(C) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership;
(3) exercise in person or by proxy or enforce by litigation, action, or otherwise a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument;
(4) with respect to a business owned solely by the principal:
(A) continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;
(B) determine:
(i) the location of its operation;
(ii) the nature and extent of its business;
(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
(iv) the amount and types of insurance carried; and
(v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;
(C) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and
(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;
(5) put additional capital into a business in which the principal has an interest;
(6) join in a plan of reorganization, consolidation, or merger of the business;
(7) sell or liquidate a business or part of it at the time and on the terms that the attorney in fact or agent considers desirable;
(8) establish the value of a business under a buy-out agreement to which the principal is a party;
(9) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency, department, or instrumentality or that the attorney in fact or agent considers desirable and make related payments; and
(10) pay, compromise, or contest taxes or assessments and do any other act that the attorney in fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted
by law, money paid before or after the execution of the power of attorney.

Revisor's Note
Section 497(3), Texas Probate Code, refers to "a bond, share, or other instrument of similar character" and to "a bond, share, or similar instrument." The revised law substitutes "other similar instrument" for the reference to "instrument of similar character" for consistency of terminology and because the phrases are synonymous.

Revised Law
Sec. 752.108. INSURANCE AND ANNUITY TRANSACTIONS. (a) The language conferring authority with respect to insurance and annuity transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, or additional insurance contracts and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and method of payment;

(3) pay the premium or assessment on, or modify, rescind, release, or terminate, an insurance contract or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the insurance contract, except as provided by Subsection (b);

(5) apply for and receive a loan on the security of the insurance contract or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract
or annuity with respect to which the principal has or claims to have
a power described by this section;

(10) change the beneficiary of an insurance contract
or annuity, except that the attorney in fact or agent may be
designated a beneficiary only to the extent authorized by
Subsection (b);

(11) apply for and procure government aid to guarantee
or pay premiums of an insurance contract on the life of the
principal;

(12) collect, sell, assign, borrow on, or pledge the
principal's interest in an insurance contract or annuity; and

(13) pay from proceeds or otherwise, compromise or
contest, or apply for refunds in connection with a tax or assessment
imposed by a taxing authority with respect to an insurance contract
or annuity or the proceeds of the contract or annuity or liability
accruing because of the tax or assessment.

(b) An attorney in fact or agent may be named a beneficiary
of an insurance contract or an extension, renewal, or substitute
for the contract only to the extent the attorney in fact or agent
was named as a beneficiary under a contract procured by the
principal before executing the power of attorney. (Tex. Prob.
Code, Sec. 498.)

Source Law

Sec. 498. In a statutory durable power of
attorney, the language conferring authority with
respect to insurance and annuity transactions empowers
the attorney in fact or agent to:

1. continue, pay the premium or
assessment on, modify, rescind, release, or terminate
a contract procured by or on behalf of the principal
that insures or provides an annuity to either the
principal or another person, whether or not the
principal is a beneficiary under the contract;

2. procure new, different, or additional
contracts of insurance and annuities for the principal
or the principal's spouse, children, and other
dependents and select the amount, type of insurance or
annuity, and mode of payment;

3. pay the premium or assessment on or
modify, rescind, release, or terminate a contract of
insurance or annuity procured by the attorney in fact
or agent;

4. designate the beneficiary of the
contract, except that an attorney in fact or agent may
be named a beneficiary of the contract or an extension,
renewal, or substitute for the contract only to the extent the attorney in fact or agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subdivision (4) of this section;

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow on, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, or apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing because of the tax or assessment.

Revisor's Note

Section 498(13), Texas Probate Code, refers to "a tax or assessment levied by a taxing authority." The revised law substitutes "imposed" for "levied" because the former is synonymous with "levied," is more commonly used, and includes the levy of a tax or assessment.

Revised Law

Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS. The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the attorney in fact or agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to:

(A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or

(B) remove, substitute, or surcharge a fiduciary;

(4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor. (Tex. Prob. Code, Sec. 499.)

Source Law

Sec. 499. In a statutory durable power of attorney, the language conferring authority with respect to estate, trust, and other beneficiary transactions empowers the attorney in fact or agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, or oppose a legal or judicial proceeding to remove, substitute, or surcharge a fiduciary;

(5) conserve, invest, disburse, or use anything received for an authorized purpose; and

(6) transfer all or part of an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.
Sec. 752.110. CLAIMS AND LITIGATION. The language conferring general authority with respect to claims and litigation in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset, or defend against an individual, a legal entity, or a government, including an action to:

(A) recover property or other thing of value;
(B) recover damages sustained by the principal;
(C) eliminate or modify tax liability; or
(D) seek an injunction, specific performance, or other relief;

(2) bring an action to determine an adverse claim, intervene in an action or litigation, and act as an amicus curiae;

(3) in connection with an action or litigation:

(A) procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree; and

(B) perform any lawful act the principal could perform, including:

(i) acceptance of tender;
(ii) offer of judgment;
(iii) admission of facts;
(iv) submission of a controversy on an agreed statement of facts;
(v) consent to examination before trial;

and

(vi) binding of the principal in litigation;

(4) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;
(5) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(6) act for the principal regarding voluntary or involuntary bankruptcy or insolvency proceedings concerning:
   (A) the principal; or
   (B) another person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects the principal's interest in property or other thing of value; and

(7) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation. (Tex. Prob. Code, Sec. 500.)

Source Law

Sec. 500. In a statutory durable power of attorney, the language conferring general authority with respect to claims and litigation empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset or defend against an individual, a legal entity, or a government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims, intervene in an action or litigation, and act as amicus curiae;

(3) in connection with an action or litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment,
order, or decree;
(4) in connection with an action or litigation, perform any lawful act the principal could perform, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding of the principal in litigation;
(5) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;
(6) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in real or personal property or other thing of value; and
(8) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Revised Law
Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the attorney in fact or agent to:
(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:
(A) providing living quarters by purchase, lease, or other contract; or
(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;
(2) provide for the individuals described by
Subdivision (1):

(A) normal domestic help;
(B) usual vacations and travel expenses; and
(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; and

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations. (Tex. Prob. Code, Sec. 501.)

Source Law

Sec. 501. In a statutory durable power of attorney, the language conferring authority with respect to personal and family maintenance empowers the attorney in fact or agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1) of this section normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for...
the individuals described by Subdivision (1) of this section;
(4) continue any provision made by the principal, for the individuals described by Subdivision (1) of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;
(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) of this section and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; and
(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

Revisor's Note

Section 501(2), Texas Probate Code, refers to "funds for shelter, clothing, food, appropriate education, and other current living costs." The revised law substitutes "money" for "funds" because, in context, the meaning is the same and "money" is the more commonly used term.

Revised Law

Sec. 752.112. BENEFITS FROM CERTAIN GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE. The language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) execute a voucher in the principal's name for an allowance or reimbursement payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including an allowance or reimbursement for:
   (A) transportation of the individuals described by Section 752.111(1); and
   (B) shipment of the household effects of those individuals;

(2) take possession and order the removal and shipment of the principal's property from a post, warehouse, depot, dock, or other governmental or private place of storage or safekeeping and execute and deliver a release, voucher, receipt, bill of lading,
shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described by this section and conserve, invest, disburse, or use anything received for a lawful purpose. (Tex. Prob. Code, Sec. 502.)

Source Law
Sec. 502. In a statutory durable power of attorney, the language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service empowers the attorney in fact or agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described by Section 501(1) of this code, and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Revised Law
Sec. 752.113. RETIREMENT PLAN TRANSACTIONS. (a) In this section, "retirement plan" means:

(1) an employee pension benefit plan as defined by Section 3, Employee Retirement Income Security Act of 1974 (29
(1) U.S.C. Section 1002), without regard to the provisions of Section
(2)(B) of that section;

(2) a plan that does not meet the definition of an
employee benefit plan under the Employee Retirement Income Security
Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does
not cover common law employees;

(3) a plan that is similar to an employee benefit plan
under the Employee Retirement Income Security Act of 1974 (29
U.S.C. Section 1001 et seq.), regardless of whether the plan is
covered by Title 1 of that Act, including a plan that provides death
benefits to the beneficiary of employees; and

(4) an individual retirement account or annuity, a
self-employed pension plan, or a similar plan or account.

(b) The language conferring authority with respect to
retirement plan transactions in a statutory durable power of
attorney empowers the attorney in fact or agent to perform any
lawful act the principal may perform with respect to a transaction
relating to a retirement plan, including to:

(1) apply for service or disability retirement
benefits;

(2) select payment options under any retirement plan
in which the principal participates, including plans for
self-employed individuals;

(3) designate or change the designation of a
beneficiary or benefits payable by a retirement plan, except as
provided by Subsection (c);

(4) make voluntary contributions to retirement plans
if authorized by the plan;

(5) exercise the investment powers available under any
self-directed retirement plan;

(6) make rollovers of plan benefits into other
retirement plans;

(7) borrow from, sell assets to, and purchase assets
from retirement plans if authorized by the plan;
(B) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed;

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(c) An attorney in fact or agent may be named a beneficiary under a retirement plan only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan before the durable power of attorney was executed. (Tex. Prob. Code, Sec. 503.)

Source Law

Sec. 503. (a) In a statutory durable power of attorney, the language conferring authority with respect to retirement plan transactions empowers the attorney in fact or agent to do any lawful act the principal may do with respect to a transaction relating to a retirement plan, including to:

(1) apply for service or disability retirement benefits;

(2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except that an attorney in fact or agent may be named a beneficiary only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan before the durable power of attorney was executed;

(4) make voluntary contributions to retirement plans if authorized by the plan;

(5) exercise the investment powers available under any self-directed retirement plan;

(6) make "rollovers" of plan benefits into other retirement plans;

(7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;

(8) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed;

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the right of the principal to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.
(b) In this section, "retirement plan" means:

1. an employee pension benefit plan as defined by Section 1002, Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. Section 1002), without regard to the provisions of Section (2)(B) of that section;

2. a plan that does not meet the definition of an employee benefit plan under ERISA because the plan does not cover common law employees;

3. a plan that is similar to an employee benefit plan under ERISA, regardless of whether it is covered by Title I of ERISA, including a plan that provides death benefits to the beneficiary of employees; and

4. an individual retirement account or annuity or a self-employed pension plan or similar plan or account.

**Revisor's Note**

Sections 503(b)(2) and (3), Texas Probate Code, refer to an employee benefit plan under "ERISA," meaning the Employee Retirement Income Security Act of 1974, referenced in Section 503(b)(1). For the convenience of the reader, the revised law includes references to the United States Code citation for the entire act.

**Revised Law**

Sec. 752.114. TAX MATTERS. The language conferring authority with respect to tax matters in a statutory durable power of attorney empowers the attorney in fact or agent to:

1. prepare, sign, and file:
   
   (A) federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act (26 U.S.C. Chapter 21), and other tax returns;

   (B) claims for refunds;

   (C) requests for extensions of time;

   (D) petitions regarding tax matters; and

   (E) any other tax-related documents, including:

   (i) receipts;

   (ii) offers;

   (iii) waivers;

   (iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);
(v) closing agreements; and
(vi) any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters, for all periods, before the Internal Revenue Service and any other taxing authority. (Tex. Prob. Code, Sec. 504.)

Source Law

Sec. 504. In a statutory durable power of attorney, the language conferring authority with respect to tax matters empowers the attorney in fact or agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), closing agreements, and any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

Revisor's Note

Section 504(1), Texas Probate Code, refers to the "Federal Insurance Contributions Act." For the convenience of the reader, the revised law includes a reference to the United States Code citation for that.
Revised Law
Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS. The powers described by Sections 752.102-752.114 may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:

(1) the property is located in this state; or
(2) the powers are exercised or the durable power of attorney is executed in this state. (Tex. Prob. Code, Sec. 505.)

Source Law
Sec. 505. The powers described in Sections 492 through 504 of this code may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the durable power of attorney is executed in this state.

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 1001. PURPOSE AND CONSTRUCTION
Sec. 1001.001. POLICY; PURPOSE OF GUARDIANSHIP
Sec. 1001.002. LAWS APPLICABLE TO GUARDIANSHIPS
Sec. 1001.003. REFERENCES IN LAW MEANING INCAPACITATED PERSON

CHAPTER 1001. PURPOSE AND CONSTRUCTION
Revised Law
Sec. 1001.001. POLICY; PURPOSE OF GUARDIANSHIP. (a) A court may appoint a guardian with either full or limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the incapacitated person.

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person. (Tex.
Sec. 602. A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

Revisor's Note

Section 602, Texas Probate Code, refers to the creation of a guardianship in which a guardian is given limited "power or authority" over an incapacitated person. The revised law omits "power" for consistency of terminology throughout the section and because, in this context, "power" is included in the meaning of "authority."

Revised Law

Sec. 1001.002. LAWS APPLICABLE TO GUARDIANSHIPS. To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to guardianships. (Tex. Prob. Code, Sec. 603(a).)

Source Law

Sec. 603. (a) To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to and govern guardianships.

Revisor's Note

Section 603(a), Texas Probate Code, provides that the laws and rules governing estates of decedents "apply to and govern" guardianships. The revised law omits "govern" because, in this context, "govern" is included in the meaning of "apply to."

Revised Law

Sec. 1001.003. REFERENCES IN LAW MEANING INCAPACITATED PERSON. In this code or any other law, a reference to any of the
following means an incapacitated person:

1. a person who is mentally, physically, or legally incompetent;
2. a person who is judicially declared incompetent;
3. an incompetent or an incompetent person;
4. a person of unsound mind; or
5. a habitual drunkard. (Tex. Prob. Code, Sec. 603(b).)

(b) A reference in other sections of this code or in other law to a person who is mentally, physically, or legally incompetent, a person who is judicially declared incompetent, an incompetent or an incompetent person, a person of unsound mind, or a habitual drunkard means an incapacitated person.

CHAPTER 1002. DEFINITIONS

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CHAPTER 1002. DEFINITIONS

Revised Law
Sec. 1002.001. APPLICABILITY OF DEFINITIONS. The definition for a term provided by this chapter applies in this title. (Tex. Prob. Code, Sec. 601 (part).)

Source Law
Sec. 601. In this chapter:

Revisor's Note
Section 601, Texas Probate Code, refers to "this chapter" meaning Chapter XIII, Texas Probate Code. Throughout this title, the revised law substitutes references to "this title" for references to "this chapter" because all of the provisions in Chapter XIII are revised or redesignated as provisions in Title 3 of this code, and this chapter is included in that title.

Revised Law
Sec. 1002.002. ATTORNEY AD LITEM. "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding. (Tex. Prob. Code, Sec. 601(1).)
(1) "Attorney ad litem" means an attorney who is appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding.

Revised Law
Sec. 1002.003. AUTHORIZED CORPORATE SURETY. "Authorized corporate surety" means a domestic or foreign corporation authorized to engage in business in this state to issue surety, guaranty, or indemnity bonds that guarantee the fidelity of a guardian. (Tex. Prob. Code, Sec. 601(2).)

Source Law
(2) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in this state to issue surety, guaranty, or indemnity bonds guaranteeing the fidelity of guardians.

Revised Law
Sec. 1002.004. CHILD. "Child" includes a biological child and an adopted child, regardless of whether the child was adopted by a parent under a statutory procedure or by acts of estoppel. (Tex. Prob. Code, Sec. 601(3).)

Source Law
(3) "Child" includes a biological or adopted child, whether adopted by a parent under a statutory procedure or by acts of estoppel.

Revised Law
Sec. 1002.005. CLAIM. "Claim" includes:
(1) a liability against the estate of an incapacitated person; and
(2) a debt due to the estate of an incapacitated person. (Tex. Prob. Code, Sec. 601(4).)

Source Law
(4) "Claims" includes a liability against the estate of a minor or an incapacitated person and debts due to the estate of a minor or an incapacitated person.

Revisor's Note
Section 601(4), Texas Probate Code, refers to "a minor or an incapacitated person." The revised law
omits the references to "a minor" as unnecessary
because Section 601(14), Texas Probate Code, revised
in this chapter as Section 1002.017, defines
"incapacitated person" to include a minor.

Revised Law
Sec. 1002.006. COMMUNITY ADMINISTRATOR. "Community administrator" means a spouse who, on the judicial declaration of incapacity of the other spouse, is authorized to manage, control, and dispose of the entire community estate, including the part of the community estate the incapacitated spouse legally has the power to manage in the absence of the incapacity. (Tex. Prob. Code, Sec. 601(5).)

Source Law
(5) "Community administrator" means a spouse who is authorized to manage, control, and dispose of the entire community estate on the judicial declaration of incapacity of the other spouse, including the part of the community estate that the other spouse legally has the power to manage in the absence of the incapacity.

Revised Law
Sec. 1002.007. CORPORATE FIDUCIARY. "Corporate fiduciary" means a financial institution, as defined by Section 201.101, Finance Code, that:
(1) is existing or engaged in business under the laws of this state, another state, or the United States;
(2) has trust powers; and
(3) is authorized by law to act under the order or appointment of a court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, or, although the financial institution does not have general depository powers, depository for any money paid into the court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state. (Tex. Prob. Code, Sec. 601(6).)

Source Law
(6) "Corporate fiduciary" means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state,
or the United States, that is authorized by law to act under the order or appointment of any court of record, without giving bond, as a guardian, receiver, trustee, executor, or administrator, or, although without general depository powers, as a depository for any money paid into court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

Revised Law
Sec. 1002.008. COURT; PROBATE COURT; STATUTORY PROBATE COURT. (a) "Court" or "probate court" means:
(1) a county court exercising its probate jurisdiction;
(2) a court created by statute and authorized to exercise original probate jurisdiction; or
(3) a district court exercising original probate jurisdiction in a contested matter.
(b) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. The term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code. (Tex. Prob. Code, Secs. 601(8), (29).)

Source Law
(8) "Court" or "probate court" means a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.
(29) "Statutory probate court" means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this chapter unless the court is designated a statutory probate court under Chapter 25, Government Code.

Revised Law
Sec. 1002.009. COURT INVESTIGATOR. "Court investigator" means a person appointed by the judge of a statutory probate court under Section 25.0025, Government Code. (Tex. Prob. Code, Sec. 601(7).)

Source Law
(7) "Court investigator" means a person
appointed by a statutory probate court under Section 25.0025, Government Code.

Revised Law
Sec. 1002.010. ESTATE; GUARDIANSHIP ESTATE. "Estate" or "guardianship estate" means a ward's or deceased ward's property, as that property:
(1) exists originally and changes in form by sale, reinvestment, or otherwise;
(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the deceased ward's representative by the trustee of a trust that terminates on the ward's death, or substitutions for the property; and
(3) is diminished by any decreases in or distributions from the property. (Tex. Prob. Code, Sec. 601(9).)

Source Law
(9) "Estate" or "guardianship estate" means the real and personal property of a ward or deceased ward, both as the property originally existed and as has from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions to (including any property to be distributed to the representative of the deceased ward by the trustee of a trust that terminates on the ward's death) or substitutions for the property, and as diminished by any decreases to or distributions from the property.

Revisor's Note
(1) Section 601(9), Texas Probate Code, refers to "real and personal property." The revised law omits the reference to "real and personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.
(2) Section 601(9), Texas Probate Code, refers to property as it originally existed and as it has "from time to time" changed. The revised law omits the quoted phrase as unnecessary because without express limitation, the inclusion of changes in the property includes changes that occur from time to time.
Revised Law

Sec. 1002.011. EXEMPT PROPERTY. "Exempt property" means the property in a deceased ward's estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property. (Tex. Prob. Code, Sec. 601(10).)

Source Law

(10) "Exempt property" refers to that property of a deceased ward's estate that is exempt from execution or forced sale by the constitution or laws of this state, and to the allowance in lieu of the property.

Revisor's Note

Section 601(10), Texas Probate Code, defines exempt property to include the allowance in lieu of property of a deceased ward's estate that is exempt from execution or forced sale. The revised law refers to any allowance "paid" for consistency with the terminology used in Section 273, Texas Probate Code, revised in this code as Section 353.053, which provides for an allowance to be paid to a decedent's surviving spouse and children under certain circumstances.

Revised Law

Sec. 1002.012. GUARDIAN. (a) "Guardian" means a person appointed as a:

(1) guardian under Subchapter D, Chapter 1101;

(2) successor guardian; or

(3) temporary guardian.

(b) Except as expressly provided otherwise, "guardian" includes:

(1) the guardian of the estate of an incapacitated person; and

(2) the guardian of the person of an incapacitated person. (Tex. Prob. Code, Sec. 601(11).)
"Guardian" means a person who is appointed guardian under Section 693 of this code, or a temporary or successor guardian. Except as expressly provided otherwise, "guardian" includes the guardian of the estate and the guardian of the person of an incapacitated person.

Section 601(11), Texas Probate Code, refers to a person appointed guardian under Section 693, Texas Probate Code. Section 693, along with certain other provisions, is revised in this code in Subchapter D, Chapter 1101. The revised law refers to Subchapter D, Chapter 1101, in its entirety because the entire subchapter deals with the appointment of a guardian.

"Guardian ad litem" means a person appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding. (Tex. Prob. Code, Sec. 601(12).)

"Guardian ad litem" means a person who is appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.

"Guardianship Certification Board" means the Guardianship Certification Board established under Chapter 111, Government Code. (Tex. Prob. Code, Sec. 601(12-a).)

"Guardianship Certification Board" means the Guardianship Certification Board established under Chapter 111, Government Code.

The terms "guardianship matter," "guardianship proceeding," "proceedings in guardianship," and "proceedings for guardianship matter; proceedings in guardianship; proceedings for guardianship; proceedings in guardianship, and "proceedings for guardianship"
"guardianship" are synonymous and include a matter or proceeding relating to a guardianship or any other matter addressed by this title. (Tex. Prob. Code, Sec. 601(25).)

Source Law

(25) "Proceedings in guardianship," "guardianship matter," "guardianship matters," "guardianship proceeding," and "proceedings for guardianship" are synonymous and include a matter or proceeding relating to a guardianship or any other matter addressed by this chapter.

Revisor's Note

Section 601(25), Texas Probate Code, refers to a "guardianship matter" and to "guardianship matters."
The revised law omits the reference to "guardianship matters" because Section 311.012(b), Government Code (Code Construction Act), applicable to the revised law, provides that a reference to the singular includes the plural.

Revised Law

Sec. 1002.016. GUARDIANSHIP PROGRAM. "Guardianship program" has the meaning assigned by Section 111.001, Government Code. (Tex. Prob. Code, Sec. 601(13).)

Source Law

(13) "Guardianship program" has the meaning assigned by Section 111.001, Government Code.

Revised Law

Sec. 1002.017. INCAPACITATED PERSON. "Incapacitated person" means:

(1) a minor;
(2) an adult who, because of a physical or mental condition, is substantially unable to:
   (A) provide food, clothing, or shelter for himself or herself;
   (B) care for the person's own physical health; or
   (C) manage the person's own financial affairs; or
(3) a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.
(Tex. Prob. Code, Sec. 601(14).)

Source Law
(14) "Incapacitated person" means:
(A) a minor;
(B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or
(C) a person who must have a guardian appointed to receive funds due the person from any governmental source.

Revised Law
Sec. 1002.018. INTERESTED PERSON; PERSON INTERESTED.

"Interested person" or "person interested" means:
(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or
(2) a person interested in the welfare of an incapacitated person. (Tex. Prob. Code, Sec. 601(15).)

Source Law
(15) "Interested persons" or "persons interested" means an heir, devisee, spouse, creditor, or any other person having a property right in, or claim against, the estate being administered or a person interested in the welfare of an incapacitated person, including a minor.

Revisor's Note
Section 601(15), Texas Probate Code, refers to "an incapacitated person, including a minor." The revised law omits "including a minor" as unnecessary for the reason stated in the revisor's note to Section 1002.005 of this chapter.

Revised Law
Sec. 1002.019. MINOR. "Minor" means a person younger than 18 years of age who:
(1) has never been married; and
(2) has not had the disabilities of minority removed for general purposes. (Tex. Prob. Code, Sec. 601(16).)
than 18 years of age and who has never been married or who has not had the person's disabilities of minority removed for general purposes.

Revised Law

Sec. 1002.020. MORTGAGE; LIEN. "Mortgage" and "lien" include:

1. a deed of trust;
2. a vendor's lien;
3. a mechanic's, materialman's, or laborer's lien;
4. a judgment, attachment, or garnishment lien;
5. a federal or state tax lien;
6. a chattel mortgage; and
7. a pledge by hypothecation. (Tex. Prob. Code, Sec. 601(18).)

Source Law

(18) "Mortgage" or "lien" includes a deed of trust; vendor's lien; chattel mortgage; mechanic's, materialman's, or laborer's lien; judgment, attachment, or garnishment lien; pledge by hypothecation; and a federal or state tax lien.

Revised Law

Sec. 1002.021. NEXT OF KIN. "Next of kin" includes:

1. an adopted child;
2. an adopted child's descendants; and
3. the adoptive parent of an adopted child. (Tex. Prob. Code, Sec. 601(19).)

Source Law

(19) "Next of kin" includes an adopted child, the descendants of an adopted child, and the adoptive parent of an adopted child.

Revised Law

Sec. 1002.022. PARENT. "Parent" means the mother of a child, a man presumed to be the biological father of a child, a man who has been adjudicated to be the biological father of a child by a court of competent jurisdiction, or an adoptive mother or father of a child, but does not include a parent as to whom the parent-child relationship has been terminated. (Tex. Prob. Code, Sec. 601(20).)

Source Law

(20) "Parent" means the mother of a child,
a man presumed to be the biological father of a child,
man who has been adjudicated to be the biological
father of a child by a court of competent jurisdiction,
or an adoptive mother or father of a child, but does
not include a parent as to whom the parent-child
relationship has been terminated.

**Revised Law**

Sec. 1002.023. PERSON. (a) "Person" includes a natural
person, a corporation, and a guardianship program.
(b) The definition of "person" assigned by Section 311.005,
Government Code, does not apply to any provision in this title.
(Tex. Prob. Code, Sec. 601(21); New.)

**Source Law**

(21) "Person" includes natural persons, 
corporations, and guardianship programs.

**Revisor's Note**

Section 311.005(2), Government Code (Code
Construction Act), defines "person" to include a 
"corporation, organization, government or 
governmental subdivision or agency, business trust,
estate, trust, partnership, association, and any other 
legal entity." To ensure that no substantive change is 
made by revision of the term "person" in Title 3, 
Estates Code, the revised law adds a provision stating 
that the definition in Section 311.005(2) does not 
apply to this title. See also Section 21.002 of this 
code, which states that Chapter 311, Government Code, 
applies to this code except as provided by Sections 
21.002 and 22.027 of this code and this section.

**Revised Law**

Sec. 1002.024. PERSONAL PROPERTY. "Personal property"
includes an interest in:

(1) goods;
(2) money;
(3) a chose in action;
(4) an evidence of debt; and
(5) a real chattel. (Tex. Prob. Code, Sec. 601(22).)
"Personal property" includes an interest in goods, money, choses in action, evidence of debts, and chattels real.

"Private professional guardian" has the meaning assigned by Section 111.001, Government Code. (Tex. Prob. Code, Sec. 601(24).)

"Private professional guardian" has the meaning assigned by Section 111.001, Government Code.

"Proposed ward" means a person alleged in a guardianship proceeding to be incapacitated. (Tex. Prob. Code, Sec. 601(27).)

"Proposed ward" means a person alleged to be incapacitated in a guardianship proceeding.

"Real property" includes estates and interests in land, whether corporeal or incorporeal or legal or equitable. The term does not include a real chattel. (Tex. Prob. Code, Sec. 601(28).)

"Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

"Representative" and "personal representative" include:

  (1) a guardian; and

  (2) a successor guardian. (Tex. Prob. Code, Sec. 601(23).)

"Personal representative" or "representative" includes a guardian, and a successor guardian.
Sec. 1002.029. SURETY. "Surety" includes a personal surety and a corporate surety. (Tex. Prob. Code, Sec. 601(30).)

Source Law

(30) "Surety" includes a personal and a corporate surety.

Sec. 1002.030. WARD. "Ward" means a person for whom a guardian has been appointed. (Tex. Prob. Code, Sec. 601(31).)

Source Law

(31) "Ward" is a person for whom a guardian has been appointed.

Revisor's Note

(End of Chapter)

Section 601(26), Texas Probate Code, defines "property" as including both real and personal property. The revised law omits the definition as unnecessary because, as explained in Revisor's Note (1) to Section 1002.010 of this chapter, Section 311.005(4), Government Code (Code Construction Act), contains a substantively identical definition of "property." That definition is made applicable to the revised law in this code by Section 21.002 of this code and to the redesignated but unrevised law in this code by Section 21.005(2) of this code. The omitted law reads:

(26) "Property" includes both real and personal property.

Sections 601(32) and (33), Texas Probate Code, provide general rules of construction with respect to certain terms used in that code. The revised law omits the provisions as unnecessary because Sections 311.012(b) and (c), Government Code (Code Construction Act), contain substantively identical provisions. Those sections are made applicable to the revised law in this code by Section
21.002 of this code and to the redesignated but
unrevised law in this code by Section 21.005(2) of this
code. The omitted law reads:

(32) The singular number
includes the plural; the plural number
includes the singular.
(33) The masculine gender
includes the feminine and neuter.

[Chapters 1003-1030 reserved for expansion]

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

[Chapters 1031-1050 reserved]

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CHAPTER 1051. NOTICES AND PROCESS IN GUARDIANSHIP PROCEEDINGS IN GENERAL

SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

Revised Law
Sec. 1051.001. ISSUANCE OF NOTICE OR PROCESS IN GENERAL.
(a) Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice in a guardianship matter except in a situation in which this title expressly provides for
citation or the giving of notice.

(b) If this title does not expressly provide for citation or the issuance or return of notice in a guardianship matter, the court may require that notice be given. A court that requires that notice be given shall prescribe the form and manner of service of the notice and the return of service.

(c) Unless a court order is required by this title, the county clerk without a court order shall issue:

1. necessary citations, writs, and other process in a guardianship matter; and
2. all notices not required to be issued by a guardian. (Tex. Prob. Code, Secs. 632(a), (b).)

Source Law

Sec. 632. (a) A person does not need to be cited or otherwise given notice in a guardianship matter except in situations in which this chapter expressly provides for citation or the giving of notice. If this chapter does not expressly provide for citation or the issuance or return of notice in a guardianship matter, the court may require that notice be given. If the court requires that notice be given, the court shall prescribe the form and manner of service and return of service.

(b) Unless a court order is required by a provision of this chapter, the county clerk shall issue without a court order necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.

Revised Law

Sec. 1051.002. DIRECTION OF WRIT OR OTHER PROCESS. (a) A writ or other process other than a citation or notice must be directed "To any sheriff or constable within the State of Texas."

(b) Notwithstanding Subsection (a), a writ or other process other than a citation or notice may not be held defective because the process is directed to the sheriff or a constable of a named county if the process is properly served within that county by an officer authorized to serve the process. (Tex. Prob. Code, Sec. 632(c) (part).)

Source Law

(c) ... A writ or other process other than a citation or notice shall be directed "To any sheriff or constable within the State of Texas" and may not be held defective because it is directed to the sheriff or
any constable of a specific county if the writ or other
process is properly served within the named county by
an officer authorized to serve it.

Revisor's Note

Section 632(c), Texas Probate Code, provides that
certain writs and processes directed to the sheriff or
constable of a specific county are not defective if the
writ or process is properly served in that county by an
officer authorized to serve the process. The revised
law adds "[n]otwithstanding Subsection (a)," for the
convenience of the reader to clarify that this
provision is an exception to the requirement, revised
in Subsection (a) of this section, that a writ or
process be directed to "any sheriff or constable" in
this state.

Revised Law

Sec. 1051.003. CONTENTS OF CITATION OR NOTICE. (a) A
citation or notice must:

(1) be directed to the person to be cited or notified;
(2) be dated;
(3) state the style and number of the proceeding;
(4) state the court in which the proceeding is
pending;
(5) describe generally the nature of the proceeding or
matter to which the citation or notice relates;
(6) direct the person being cited or notified to
appear by filing a written contest or answer or to perform another
required action; and
(7) state when and where the appearance or performance
described by Subdivision (6) is required.

(b) A citation or notice issued by the county clerk must be
styled "The State of Texas" and be signed by the clerk under the
clerk's seal.

(c) A notice required to be given by a guardian must be in
writing and be signed by the guardian in the guardian's official
capacity.
(d) A citation or notice is not required to contain a precept directed to an officer, but may not be held defective because the citation or notice contains a precept directed to an officer authorized to serve the citation or notice. (Tex. Prob. Code, Sec. 632(c) (part).)

Source Law

[(b) ... the county clerk shall issue ... necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.]

(c) A citation and notice issued by the clerk shall be signed and sealed by the clerk and shall be styled "The State of Texas." A notice required to be given by a guardian shall be in writing and signed by the guardian in the guardian's official capacity. A citation or notice shall be dated and directed to the person that is being cited or notified and must state the style and number of the proceeding and the court in which the proceeding is pending and must describe generally the nature of the proceeding or matter to which the citation or notice relates. A precept directed to an officer is not necessary. A citation or notice must direct the person cited or notified to appear by filing a written contest or answer or perform other required acts. A citation or notice must state when and where an appearance or performance by a person cited or notified is required. A citation or notice is not defective because it contains a precept directed to an officer authorized to serve it. ...

[Sections 1051.004-1051.050 reserved for expansion]

SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS TO BE SERVED

Revised Law

Sec. 1051.051. PERSONAL SERVICE. (a) Except as otherwise provided by Subsection (b), if personal service of citation or notice is required, the citation or notice must be served on the attorney of record for the person to be cited or notified. Notwithstanding the requirement of personal service, service may be made on that attorney by any method specified by Section 1051.055 for service on an attorney of record.

(b) If the person to be cited or notified does not have an attorney of record in the proceeding, or if an attempt to serve the person's attorney is unsuccessful:

(1) the sheriff or constable shall serve the citation or notice by delivering a copy of the citation or notice to the
person to be cited or notified, in person, if the person to whom the
citation or notice is directed is in this state; or

(2) a disinterested person competent to make an oath
that the citation or notice was served may serve the citation or
notice, if the person to be cited or notified is absent from or is
not a resident of this state.

(c) The return day of the citation or notice served under
Subsection (b) must be at least 10 days after the date of service,
excluding the date of service.

(d) If the citation or notice attempted to be served as
provided by Subsection (b) is returned with the notation that the
person sought to be served, whether inside or outside this state,
cannot be found, the county clerk shall issue a new citation or
notice. Service of the new citation or notice must be made by
publication. (Tex. Prob. Code, Sec. 632(f)(1) (part).)

(f)(1) In cases in which it is provided that
personal service shall be had with respect to a
citation or notice, the citation or notice must be
served on the attorney of record for the person who is
being cited or notified. Notwithstanding the
requirement of personal service, service may be made
on the attorney by any method specified under this
chapter for service on an attorney. If there is no
attorney of record in the proceeding for the person who
is being cited or notified, or if an attempt to make
service on the attorney was unsuccessful, a citation
or notice directed to a person within this state must
be served in person by the sheriff or constable on the
person who is being cited or notified by delivering to
the person a true copy of the citation or notice at
least 10 days before the return day on the citation or
notice, exclusive of the date of service. If the
person who is being cited or notified is absent from
the state or is a nonresident, the citation or notice
may be served by a disinterested person competent to
make oath of the fact. The citation or notice served
by a disinterested person shall be returnable at least
10 days after the date of service, exclusive of the
date of service. [The return must . . . be . . .
returned to the county clerk who issued the citation or
notice.] If the citation or notice is returned with
the notation that the person sought to be served,
whether or not within this state, cannot be found, the
clerk shall issue a new citation or notice directed to
the person sought to be served and service shall be by
publication.

Revisor's Note

(1) Section 632(f)(1), Texas Probate Code,
states that personal service of a citation or notice may be made on the attorney of record for the person to be cited or notified by "any method specified under this chapter for service on an attorney." The only reference to the method of service on a party's attorney of record is contained in Section 634, Texas Probate Code, revised as Section 1051.055 of this chapter, which provides specific methods for service of notices on attorneys of record. For that reason, the revised law substitutes a reference to "any method specified by Section 1051.055" for the quoted phrase.

(2) Section 632(f)(1), Texas Probate Code, refers to a "true copy" of a citation or notice. The revised law omits "true" because the word does not add to the clear meaning of the law. For example, a document purporting to be a copy is not a copy if it is different from the original document.

(3) Section 632(f)(1), Texas Probate Code, describes certain situations in which a person may be cited or notified by a disinterested person competent "to make oath of the fact." The revised law substitutes "to make an oath that the citation or notice was served" for the quoted language because it is clear from the context that the fact to which the source law refers is the service of citation or notice on the person to be served.

(4) Section 632(f)(1), Texas Probate Code, requires the county clerk, under certain circumstances, to issue a new citation or notice "directed to the person sought to be served." The revised law omits the quoted language as duplicative of Section 632(c), Texas Probate Code, revised in relevant part as Section 1051.003(a)(1), which requires that each citation or notice in a proceeding
be directed to the person to be cited or notified.

Revised Law

Sec. 1051.052. SERVICE BY MAIL. (a) The county clerk, or the guardian if required by statute or court order, shall serve a citation or notice required or permitted to be served by regular mail by mailing the original citation or notice to the person to be cited or notified.

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served by registered or certified mail and shall serve the citation or notice by mailing the original citation or notice by registered or certified mail.

(c) A guardian shall issue a notice required to be given by the guardian by registered or certified mail and shall serve the notice by mailing the original notice by registered or certified mail.

(d) The county clerk or guardian, as applicable, shall mail a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt requested. The clerk or guardian, as applicable, shall address the envelope containing the citation or notice to:

(1) the attorney of record in the proceeding for the person to be cited or notified; or

(2) the person to be cited or notified, if the citation or notice to the attorney is returned undelivered or the person to be cited or notified has no attorney of record in the proceeding.

(e) Service by mail must be made at least 20 days before the return day of the citation or notice, excluding the date of service. The date of service by mail is the date of mailing.

(f) A copy of a citation or notice served under Subsection (a), (b), or (c) and a certificate of the person serving the citation or notice showing that the citation or notice was mailed and the date of the mailing shall be filed and recorded. A returned receipt for a citation or notice served under Subsection (b) or (c)
shall be attached to the certificate.

(g) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting. (Tex. Prob. Code, Sec. 632(f)(4).)

Source Law

[(b) A.A.A. the county clerk shall issue . . . necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.]

(f) . . .

(4)(A) When a citation or notice is required or permitted to be served by registered or certified mail, other than a notice required to be given by a guardian, the clerk shall issue the citation or notice and shall serve the citation or notice by sending the original citation or notice by registered or certified mail. A guardian shall issue notice required to be given by the guardian by registered or certified mail, and the guardian shall serve the notice by sending the original notice by registered or certified mail. The citation or notice shall be mailed return receipt requested with instructions to deliver to the addressee only. The envelope containing the citation or notice shall be addressed to the attorney of record in the proceeding for the person who is being cited or notified. If there is no attorney of record, or if the citation or notice is returned undelivered, the envelope containing the citation or notice shall be addressed to the person who is being cited or notified. A copy of the citation or notice and the certificate of the clerk or guardian showing the fact and date of mailing shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When a citation or notice required or permitted to be served by ordinary mail, the clerk or the guardian when required by statute or court order, shall serve the citation or notice by mailing the original to the person being cited or notified. A copy of the citation or notice and a certificate of the person serving the citation or notice that shows the fact and time of mailing shall be filed and recorded.

(C) When service is made by mail, the date of mailing is the date of service. Service by mail must be made not less than 20 days before the return day of the citation or notice, exclusive of the date of service.

(D) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued, and the new citation or notice shall be served by posting.

Revisor’s Note

Section 632(f)(4)(B), Texas Probate Code, refers to a certificate showing the "time" of mailing of a citation or notice. However, Section 632(f)(4)(A),
Texas Probate Code, refers to a certificate showing the "date" of mailing of a citation or notice. The revised law substitutes "date" for "time" for consistency of terminology and because a record of the specific time of day of the mailing is inconsequential. The purpose of maintaining a record of the date of mailing is to determine whether the mailing occurred within the period prescribed by Section 632(f)(4)(C), Texas Probate Code, which is revised in this section as Subsection (e). The time of day of the mailing is irrelevant in making that determination.

Revised Law
Sec. 1051.053. SERVICE BY POSTING. (a) The county clerk shall deliver the original and a copy of a citation or notice required to be posted to the sheriff or a constable of the county in which the proceeding is pending. The sheriff or constable shall post the copy at the door of the county courthouse or the location in or near the courthouse where public notices are customarily posted.

(b) Citation or notice under this section must be posted for at least 10 days before the return day of the citation or notice, excluding the date of posting, except as provided by Section 1051.152(b). The date of service of citation or notice by posting is the date of posting.

(c) A sheriff or constable who posts a copy of a citation or notice under this section shall return the original citation or notice to the county clerk and state the date and location of the posting in a written return of the copy of the citation or notice.

(d) The method of service prescribed by this section applies when a guardian is required or permitted to post a notice. The notice must be:

(1) issued in the name of the guardian;
(2) addressed and delivered to, and posted and
returned by, the appropriate officer; and

(3) filed with the county clerk. (Tex. Prob. Code, Sec. 632(f)(2).)

Source Law

[(b) ... the county clerk shall issue ... necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.]

(f) ... (2) When citation or notice is required to be posted, the sheriff or constable shall post the citation or notice at the courthouse door of the county in which the proceeding is pending, or at the place in or near the courthouse where public notices customarily are posted, for at least 10 days before the return day of the citation or notice, exclusive of the date of posting. The clerk shall deliver the original and a copy of the citation or notice to the sheriff or a constable of the proper county, who shall post the copy as prescribed by this section and return the original to the clerk, stating in a written return of the copy the time when and the place where the sheriff or constable posted the copy. The date of posting is the date of service. When posting of notice by a guardian is authorized or required, the method prescribed by this section shall be followed. The notice is to be issued in the name of the guardian, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

Revisor's Note

(1) Section 632(f)(2), Texas Probate Code, specifies the period for which a citation or notice must be posted before the return day of the citation or notice. Section 632(h), Texas Probate Code, provides an exception to the requirement that citation or notice be posted for that period. The relevant part of Section 632(h) is revised in this chapter as Section 1051.152(b), and the revised law adds a cross-reference to that section for the convenience of the reader.

(2) Section 632(f)(2), Texas Probate Code, refers to posting a citation or notice as prescribed by "this section," meaning Section 632. The revised law retains the reference to "this section" because the relevant provisions of Section 632 are revised in this section of this code.
Section 632(f)(2), Texas Probate Code, refers to the "time" and place of posting of a citation or notice. The revised law substitutes "date" for "time" for the reason stated in the revisor's note to Section 1051.052 with respect to the mailing of a citation or notice.

Revised Law
Sec. 1051.054. SERVICE BY PUBLICATION. (a) Citation or notice to a person to be served by publication shall be published one time in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the citation or notice, excluding the date of publication.

(b) The date of service of citation or notice by publication is the date of publication printed on the newspaper in which the citation or notice is published.

(c) If there is not a newspaper of general circulation published or printed in the county in which the citation or notice is to be published, the citation or notice under Subsection (a) shall be served by posting. (Tex. Prob. Code, Sec. 632(f)(3).)

Source Law
(3) When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceeding is pending, and the publication shall be not less than 10 days before the return date of the citation or notice, exclusive of the date of publication. The date of publication of the newspaper in which the citation or notice is published appears is the date of service. If there is no newspaper of general circulation published or printed in the county in which citation or notice is to be had, service of the citation or notice shall be by posting.

Revised Law
Sec. 1051.055. SERVICE ON PARTY'S ATTORNEY OF RECORD. (a) If a party is represented by an attorney of record in a guardianship proceeding, a citation or notice required to be served on the party shall be served instead on that attorney.

(b) A notice served on an attorney under this section may be
served by:

(1) delivery to the attorney in person;
(2) registered or certified mail, return receipt requested; or
(3) any other form of mail that requires proof of delivery.

(c) A notice or citation may be served on an attorney under this section by:

(1) another party to the proceeding;
(2) the attorney of record for another party to the proceeding;
(3) an appropriate sheriff or constable; or
(4) another person competent to testify.

(d) Each of the following is prima facie evidence of the fact that service has been made under this section:

(1) the written statement of an attorney of record showing service;
(2) the return of the officer showing service; and
(3) the affidavit of a person showing service.

(e) Except as provided by Section 1051.105, an attorney ad litem may not waive personal service of citation. (Tex. Prob. Code, Sec. 634.)

Source Law

Sec. 634. (a) If an attorney has entered an appearance on record for a party in a guardianship proceeding, a citation or notice required to be served on the party shall be served on the attorney. Service on the attorney of record is in lieu of service on the party for whom the attorney appears. Except as provided by Section 633(e) of this code, an attorney ad litem may not waive personal service of citation.

(b) A notice served on an attorney under this section may be served by registered or certified mail, return receipt requested, by any other form of mail requiring proof of delivery, or by delivery to the attorney in person. A party to the proceeding or the party’s attorney of record, an appropriate sheriff or constable, or another person who is competent to testify may serve notice or citation to an attorney under this section.

(c) A written statement by an attorney of record, the return of the officer, or the affidavit of a person that shows service is prima facie evidence of the fact of service.
Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a guardian or receiver shall serve the citation or notice by mailing the original citation or notice by registered or certified mail to:

(1) the guardian's or receiver's attorney of record;

or

(2) the guardian or receiver, if the guardian or receiver does not have an attorney of record. (Tex. Prob. Code, Sec. 632(e).)

Source Law

[(b) . . . the county clerk shall issue . . . necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.]

(e) Except in instances in which this chapter expressly provides for another method of service, a notice or citation required to be served on a guardian or receiver shall be served by the clerk that issues the citation or notice. The clerk shall serve the citation or notice by sending the original citation or notice by registered or certified mail to the attorney of record for the guardian or receiver or to the guardian or receiver, if the guardian or receiver does not have an attorney of record.

[Sections 1051.057-1051.100 reserved for expansion]

SUBCHAPTER C. NOTICE AND CITATION REQUIRED FOR APPLICATION FOR GUARDIANSHIP

Revised Law

Sec. 1051.101. NOTICE REQUIRED FOR APPLICATION FOR GUARDIANSHIP; CITATION OF APPLICANT NOT REQUIRED. (a) On the filing of an application for guardianship, notice shall be issued and served as provided by this subchapter.

(b) It is not necessary to serve a citation on a person who files an application for the creation of a guardianship under this title or for that person to waive the issuance and personal service of citation under this subchapter. (Tex. Prob. Code, Secs. 633(a), (g).)
Sec. 633. (a) On the filing of an application for guardianship, notice shall be issued and served as provided by this section.

(g) It is not necessary for a person who files an application for the creation of a guardianship under this chapter to be served with citation or waive the issuance and personal service of citation under this section.

Sec. 1051.102. ISSUANCE OF CITATION FOR APPLICATION FOR GUARDIANSHIP. (a) On the filing of an application for guardianship, the court clerk shall issue a citation stating:

(1) that the application was filed;
(2) the name of the proposed ward;
(3) the name of the applicant; and
(4) the name of the person to be appointed guardian as provided in the application, if that person is not the applicant.

(b) The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if the persons wish to contest the application.

(c) The citation shall be posted. (Tex. Prob. Code, Sec. 633(b).)

Sec. 1051.103. SERVICE OF CITATION FOR APPLICATION FOR GUARDIANSHIP. The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

(1) a proposed ward who is 12 years of age or older;
(2) the proposed ward's parents, if the whereabouts of
the parents are known or can be reasonably ascertained;
(3) any court-appointed conservator or person having
control of the care and welfare of the proposed ward;
(4) the proposed ward's spouse, if the whereabouts of
the spouse are known or can be reasonably ascertained; and
(5) the person named in the application to be
appointed guardian, if that person is not the applicant. (Tex.
Prob. Code, Sec. 633(c).)

(c) The sheriff or other officer shall
personally serve citation to appear and answer the
application for guardianship on:
(1) a proposed ward who is 12 years of age
or older;
(2) the parents of a proposed ward if the
whereabouts of the parents are known or can be
reasonably ascertained;
(3) any court-appointed conservator or
person having control of the care and welfare of the
proposed ward;
(4) a proposed ward's spouse if the
whereabouts of the spouse are known or can be
reasonably ascertained; and
(5) the person named in the application to
be appointed guardian, if that person is not the
applicant.

Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP. (a)
The person filing an application for guardianship shall mail a copy
of the application and a notice containing the information required
in the citation issued under Section 1051.102 by registered or
certified mail, return receipt requested, or by any other form of
mail that provides proof of delivery, to the following persons, if
their whereabouts are known or can be reasonably ascertained:
(1) each adult child of the proposed ward;
(2) each adult sibling of the proposed ward;
(3) the administrator of a nursing home facility or
similar facility in which the proposed ward resides;
(4) the operator of a residential facility in which
the proposed ward resides;
(5) a person whom the applicant knows to hold a power
of attorney signed by the proposed ward;
(6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;

(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;

(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and

(9) each person named as next of kin in the application as required by Section 1101.001(b)(11) or (13).

(b) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (a) and the proofs of delivery of the notice; and

(2) an affidavit sworn to by the applicant or the applicant's attorney stating:

(A) that the notice was mailed as required by Subsection (a); and

(B) the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery.

(c) Failure of the applicant to comply with Subsections (a)(2)-(9) does not affect the validity of a guardianship created under this title. (Tex. Prob. Code, Secs. 633(d), (d-1), (f) (part).)

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) all adult children of a proposed ward;

(2) all adult siblings of a proposed ward;

(3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(4) the operator of a residential facility in which the proposed ward resides;

(5) a person whom the applicant knows to

Source Law
hold a power of attorney signed by the proposed ward;

(6) a person designated to serve as
guardian of the proposed ward by a written declaration
under Section 679 of this code, if the applicant knows
of the existence of the declaration;

(7) a person designated to serve as
guardian of the proposed ward in the probated will of
the last surviving parent of the ward;

(8) a person designated to serve as
guardian of the proposed ward by a written declaration
of the proposed ward's last surviving parent, if the
declarant is deceased and the applicant knows of the
existence of the declaration; and

(9) each person named as next of kin in the
application for guardianship as required by Section
682(10) or (12) of this code.

(d-1) The applicant shall file with the court:

(1) a copy of any notice required by
Subsection (d) of this section and the proofs of
delivery of the notice; and

(2) an affidavit sworn to by the applicant
or the applicant's attorney stating:
(A) that the notice was mailed as
required by Subsection (d) of this section; and
(B) the name of each person to whom
the notice was mailed, if the person's name is not
shown on the proof of delivery.

(f) . . . The validity of a guardianship
created under this chapter is not affected by the
failure of the applicant to comply with the
requirements of Subsections (d)(2)-(9) of this
section.

Revisor's Note

Section 633(d)(6), Texas Probate Code, refers to
a written declaration under Section 679, Texas Probate
Code. Section 679, along with Section 679A, Texas
Probate Code, is revised in this code in Subchapter E,
Chapter 1104. The revised law refers to Subchapter E,
Chapter 1104, in its entirety because the entire
subchapter deals with a written declaration to
designate a guardian before the need arises.

Revised Law

Sec. 1051.105. WAIVER OF NOTICE OF APPLICATION FOR
GUARDIANSHIP. A person other than the proposed ward who is entitled
to receive notice or personal service of citation under Sections
1051.103 and 1051.104(a) may, by writing filed with the clerk,
waive the receipt of notice or the issuance and personal service of
citation either in person or through an attorney ad litem. (Tex.
Prob. Code, Sec. 633(e).)
(e) A person other than the proposed ward who is entitled to receive notice or personal service of citation under Subsections (c) and (d) of this section may choose, in person or by attorney ad litem, by writing filed with the clerk, to waive the receipt of notice or the issuance and personal service of citation.

Revised Law
Sec. 1051.106. ACTION BY COURT ON APPLICATION FOR GUARDIANSHIP. The court may not act on an application for the creation of a guardianship until the applicant has complied with Section 1051.104(b) and not earlier than the Monday following the expiration of the 10-day period beginning on the date service of notice and citation has been made as provided by Sections 1051.102, 1051.103, and 1051.104(a)(1). (Tex. Prob. Code, Sec. 633(f) (part).)

(f) The court may not act on an application for the creation of a guardianship until the Monday following the expiration of the 10-day period beginning the date service of notice and citation has been made as provided by Subsections (b), (c), and (d)(1) of this section and the applicant has complied with Subsection (d-1) of this section. . . .

[Sections 1051.107-1051.150 reserved for expansion]

SUBCHAPTER D. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

Revised Law
Sec. 1051.151. REQUIREMENTS FOR RETURN ON CITATION OR NOTICE SERVED BY PERSONAL SERVICE. The return of the person serving a citation or notice under Section 1051.051 must:

(1) be endorsed on or attached to the citation or notice;

(2) state the date and place of service;

(3) certify that a copy of the citation or notice was delivered to the person directed to be served;

(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and

(5) be returned to the county clerk who issued the
citation or notice. (Tex. Prob. Code, Sec. 632(f)(1) (part).)

Source Law

(1) [In cases in which it is provided that personal service shall be had] . . . . The return of the person serving the citation or notice shall be endorsed on or attached to the citation or notice. The return must show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before an officer authorized by the laws of this state to take affidavits, under the hand and official seal of the officer, and returned to the county clerk who issued the citation or notice. . . .

Revisor's Note

(1) Section 632(f)(1), Texas Probate Code, refers to the "time" and place of personal service of a citation or notice. The revised law substitutes "date" for "time" for the reason stated in the revisor's note to Section 1051.052 with respect to the mailing of a citation or notice.

(2) Section 632(f)(1), Texas Probate Code, refers to a "true" copy of a citation or notice. The revised law omits "true" for the reason stated in Revisor's Note (2) to Section 1051.051.

Revised Law

Sec. 1051.152. VALIDITY OF SERVICE AND RETURN ON CITATION OR NOTICE SERVED BY POSTING. (a) A citation or notice in a guardianship matter that is required to be served by posting and is issued in conformity with this title, and the service of and return of the citation or notice, is valid if:

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and

(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

(b) The fact that the sheriff or constable, as applicable, makes the return of service on the citation or notice described by Subsection (a) and returns the citation or notice on which the
return has been made to the court before the expiration of the
period the citation or notice must be posted does not affect the
validity of the citation or notice or the service or return of
service. This subsection applies even if the sheriff or constable
makes the return of service and returns the citation or notice to
the court on the same day the citation or notice is issued. (Tex.
Prob. Code, Sec. 632(h).)

Source Law

(h) In a guardianship matter in which citation
or notice is required to be served by posting and
issued in conformity with the applicable provision of
this code, the citation or notice and the service of
and return of the citation or notice is sufficient and
valid if a sheriff or constable posts a copy of the
citation or notice at the place or places prescribed by
this chapter on a day that is sufficiently before the
return day contained in the citation or notice for the
period of time for which the citation or notice is
required to be posted to elapse before the return day
of the citation or notice. The sufficiency or validity
of the citation or notice or the service of or return
of the service of the citation or notice is not
affected by the fact that the sheriff or constable
makes his return on the citation or notice and returns
the citation or notice to the court before the period
elapses for which the citation or notice is required to
be posted, even though the return is made, and the
citation or notice is returned to the court, on the
same day it is issued.

Revisor's Note

(1) Section 632(h), Texas Probate Code, refers
to a guardianship matter in which citation or notice is
required to be served by posting and issued in
conformity with the applicable provision of "this
code," meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this code" because all the provisions of
the Texas Probate Code requiring citation or notice
relating to guardianship matters are revised in this
title.

(2) Section 632(h), Texas Probate Code,
provides certain circumstances under which a citation
or notice served by posting and the service and return
of that citation or notice is "sufficient and valid"
and refers to the "sufficiency or validity" of that citation, notice, service, or return. The revised law omits "sufficient" and "sufficiency" because, in context, the meaning of those terms is included within the meaning of "valid" and "validity," respectively.

**Revised Law**

Sec. 1051.153. PROOF OF SERVICE. (a) Proof of service in each case requiring citation or notice must be filed before a hearing.

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

   (A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making the service that states that the citation or notice was mailed and the date of the mailing; and

   (B) the return receipt attached to the certificate, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication, an affidavit that:

   (A) is made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

   (B) contains or to which is attached a copy of the published citation or notice; and

   (C) states the date of publication printed on the newspaper in which the citation or notice was published. (Tex. Prob. Code, Sec. 632(i).)

**Source Law**

[(b) ... the county clerk shall issue ... necessary citations, writs, and process in]
guardianship matters and all notices not required to be issued by guardians.]

(i) Proof of service by publication, posting, mailing, or otherwise in all cases requiring notice or citation shall be filed before a hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the person's affidavit. Proof of service by publication shall be made by an affidavit of the publisher or of an employee of the publisher that shows the issue date of the newspaper that carried the notice or citation and that has attached to or embodied in the affidavit a copy of the notice or citation. Proof of service by mail shall be made by the certificate of the clerk, or the affidavit of the guardian or other person that makes the service that states the fact and time of mailing. The return receipt must be attached to the certificate, if a receipt has been returned if service is made by registered or certified mail.

Revisor's Note

(1) Section 632(i), Texas Probate Code, refers to service of notice or citation "by publication, posting, mailing, or otherwise." The methods of service specified in the quoted language include all methods authorized by the Texas Probate Code in guardianship matters. Because the specified methods of service do not exclude any method authorized under the code and therefore do not limit the applicability of the provision, the revised law omits the quoted language as unnecessary.

(2) Section 632(i), Texas Probate Code, refers to proof of the "time" of mailing of service of citation or notice. The revised law substitutes "date" for "time" for the reason stated in the revisor's note to Section 1051.052.

Revised Law

Sec. 1051.154. RETURN TO COURT. A citation or notice issued by a county clerk must be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected. (Tex. Prob. Code, Sec. 632(g).)

Source Law

[(b) . . . the county clerk shall issue . . . necessary citations, writs, and process in guardianship matters and all notices not required to
be issued by guardians.]

(g) A citation or notice issued by the clerk and served by personal service, by mail, by posting, or by publication shall be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

Revisor's Note
Section 632(g), Texas Probate Code, provides for the day on which a citation or notice "served by personal service, by mail, by posting, or by publication" must be returned. The revised law omits the quoted phrase for the reason stated in Revisor's Note (1) to Section 1051.153.

[Sections 1051.155-1051.200 reserved for expansion]

SUBCHAPTER E. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

Revised Law
Sec. 1051.201. COURT-ORDERED ISSUANCE, SERVICE, AND RETURN UNDER CERTAIN CIRCUMSTANCES. (a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:

(1) an interested person requests that action;

(2) a specific method is not provided by this title for giving the citation or notice;

(3) a specific method is not provided by this title for the service and return of citation or notice; or

(4) a provision with respect to a matter relating to citation or notice is inadequate.

(b) Citation or notice issued, served, and returned in the manner specified by a court order as provided by Subsection (a) has the same effect as if the manner of service and return had been specified by this title. (Tex. Prob. Code, Sec. 632(d).)

Source Law
(d) In all situations in which this chapter requires that notice be given or that a person be cited, and in which a specific method of giving the notice or citing the person, or a specific method of service and return of the citation or notice is not given, or an insufficient or inadequate provision appears with respect to any matter relating to
citation or notice, or on request of an interested person, notice or citation shall be issued, served, and returned in the manner the court, by written order, directs in accordance with this chapter and the Texas Rules of Civil Procedure and has the same force and effect as if the manner of service and return had been specified in this chapter.

Revisor's Note

(1) Section 632(d), Texas Probate Code, refers to certain provisions of the Texas Probate Code that with respect to citation or notice are "insufficient or inadequate." The revised law omits "insufficient" because, in context, the terms are synonymous.

(2) Section 632(d), Texas Probate Code, refers to the "force and effect" of the issuance, service, and return of citation or notice ordered by a court. The revised law omits the reference to "force" as unnecessary because, in context, the meaning of the term is included within the meaning of "effect."

[Sections 1051.202-1051.250 reserved for expansion]

SUBCHAPTER F. ADDITIONAL NOTICE PROVISIONS

Revised Law

Sec. 1051.251. WAIVER OF NOTICE OF HEARING. (a) A competent person who is interested in a hearing in a guardianship proceeding may waive notice of the hearing in writing either in person or through an attorney.

(b) A consul or other representative of a foreign government whose appearance has been entered as provided by law on behalf of a person residing in a foreign country may waive notice on the person's behalf.

(c) A person who submits to the jurisdiction of the court in a hearing is considered to have waived notice of the hearing. (Tex. Prob. Code, Sec. 635.)

Source Law

Sec. 635. A competent person who is interested in a hearing in a guardianship proceeding, in person or by attorney, may waive in writing notice of the hearing. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of a person residing in a foreign country, may waive notice on behalf of the
person. A person who submits to the jurisdiction of
the court in a hearing is deemed to have waived notice
of the hearing.

Revised Law
Sec. 1051.252. REQUEST FOR NOTICE OF FILING OF PLEADING.
(a) At any time after an application is filed to commence a
guardianship proceeding, a person interested in the estate or
welfare of a ward or incapacitated person may file with the county
clerk a written request to be notified of all, or any specified,
motions, applications, or pleadings filed with respect to the
proceeding by any person or by a person specifically designated in
the request. A person filing a request under this section is
responsible for payment of the fees and other costs of providing the
requested documents, and the clerk may require a deposit to cover
the estimated costs of providing the notice. The clerk shall send
to the requestor by regular mail a copy of any requested document.
(b) A county clerk's failure to comply with a request under
this section does not invalidate a proceeding. (Tex. Prob. Code,
Sec. 632(j).)

Source Law
[(b) . . . the county clerk shall issue . . .
necessary citations, writs, and process in
guardianship matters and all notices not required to
be issued by guardians.]

(j) At any time after an application is filed
for the purpose of commencing a guardianship
proceeding, a person interested in the estate or
welfare of a ward or an incapacitated person may file
with the clerk a written request that the person be
notified of any or all specifically designated
motions, applications, or pleadings filed by any
person, or by a person specifically designated in the
request. The person who makes the request is
responsible for the fees and costs associated with the
documents specified in the request. The clerk may
require a deposit to cover the estimated costs of
furnishing the person with the requested notice. The
clerk by ordinary mail shall send to the requesting
person a copy of any document specified in the request.
A proceeding is not invalid if the clerk fails to
comply with the request under this subsection.

Revised Law
Sec. 1051.253. SERVICE OF NOTICE OF INTENTION TO TAKE
DEPOSITIONS IN CERTAIN MATTERS. (a) In a guardianship proceeding
in which there is no opposing party or attorney of record on whom to
serve notice and copies of interrogatories, service may be made by
posting notice of the intention to take depositions for a period of
10 days as provided by Section 1051.053 governing a posting of
notice.

(b) When notice by posting under Subsection (a) is filed
with the clerk, a copy of the interrogatories must also be filed.

(c) At the expiration of the 10-day period prescribed by
Subsection (a):

(1) commission may issue for taking the depositions
for which the notice was posted; and

(2) the judge may file cross-interrogatories if no
person appears. (Tex. Prob. Code, Sec. 649 (part).)

Source Law

Sec. 649. In a guardianship proceeding, . . . .
If there is no opposing party or attorney of record on
whom to serve notice and copies of interrogatories,
service may be had by posting notice of the intention
to take depositions for a period of 10 days as provided
by this chapter in the provisions governing a posting
of notice. When notice by posting under this section
is filed with the clerk, a copy of the interrogatories
shall also be filed. At the expiration of the 10-day
period, commission may issue for taking the
depositions and the judge may file
cross-interrogatories if no person appears.

Revisor’s Note

(1) Section 649, Texas Probate Code, refers to a
10-day period "as provided by this chapter," meaning
Chapter XIII, Texas Probate Code, in the provisions
that govern the posting of notices. The posting of
notices is governed by Section 632(f)(2), Texas
Probate Code, which is revised as Section 1051.053 of
this chapter. The revised law substitutes a reference
to Section 1051.053 for the quoted phrase for the
convenience of the reader.

(2) Section 649, Texas Probate Code, provides
that when notice by posting under "this section" is
filed with the clerk, a copy of the interrogatories
shall also be filed. The revised law substitutes a
reference to "Subsection (a)" for the reference to
"this section" because the relevant portion of Section 649 relating to notice by posting is revised in Subsection (a) of this section.

CHAPTER 1052. FILING AND RECORDKEEPING

SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

Sec. 1052.001. GUARDIANSHIP DOCKET. (a) The county clerk shall maintain a record book titled "Judge's Guardianship Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;

(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship;

(3) the date each original application for a guardianship proceeding is filed;

(4) a notation of each order, judgment, decree, and proceeding that occurs in each estate, including the date it occurs; and

(5) the docket number of each guardianship as assigned under Subsection (b).

(b) The county clerk shall assign a docket number to each guardianship in the order a proceeding is commenced. (Tex. Prob. Sec. 1052.001(1978).)
The county clerk shall keep a record book to be styled "Judge's Guardianship Docket" and shall enter in the record book:

1. the name of each person on whose person or estate a proceeding is had or is sought to be had;
2. the name of the guardian of the estate or person or of the applicant for letters;
3. the date the original application for a guardianship proceeding was filed;
4. a notation, including the date, of each order, judgment, decree, and proceeding in each estate; and
5. a number of each guardianship on the docket in the order in which a proceeding is commenced.

Revisor's Note

1. Section 623(a)(2), Texas Probate Code, refers to "the applicant for letters." For clarity and the convenience of the reader, the revised law specifies that this section concerns "letters of guardianship," to distinguish letters testamentary or of administration, which are covered by Section 13(b), Texas Probate Code, revised as Section 52.001 of this code.

2. Section 623(a)(4), Texas Probate Code, requires the county clerk to record each order, judgment, decree, and proceeding "in each estate." Because the reference to "estate" in this context is ambiguous, the revised law preserves the ambiguity by retaining the reference.

In 1955, in Chapter 55 (S.B. 97), Acts of the 54th Legislature, Regular Session, the Texas Legislature enacted the Texas Probate Code. Included in the original enactment of the Texas Probate Code was Section 13, which required a county clerk to enter in the "Judge's Probate Docket" a minute (notation) of each order, judgment, decree, and proceeding that occurs in each "estate" and to enter a number for each "estate" on the docket which then must be given to each paper filed in the "estate." At the time of enactment,
the provision applied to probate proceedings as well as guardianship proceedings. In 1993, the legislature enacted Chapter 957 (H.B. 2685), Acts of the 73rd Legislature, Regular Session, which separated the decedents' estates statutes and the guardianship statutes into distinct portions of the Texas Probate Code. As part of this separation of the statutes, the legislature enacted Section 623, Texas Probate Code, which applies only to guardianship proceedings, using language very similar to the language of Section 13. Section 623 requires a county clerk to enter in the "Judge's Guardianship Docket" a notation of each order, judgment, decree, and proceeding that occurs in each "estate." However, unlike Section 13, Section 623 requires the entering of a number for each "guardianship" on the docket. That provision conflicts with Subsection (b) of Section 623, revised in this chapter as Section 1052.051(b), which requires that each paper filed in a proceeding be given the corresponding docket number of the "estate."

Because the reference to "estate" in Section 13 that relates to entering a number on the docket for a proceeding was changed to "guardianship" in enacting Section 623 but the references to "estate" relating to entering notations or numbering papers were not changed, the legislative intent is ambiguous as to the types of proceedings for which notations must be entered and papers must be numbered. The revised law preserves the ambiguity by retaining the references to "estate."

Revised Law
Sec. 1052.002. CLAIM DOCKET. (a) The county clerk shall maintain a record book titled "Claim Docket" and shall record in the book each claim that is presented against a guardianship for the
court's approval.

(b) The county clerk shall assign one or more pages of the record book to each guardianship.

(c) The claim docket must be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. The county clerk shall record for each claim, in the order the claims are filed, the following information in the respective columns, beginning with the first or marginal column:

1. the name of the claimant;
2. the amount of the claim;
3. the date of the claim;
4. the date the claim is filed;
5. the date the claim is due;
6. the date the claim begins bearing interest;
7. the interest rate;
8. the date the claim is allowed by the guardian, if applicable;
9. the amount allowed by the guardian, if applicable;
10. the date the claim is rejected, if applicable;
11. the date the claim is approved, if applicable;
12. the amount approved for the claim, if applicable;
13. the date the claim is disapproved, if applicable;
14. the class to which the claim belongs;
15. the date the claim is established by a judgment of a court, if applicable; and
16. the amount of the judgment established under Subdivision (15), if applicable. (Tex. Prob. Code, Sec. 624.)

Source Law

Sec. 624. The county clerk shall keep a record book to be styled "Claim Docket" and shall enter in the claim docket all claims presented against a guardianship for court approval. The claim docket shall be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each guardianship. The following information shall be entered in the respective columns beginning with the first or marginal column: The names
of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of the judgment.

Revised Law

Sec. 1052.003. GUARDIANSHIP FEE BOOK. (a) The county clerk shall maintain a record book titled "Guardianship Fee Book" and shall record in the book each item of cost that accrues to the officers of the court and any witness fees. (b) Each record entry must include: (1) the party to whom the cost or fee is due; (2) the date the cost or fee accrued; (3) the guardianship or party liable for the cost or fee; and (4) the date the cost or fee is paid. (Tex. Prob. Code, Sec. 626.)

Source Law

Sec. 626. The county clerk shall keep a record book styled "Guardianship Fee Book" and shall enter in the guardianship fee book each item of costs that accrue to the officers of the court, with witness fees, if any, showing the: (1) party to whom the costs or fees are due; (2) date of the accrual of the costs or fees; (3) guardianship or party liable for the costs or fees; and (4) date on which the costs or fees are paid.

Revised Law

Sec. 1052.004. ALTERNATE RECORDKEEPING. Instead of maintaining the record books described by Sections 1052.001, 1052.002, and 1052.003, the county clerk may maintain the information described by those sections relating to a person's guardianship proceeding: (1) on a computer file; (2) on microfilm; (3) in the form of a digitized optical image; or (4) in another similar form of data compilation.
Sec. 627. In lieu of keeping the record books described by Sections 623, 624, and 626 of this code, the county clerk may maintain the information relating to a person's guardianship proceeding maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Revisor’s Note

Section 627, Texas Probate Code, refers to the record book described by Section 623, Texas Probate Code. Section 623(a) is revised as Section 1052.001 of this chapter, and Section 623(b) is revised in Section 1052.051 of this chapter. For clarity and the convenience of the reader, the revised law refers only to Section 1052.001 because the relevant portion of Section 623 is revised as that section.

[Sections 1052.005-1052.050 reserved for expansion]

SUBCHAPTER B. FILES; INDEX

Revised Law

Sec. 1052.051. FILING PROCEDURES. (a) An application for a guardianship proceeding, complaint, petition, or other paper permitted or required by law to be filed with a court in a guardianship matter must be filed with the county clerk of the appropriate county.

(b) Each paper filed in a guardianship proceeding must be given the docket number assigned to the estate.

(c) On receipt of a paper described by Subsection (a), the county clerk shall:

(1) file the paper; and

(2) endorse on the paper:

(A) the date the paper is filed;

(B) the docket number; and

(C) the clerk’s official signature. (Tex. Prob. Code, Secs. 621, 623(b).)
Source Law

Sec. 621. (a) An application for a guardianship proceeding, a complaint, petition, or other paper permitted or required by law to be filed in the court in guardianship matters shall be filed with the county clerk of the proper county.

(b) The county clerk shall file the paper received under this section and endorse on each paper the date filed, the docket number, and the clerk's official signature.

[Sec. 623]

(b) Each paper filed in a guardianship proceeding shall be given the corresponding docket number of the estate.

Revisor's Note

Section 623(b), Texas Probate Code, requires each paper filed in a guardianship proceeding to be given the docket number assigned to the "estate." The revised law retains the reference to "estate" for the reasons stated in Revisor's Note (2) to Section 1052.001.

Revised Law

Sec. 1052.052. CASE FILES. (a) The county clerk shall maintain a case file for each person's filed guardianship proceedings.

(b) Each case file must contain each order, judgment, and proceeding of the court and any other guardianship filing with the court, including each:

(1) application for the granting of guardianship;

(2) citation and notice, whether published or posted, including the return on the citation or notice;

(3) bond and official oath;

(4) inventory, appraisement, and list of claims;

(5) exhibit and account;

(6) report of renting;

(7) application for sale or partition of real estate;

(8) report of sale;

(9) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;
(10) report of lending or investing money; and
(11) report of guardians of the persons. (Tex. Prob. Code, Sec. 625.)

Source Law
Sec. 625. The county clerk shall maintain a case file for each person's filed guardianship proceedings. The case file must contain all orders, judgments, and proceedings of the court and any other guardianship filing with the court, including all:
(1) applications for the granting of guardianship;
(2) citations and notices, whether published or posted, with the returns on the citations and notices;
(3) bonds and official oaths;
(4) inventories, appraisements, and lists of claims;
(5) exhibits and accounts;
(6) reports of hiring, renting, or sale;
(7) applications for sale or partition of real estate and reports of sale and of commissioners of partition;
(8) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;
(9) reports of lending or investing money; and
(10) reports of guardians of the persons.

Revisor's Note
(1) Section 625(6), Texas Probate Code, refers to "reports of hiring, renting, or sale." Section 845, Texas Probate Code, requires, under certain circumstances, the filing of a report when guardianship estate property has been "hired or rented." Section 1159.051 of this code, which is the revision of Section 845, omits the references to the "hiring" of property because "hiring" property is synonymous with "renting" property, and "renting" property is more consistent with modern usage. Similar changes are made throughout Chapter 1159 of this code. Therefore, for consistency of terminology with that chapter, the revised law omits the reference to "hiring" from the quoted phrase.

In addition, the revised law omits the reference in the quoted phrase to a report of sale as duplicative
of Section 625(7), Texas Probate Code, revised in this section as Subsection (b)(8), which also requires each case file maintained by a county clerk to contain each report of sale.

(2) Section 625(7), Texas Probate Code, refers to "reports . . . of commissioners of partition." The revised law omits the quoted language because that language is not an accurate statement of the law. Subchapter O, Chapter 1158, of this code, which is the revision of Section 853, Texas Probate Code, provides a procedure for the partitioning of real estate owned in part by a ward and does not provide for the appointment of the commissioners of partition.

Additionally, the revised law omits the quoted language because it is clear from the context of Section 625 that the reference in Section 625(7) to "commissioners of partition" is a vestige of that section's origin in Section 15, Texas Probate Code. Section 15 was included in the 1955 original enactment of the Texas Probate Code and contained the requirement that the county clerk record each report of commissioners of partition. Through the operation of Section 3(g), Texas Probate Code (defining "court"), Section 15 was applicable to probate proceedings as well as guardianship proceedings. Section 15 was not subsequently amended until 1993 when the legislature, in Chapter 957 (H.B. 2685), Acts of the 73rd Legislature, Regular Session, separated the decedents' estates statutes and guardianship statutes into distinct portions of the code. As part of this separation of the statutes, the legislature enacted Section 625, Texas Probate Code, which, using language virtually identical to the language of Section 15, contained the requirements for
guardianship minutes. Chapter 67 (H.B. 1142), Acts of
the 76th Legislature, Regular Session, 1999, amended
both Sections 15 and 625, Texas Probate Code, to refer
respectively to a "case file" for each decedent's
estate or each person's filed guardianship
proceedings. It is in this context that the revised
law omits "commissioners of partition."

Revised Law
Sec. 1052.053. INDEX. (a) The county clerk shall properly
index the records required under this chapter.
(b) The county clerk shall keep the index open for public
inspection but may not release the index from the clerk's custody.
(Tex. Prob. Code, Sec. 627A.)

Source Law
Sec. 627A. The county clerk shall properly
index the records and keep the index open for public
inspection but may not release the index from the
clerk's custody.

Revisor's Note
Section 627A, Texas Probate Code, requires the
county clerk to properly index "the records." For
clarity and the convenience of the reader, the revised
law refers to "the records required under this
chapter." It is clear from the context that the quoted
phrase refers to the records the clerk is required to
keep under Subpart C, Part 2, Chapter XIII, Texas
Probate Code. The relevant requirements of that
subpart are revised in this chapter.

CHAPTER 1053. OTHER COURT DUTIES AND PROCEDURES
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Sec. 1053.001. ENFORCEMENT OF ORDERS. A judge may enforce an order entered against a guardian by attachment and confinement. Unless this title expressly provides otherwise, the term of confinement for any one offense under this section may not exceed three days. (Tex. Prob. Code, Sec. 651.)

Source Law
Sec. 651. The judge may enforce obedience to an order entered against a guardian by attachment and imprisonment. An imprisonment of a guardian may not exceed three days for any one offense, unless expressly provided otherwise in this chapter.

Revisor's Note
Section 651, Texas Probate Code, refers to the maximum period of "imprisonment" to enforce an order against a guardian, except as otherwise provided by "this chapter," meaning Chapter XIII of the Texas Probate Code. The revised law replaces the references to "imprisonment" with "confinement" to conform to the terminology of the Penal Code.

[Sections 1053.002-1053.050 reserved for expansion]

Sec. 1053.051. APPLICABILITY OF CERTAIN LAWS. A law regulating costs in ordinary civil cases applies to a guardianship matter unless otherwise expressly provided by this title. (Tex. Prob. Code, Sec. 622(a).)

Source Law
Sec. 622. (a) The laws regulating costs in ordinary civil cases apply to a guardianship matter
unless otherwise expressly provided by this chapter.

Revised Law

Sec. 1053.052. SECURITY FOR CERTAIN COSTS. (a) The clerk may require a person who files an application, complaint, or opposition relating to a guardianship matter, other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the guardianship proceeding before filing the application, complaint, or opposition.

(b) At any time before the trial of an application, complaint, or opposition described by Subsection (a), an officer of the court or a person interested in the guardianship or in the welfare of the ward may, by written motion, obtain from the court an order requiring the person who filed the application, complaint, or opposition to provide security for the probable costs of the proceeding. The rules governing civil suits in the county court with respect to providing security for the probable costs of a proceeding control in cases described by Subsection (a) and this subsection.

(c) A guardian, attorney ad litem, or guardian ad litem appointed under this title by a court of this state may not be required to provide security for costs in an action brought by the guardian, attorney ad litem, or guardian ad litem in the guardian's, attorney ad litem's, or guardian ad litem's fiduciary capacity. (Tex. Prob. Code, Secs. 622(b), (c).)

Source Law

(b) When a person other than the guardian, attorney ad litem, or guardian ad litem files an application, complaint, or opposition in relation to a guardianship matter, the clerk may require the person to give security for the probable costs of the guardianship proceeding before filing. A person interested in the guardianship or in the welfare of the ward, or an officer of the court, at any time before the trial of an application, complaint, or opposition in relation to a guardianship matter, may obtain from the court, on written motion, an order requiring the person who filed the application, complaint, or opposition to give security for the probable costs of the proceeding. The rules governing civil suits in the county court relating to this subject control in these cases.

(c) No security for costs shall be required of a guardian, attorney ad litem, or guardian ad litem appointed under this chapter by a court of this state.
in any suit brought by the guardian, attorney ad litem, or guardian ad litem in their respective fiduciary capacities.

[Sections 1053.053-1053.100 reserved for expansion]

SUBCHAPTER C. PROCEDURES FOR GUARDIANSHIP MATTERS

Revised Law

Sec. 1053.101. CALLING OF DOCKETS. The judge in whose court a guardianship proceeding is pending, as determined by the judge, shall:

(1) call guardianship matters in the matters' regular order on both the guardianship and claim dockets; and

(2) issue necessary orders. (Tex. Prob. Code, Sec. 629.)

Source Law

Sec. 629. The judge of the court in which a guardianship proceeding is pending, as the judge determines, shall call guardianship matters in their regular order on both the guardianship and claim dockets and shall make necessary orders.

Revised Law

Sec. 1053.102. SETTING OF CERTAIN HEARINGS BY CLERK. (a) If a judge is unable to designate the time and place for hearing a guardianship matter pending in the judge's court because the judge is absent from the county seat or is on vacation, disqualified, ill, or deceased, the county clerk of the county in which the matter is pending may:

(1) designate the time and place for hearing;

(2) enter the setting on the judge's docket; and

(3) certify on the docket the reason that the judge is not acting to set the hearing.

(b) If, after the perfection of the service of notices and citations required by law concerning the time and place of hearing, a qualified judge is not present for a hearing set under Subsection (a), the hearing is automatically continued from day to day until a qualified judge is present to hear and determine the matter. (Tex. Prob. Code, Sec. 630.)

Source Law

Sec. 630. If the county judge is absent from the
county seat or is on vacation, disqualified, ill, or deceased and is unable to designate the time and place for hearing a guardianship matter pending in the judge's court, the county clerk of the county in which the matter is pending may designate the time and place for hearing, entering the setting on the judge's docket and certifying on the docket the reason that the judge is not acting to set the hearing. If a qualified judge is not present for the hearing, after service of the notices and citations required by law with reference to the time and place of hearing has been perfected, the hearing is automatically continued from day to day until a qualified judge is present to hear and determine the matter.

Revisor's Note

Section 630, Texas Probate Code, specifies that the "county clerk of the county" in which a guardianship matter is pending may designate a time and place for a hearing on the matter if the "county judge" is absent from the county seat or is on vacation, disqualified, ill, or deceased, and is unable to set the time and place for the hearing. The revised law substitutes "judge" for "county judge" and retains the reference to the county clerk for the reasons that follow.

Section 3(f), Texas Probate Code, defines "county judge," "probate judge," and "judge" identically as interchangeable terms, with each term meaning the presiding judge of a court having original jurisdiction of probate proceedings. A court having original jurisdiction of probate proceedings may be a county court, statutory county court, statutory probate court, or in certain cases involving contested matters, district court. See Sections 4C through 4F, Texas Probate Code, applicable in the Texas Probate Code, and the substantively identical Sections 32.002 through 32.005 of this code, applicable in this code. Section 22.019 of this code, which is the revision of Section 3(f) and was enacted by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, omits the terms "county judge" and "probate judge" from the
revised definition as misleading because those terms could in some circumstances mean a district judge. Consequently, the revised definition refers only to "judge," and that term is used consistently throughout this code. See the revisor's note to Section 22.019 for a more detailed analysis.

Although Section 22.019 defines "judge" to mean the presiding judge of a court having original jurisdiction of probate proceedings, and the proceeding that is the subject of Section 630 is a guardianship proceeding, the definition provided by Section 22.019 applies equally in the context of guardianship proceedings because the court with original jurisdiction of probate proceedings is also the court with original jurisdiction of guardianship proceedings. Section 606, Texas Probate Code, redesignated as Section 606 of this code, requires guardianship matters to be heard in a statutory court exercising the jurisdiction of a probate court, or if there is none in the county, in the county court. Therefore, depending on the types of courts that exist in a county, the court exercising probate jurisdiction that would have jurisdiction of a guardianship proceeding may be a statutory county court, statutory probate court, or county court. Furthermore, Section 606 provides that a contested proceeding may be transferred to a district court and heard as if originally filed in that court. It is clear from Section 606 that a guardianship matter could be pending in a statutory county court, statutory probate court, county court, or district court. Substituting "judge" for "county judge" more accurately reflects the types of judges who may hear the matter.

As previously noted, a contested portion of a
guardianship proceeding in certain cases may be transferred to and heard in a district court, but the revised law retains the reference to the "county clerk of the county" designating the time and place of the hearing under the circumstances described in Section 630 because changing the reference to the county clerk is unnecessary. Section 606(b-5), Texas Probate Code, redesignated as Section 606(b-5) of this code, provides that when a contested portion of a guardianship proceeding is transferred to a district court, the district clerk "may perform in relation to the transferred portion of the proceeding any function a county clerk may perform in that type of contested proceeding." Therefore, the district clerk could perform the action Section 630 authorizes the county clerk to perform.


Revised Law
Sec. 1053.103. RENDERING OF DECISIONS, ORDERS, DECREES, AND JUDGMENTS. The court shall render a decision, order, decree, or judgment in a guardianship matter in open court, except as otherwise expressly provided. (Tex. Prob. Code, Sec. 650.)

Source Law
Sec. 650. A decision, order, decree, or judgment of the court in a guardianship matter must be rendered in open court, except in a case in which it is otherwise expressly provided.
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CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

SUBCHAPTER A. ATTORNEYS AD LITEM AND INTERPRETERS

Revised Law
Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN
PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this
title for the appointment of a guardian, the court shall appoint an
attorney ad litem to represent the proposed ward's interests.
(Tex. Prob. Code, Sec. 646(a) (part).)

Source Law
Sec. 646. (a) In a proceeding under this
chapter for the appointment of a guardian, the court
shall appoint an attorney ad litem to represent the
interests of the proposed ward....

Revised Law
Sec. 1054.002. TERM OF APPOINTMENT. Unless the court
determines that the continued appointment of an attorney ad litem
appointed under Section 1054.001 is in the ward's best interests,
the attorney's term of appointment expires, without a court order,
on the date the court:
(1) appoints a guardian; or
(2) denies the application for appointment of a
guardian. (Tex. Prob. Code, Sec. 646(e).)

Source Law
(e) The term of appointment of an attorney ad
litem appointed under this section expires, without a
court order, on the date the court either appoints a
guardian or denies the application for appointment of
a guardian, unless the court determines that the
continued appointment of the attorney ad litem is in
the ward's best interest.

Revisor's Note
Section 646(e), Texas Probate Code, refers to an
attorney ad litem appointed under "this section,"
meaning Section 646, Texas Probate Code. Section 646 is revised in various provisions in this subchapter. The revised law substitutes a reference to Section 1054.001 of this chapter for the quoted language because the relevant portion of Section 646 is revised as that section.

Revised Law
Sec. 1054.003. ACCESS TO RECORDS. An attorney ad litem appointed under Section 1054.001 shall be provided copies of all of the current records in the guardianship case. The attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records. (Tex. Prob. Code, Sec. 646(a) (part).)

Source Law
(a) [In a proceeding under this chapter for the appointment of a guardian, the court shall appoint an attorney ad litem . . . .] The attorney shall be supplied with copies of all of the current records in the case and may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Revised Law
Sec. 1054.004. DUTIES. (a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

(1) the law and facts of the case;
(2) the proposed ward's legal options regarding disposition of the case; and
(3) the grounds on which guardianship is sought.

(b) Before the hearing, the attorney ad litem shall review:

(1) the application for guardianship;
(2) certificates of current physical, medical, and intellectual examinations; and
(3) all of the proposed ward's relevant medical, psychological, and intellectual testing records. (Tex. Prob. Code,
Sec. 647. (a) An attorney ad litem appointed under Section 646 of this code to represent a proposed ward shall, within a reasonable time before the hearing, interview the proposed ward. To the greatest extent possible, the attorney shall discuss with the proposed ward the law and facts of the case, the proposed ward's legal options regarding disposition of the case, and the grounds on which guardianship is sought.

(b) Before the hearing, the attorney shall review the application for guardianship, certificates of current physical, medical, and intellectual examinations, and all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Revisor's Note
(1) Section 647(a), Texas Probate Code, refers to an attorney ad litem appointed under Section 646, Texas Probate Code, "to represent a proposed ward." The revised law substitutes a reference to Section 1054.001 of this chapter for the reference to Section 646, Texas Probate Code, for the reason stated in the revisor's note to Section 1054.002 of this chapter. In addition, the revised law omits the quoted language because under Section 646, an attorney ad litem is appointed for the purpose of representing the proposed ward's interests, and it is unnecessary to restate that purpose in this section.

(2) Section 647(a), Texas Probate Code, requires an attorney ad litem to take certain actions within a reasonable time before "the hearing." For clarity, the revised law substitutes a reference to "the hearing in the proceeding for the appointment of a guardian," which is the type of proceeding for which the attorney ad litem referenced in this section is appointed under Section 646, Texas Probate Code, revised in relevant part as Section 1054.001.

Revised Law
Sec. 1054.005. APPOINTMENT OF INTERPRETER. At the time the
court appoints the attorney ad litem under Section 1054.001, the
court shall appoint a language interpreter or sign interpreter if
necessary to ensure effective communication between the proposed
ward and the attorney. (Tex. Prob. Code, Sec. 646(d).)

Source Law

(d) At the time of the appointment of the
attorney ad litem, the court shall also appoint a
language interpreter or a sign interpreter if
necessary to ensure effective communication between
the proposed ward and the attorney.

[Sections 1054.006-1054.050 reserved for expansion]

SUBCHAPTER B. GUARDIANS AD LITEM

Revised Law

Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN
GUARDIANSHIP PROCEEDING. The judge may appoint a guardian ad litem
to represent the interests of an incapacitated person in a
guardianship proceeding. (Tex. Prob. Code, Sec. 645(a).)

Source Law

Sec. 645. (a) The judge may appoint a guardian
ad litem to represent the interests of an
incapacitated person in a guardianship proceeding.

Revised Law

Sec. 1054.052. APPOINTMENT OF GUARDIAN AD LITEM RELATING TO
CERTAIN OTHER SUITS. In the interest of judicial economy, the court
may appoint as guardian ad litem under Section 1104.354(1) the
person who has been appointed attorney ad litem under Section
1054.001 or the person who is serving as an ad litem for the ward’s
benefit in any other proceeding. (Tex. Prob. Code, Sec. 645(e).)

Source Law

(e) In the interest of judicial economy, the
court may appoint as guardian ad litem under Section
681(4) of this code the person who has been appointed
attorney ad litem under Section 646 of this code or the
person who is serving as an ad litem for the benefit of
the ward in any other proceeding.

Revisor's Note

Section 645(e), Texas Probate Code, refers to an
attorney ad litem appointed under Section 646, Texas
Probate Code. The revised law substitutes a reference
to Section 1054.001 of this chapter for the reference
to Section 646, Texas Probate Code, for the reason stated in the revisor's note to Section 1054.002 of this chapter.

Revised Law
Sec. 1054.053. TERM OF CERTAIN APPOINTMENTS. Unless the court determines that the continued appointment of a guardian ad litem appointed in a proceeding for the appointment of a guardian is in the ward's best interests, the guardian ad litem's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian; or

(2) denies the application for appointment of a guardian. (Tex. Prob. Code, Sec. 645(f).)

Source Law
(f) The term of appointment of a guardian ad litem made in a proceeding for the appointment of a guardian expires, without a court order, on the date the court either appoints a guardian or denies the application for appointment of a guardian, unless the court determines that the continued appointment of the guardian ad litem is in the ward's best interest.

Revised Law
Sec. 1054.054. DUTIES. (a) A guardian ad litem is an officer of the court.

(b) A guardian ad litem shall protect the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests. (Tex. Prob. Code, Sec. 645(c).)

Source Law
[(a) The judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.]

(c) A guardian ad litem is an officer of the court. The guardian ad litem shall protect the incapacitated person in a manner that will enable the court to determine what action will be in the best interests of the incapacitated person.

Revised Law
Sec. 1054.055. COMPENSATION AND EXPENSES. (a) A guardian ad litem is entitled to reasonable compensation for services
provided in the amount set by the court, to be taxed as costs in the proceeding.

(b) The fees and expenses of a guardian ad litem appointed under Section 1104.354(1) are costs of the litigation proceeding that made the appointment necessary. (Tex. Prob. Code, Secs. 645(b), (d).)

Source Law

(b) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(d) If a guardian ad litem is appointed under Section 681(4) of this code, the fees and expenses of the guardian ad litem are costs of the litigation proceeding that made the appointment necessary.

Revised Law

Sec. 1054.056. IMMUNITY. (a) Subject to Subsection (b), a guardian ad litem appointed under this subchapter or Section 1102.001 or 1202.054 to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) This section does not apply to a recommendation or opinion that is:

(1) wilfully wrongful;

(2) given:

(A) with conscious indifference to or reckless disregard for the safety of another;

(B) with malice; or

(C) in bad faith; or

(3) grossly negligent. (Tex. Prob. Code, Sec. 645A.)

Source Law

Sec. 645A. (a) A guardian ad litem appointed under Section 645, 683, or 694A of this code to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) Subsection (a) of this section does not
apply to a recommendation or opinion that is:
   (1) wilfully wrongful;
   (2) given with conscious indifference or reckless disregard to the safety of another;
   (3) given in bad faith or with malice; or
   (4) grossly negligent.

Revisor's Note

Section 645A(a), Texas Probate Code, refers to a guardian ad litem appointed under Section 645, 683, or 694A, Texas Probate Code. The revised law substitutes references to Sections 1102.001 and 1202.054 of this code for the references to Sections 683 and 694A, respectively, because the relevant portions of Sections 683 and 694A dealing with the appointment of the guardian ad litem are revised in Sections 1102.001 and 1202.054.

[Sections 1054.057-1054.100 reserved for expansion]

SUBCHAPTER C. COURT VISITORS

Revised Law

Sec. 1054.101. INAPPLICABILITY OF SUBCHAPTER TO CERTAIN GUARDIANSHIPS. This subchapter does not apply to a guardianship created only because the appointment of a guardian for a person is necessary for the person to receive funds from a governmental source. (Tex. Prob. Code, Sec. 648(f).)

Source Law

(f) This section does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source.

Revised Law

Sec. 1054.102. OPERATION OF COURT VISITOR PROGRAM. (a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards.

(b) A court, other than a statutory probate court, that has jurisdiction of a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the area the court serves. (Tex. Prob. Code, Sec. 648(a) (part).)
Sec. 648. (a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards. Another court that has jurisdiction over a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the jurisdiction.

Revisor's Note
Section 648(a), Texas Probate Code, uses the word "jurisdiction" twice, but in different contexts. The first reference is to the court's subject matter jurisdiction. The second reference is a reference to the area served by the court. The revised law substitutes "the area the court serves" for the second reference to "jurisdiction" for clarity.

Sec. 1054.103. EVALUATION OF WARD OR PROPOSED WARD. A court, at any time before a guardian is appointed for a proposed ward or during the pendency of a guardianship of the person or estate, may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Section 1054.104(b) on:

(1) the request of any interested person, including
the ward or proposed ward; or
(2) the court's own motion. (Tex. Prob. Code, Sec. 648(b).)

Sec. 1054.104. EVALUATION REPORT. (a) A court visitor appointed under Section 1054.103 shall file the report on the evaluation of a ward or proposed ward not later than the 14th day after the date the court visitor conducts the evaluation. The court

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A visitor shall swear under penalty of perjury that the report is accurate to the best of the court visitor's knowledge and belief.

(b) A court visitor's report must include:

(1) a description of the nature and degree of the ward's or proposed ward's capacity and incapacity, including a description of the ward's or proposed ward's medical history, if reasonably available and not waived by the court;

(2) a medical prognosis and list of the ward's or proposed ward's treating physicians, when appropriate;

(3) a description of the ward's or proposed ward's living conditions and circumstances;

(4) a description of the ward's or proposed ward's social, intellectual, physical, and educational conditions;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the guardian's most recent visit, if a guardian has been appointed;

(7) a recommendation as to any modification needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

(Tex. Prob. Code, Secs. 648(c), (d).)
guardianship, including removal or denial of the
guardianship; and

(8) any other information required by the
court.

(d) The court visitor shall file the report not
later than the 14th day after the date of the
evaluation conducted by the court visitor, and the
court visitor making the report must swear, under
penalty of perjury, to its accuracy to the best of the
court visitor's knowledge and belief.

Revised Law
Sec. 1054.105. COMPENSATION. (a) A court that operates a
court visitor program shall use persons willing to serve as court
visitors without compensation to the greatest extent possible.

(b) A court visitor who has not expressed a willingness to
serve without compensation is entitled to reasonable compensation
for services provided in an amount set by the court, to be taxed as
costs in the proceeding. (Tex. Prob. Code, Secs. 648(a) (part),
(e).)

Source Law

(a) ... A court that operates a court visitor
program shall use persons willing to serve without
compensation to the greatest extent possible.

(e) A court visitor who has not expressed a
willingness to serve without compensation is entitled
to reasonable compensation for services in an amount
set by the court and to be taxed as costs in the
proceeding.

[Sections 1054.106-1054.150 reserved for expansion]

SUBCHAPTER D. COURT INVESTIGATORS

Revised Law
Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP APPLICATION.
On the filing of an application for guardianship under Section
1101.001, a court investigator shall investigate the circumstances
alleged in the application to determine whether a less restrictive
alternative to guardianship is appropriate. (Tex. Prob. Code, Sec.
648A(a).)

Source Law

Sec. 648A. (a) On the filing of an application
for guardianship under Section 682 of this code, a
court investigator shall investigate the
circumstances alleged in the application to determine
whether a less restrictive alternative than
guardianship is appropriate.
Sec. 1054.152. GENERAL DUTIES. A court investigator shall:

(1) supervise a court visitor program established under Subchapter C and, in that capacity, serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and

(3) perform other duties as assigned by the judge or required by this title. (Tex. Prob. Code, Sec. 648A(b).)

Sec. 1054.153. INVESTIGATION REPORT. (a) A court investigator shall file with the court a report containing the court investigator's findings and conclusions after conducting an investigation under Section 1054.151 or 1054.152.

(b) In a contested case, the court investigator shall provide copies of the report of the court investigator's findings and conclusions to the attorneys for the parties before the earlier of:
(1) the seventh day after the date the court investigator completes the report; or
(2) the 10th day before the date the trial is scheduled to begin.

(c) Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Evidence. (Tex. Prob. Code, Sec. 648A(c).)

Source Law

(c) After making an investigation under Subsection (a) or (b) of this section, a court investigator shall file with the court a report of the court investigator's findings and conclusions. Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Civil Evidence. In a contested case, the court investigator shall provide copies of the report to the attorneys for the parties before the earlier of:

(1) the seventh day after the day the report is completed; or
(2) the 10th day before the day the trial is scheduled to begin.

Revisor's Note


Revised Law

Sec. 1054.154. EFFECT OF SUBCHAPTER ON OTHER LAW. Nothing in this subchapter supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state. (Tex. Prob. Code, Sec. 648A(d).)

Source Law

(d) Nothing in this section supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

[Sections 1054.155-1054.200 reserved for expansion]
SUBCHAPTER E. QUALIFICATIONS TO SERVE AS COURT-APPOINTED ATTORNEY

Revised Law

Sec. 1054.201. CERTIFICATION REQUIRED. (a) A court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) The State Bar of Texas shall require three hours of credit for certification under this subchapter. (Tex. Prob. Code, Secs. 646(b), 647A(a), (b).)

Source Law

[Sec. 646]

(b) To be eligible for appointment as an attorney ad litem, a person must have the certification required by Section 647A of this code.

Sec. 647A. (a) A court-appointed attorney in any guardianship proceeding must be certified by the State Bar of Texas or a person or other entity designated by the state bar as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or its designee.

(b) For certification under this section, the state bar shall require three hours of credit.

Revised Law

Sec. 1054.202. CERTIFICATE EXPIRATION. (a) Except as provided by Subsection (b), a certificate issued under this subchapter expires on the second anniversary of the date the certificate is issued.

(b) A new certificate obtained by a person to whom a certificate under this subchapter was previously issued expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued. (Tex. Prob. Code, Secs. 647A(c), (e).)

Source Law

(c) Except as provided by Subsection (e) of this section, a certificate issued under this section expires on the second anniversary of the date the certificate is issued.

(e) A new certificate obtained by a person who
previously has been issued a certificate under this section expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued.

Revised Law

Sec. 1054.203. ELIGIBILITY FOR APPOINTMENT ON EXPIRATION OF CERTIFICATE. An attorney whose certificate issued under this subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem. (Tex. Prob. Code, Secs. 646(c), 647A(d).)

Source Law

[Sec. 646]
(c) A person whose certificate has expired must obtain a new certificate to be eligible for appointment as an attorney ad litem.

[Sec. 647A]
(d) To be eligible to be appointed by a court to represent a person at a guardianship proceeding, an attorney whose certificate has expired must obtain a new certificate.

CHAPTER 1055. TRIAL AND HEARING MATTERS
SUBCHAPTER A. STANDING AND PLEADINGS
Sec. 1055.001. STANDING TO COMMENCE OR CONTEST PROCEEDING

Sec. 1055.002. DEFECT IN PLEADING

[Sections 1055.003-1055.050 reserved for expansion]

SUBCHAPTER B. TRIAL AND HEARING
Sec. 1055.051. HEARING BY SUBMISSION
Sec. 1055.052. TRIAL BY JURY

[Sections 1055.053-1055.100 reserved for expansion]

SUBCHAPTER C. EVIDENCE
Sec. 1055.101. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE
Sec. 1055.102. USE OF CERTAIN RECORDS AS EVIDENCE

CHAPTER 1055. TRIAL AND HEARING MATTERS
SUBCHAPTER A. STANDING AND PLEADINGS

Revised Law
Sec. 1055.001. STANDING TO COMMENCE OR CONTEST PROCEEDING.
(a) Except as provided by Subsection (b), any person has the right to:

(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(2) appear and contest a guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person;

(3) contest the appointment of a person as a guardian of the proposed ward or incapacitated person; or

(4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person. (Tex. Prob. Code, Sec. 642.)

Source Law

Sec. 642. (a) Except as provided by Subsection (b) of this section, any person has the right to commence any guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship, or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person;

(3) contest the appointment of a person as a guardian of the proposed ward or incapacitated person; or

(4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.
Revisor's Note

Section 642(b)(3), Texas Probate Code, provides that certain persons may not contest the appointment of a person as a guardian "of the person or estate, or both," of a proposed ward or incapacitated person. The revised law omits the quoted phrase as unnecessary because Section 601(11), Texas Probate Code, revised in this code as Section 1002.012, defines "guardian" as a person appointed guardian under Section 693, Texas Probate Code. Section 693, the relevant part of which is revised in Section 1101.151 of this code, provides for the appointment of a guardian of an individual's "person or estate, or both." Furthermore, Section 601(11), Texas Probate Code, states that the term "guardian" includes a guardian of the estate and a guardian of the person unless a provision expressly provides otherwise.

Revised Law

Sec. 1055.002. DEFECT IN PLEADING. A court may not invalidate a pleading in a guardianship matter, or an order based on the pleading, on the basis of a defect of form or substance in the pleading unless a timely objection has been made against the defect and the defect has been called to the attention of the court in which the proceeding was or is pending. (Tex. Prob. Code, Sec. 641.)

Source Law

Sec. 641. A court may not invalidate a pleading in a guardianship matter or an order based on the pleading based on a defect of form or substance in the pleading, unless the defect has been timely objected to and called to the attention of the court in which the proceeding was or is pending.

[Sections 1055.003-1055.050 reserved for expansion]

SUBCHAPTER B. TRIAL AND HEARING

Revised Law

Sec. 1055.051. HEARING BY SUBMISSION. (a) A court may consider by submission a motion or application filed under this
A court may consider by
submission a motion or application filed under this
chapter unless the proceeding is:
(1) contested; or
(2) an application for the appointment of a guardian.

(b) The party seeking relief under a motion or application
being considered by the court on submission has the burden of proof
at the hearing.

(c) The court may consider a person's failure to file a
response to a motion or application that may be considered on
submission as a representation that the person does not oppose the
motion or application.

(d) A person's request for oral argument is not a response
to a motion or application under this section.

(e) The court, on the court's own motion, may order oral
argument on a motion or application that may be considered by
submission. (Tex. Prob. Code, Sec. 644.)

Source Law
Sec. 644. (a) A court may consider by
submission a motion or application filed under this
chapter unless the proceeding is:
(1) contested; or
(2) an application for the appointment of
a guardian.

(b) The burden of proof at a hearing on a motion
or application that is being considered by the court on
submission is on the party who is seeking relief under
the motion or application.

(c) The court may consider a person's failure to
file a response to a motion or application that may be
considered on submission as a representation that the
person does not oppose the motion or application.

(d) A person's request for oral argument is not a response
to a motion or application under this
section.

(e) The court, on its own motion, may order oral
argument on a motion or application that may be
considered by submission.

Revised Law
Sec. 1055.052. TRIAL BY JURY. A party in a contested
guardianship proceeding is entitled to a jury trial on request.
(Tex. Prob. Code, Sec. 643.)

Source Law
Sec. 643. A party in a contested guardianship
proceeding is entitled, on request, to a jury trial.

[Sections 1055.053-1055.100 reserved for expansion]
SUBCHAPTER C. EVIDENCE

Revised Law

Sec. 1055.101. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE. The rules relating to witnesses and evidence that apply in the district court apply in a guardianship proceeding to the extent practicable. (Tex. Prob. Code, Sec. 649 (part).)

Source Law

Sec. 649. In a guardianship proceeding, the rules relating to witnesses and evidence that govern in the district court apply as far as practicable.

Revised Law

Sec. 1055.102. USE OF CERTAIN RECORDS AS EVIDENCE. The following are admissible as evidence in any court of this state:

(1) record books described by Sections 1052.001, 1052.002, and 1052.003 and individual case files described by Section 1052.052, including records maintained in a manner allowed under Section 1052.004; and

(2) certified copies or reproductions of the records. (Tex. Prob. Code, Sec. 628.)

Source Law

Sec. 628. The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in other sections of this chapter, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Revisor's Note

(1) Section 628, Texas Probate Code, states that certain records and files "shall be evidence" in any court of this state. The revised law substitutes "are admissible as evidence" for the quoted language because the phrases have the same meaning and the latter phrase is consistent with modern usage.

(2) Section 628, Texas Probate Code, refers to "record books or individual case files, including records on a computer file, on microfilm, in the form
of a digitized optical image, or in another similar
form of data compilation described in other sections
of this chapter," meaning Chapter XIII, Texas Probate
Code. Sections 623, 624, 625, and 626, Texas Probate
Code, are the sections of that chapter that describe
those records and files, and Section 627, Texas
Probate Code, is the section of that chapter that
authorizes certain records to be maintained on a
computer file, on microfilm, in the form of a digitized
optical image, or in another form of data compilation.
For the convenience of the reader, the revised law
substitutes references to record books described by
Sections 1052.001, 1052.002, and 1052.003 of this
code, which are the provisions that revise Sections
623, 624, and 626, Texas Probate Code, and to
individual case files maintained under Section
1052.052 of this code, which is the provision that
revises Section 625, Texas Probate Code, and records
maintained in a manner allowed under Section 1052.004
of this code, which is the provision that revises
Section 627, Texas Probate Code.
CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

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CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

SUBCHAPTER A. EXECUTION

Revised Law

Sec. 1056.001. EXECUTIONS IN GUARDIANSHIP MATTERS. (a) An execution in a guardianship matter must be:

(1) directed "to any sheriff or any constable within the State of Texas";

(2) attested and signed by the clerk officially under court seal; and

(3) made returnable in 60 days.

(b) A proceeding under an execution in a guardianship matter is governed, to the extent applicable, by the laws regulating a proceeding under an execution issued by a district court.

(c) Notwithstanding Subsection (a), an execution directed to the sheriff or a constable of a specific county in this state may not be held defective if properly executed within that county by the sheriff or constable to whom the execution is directed. (Tex. Prob. Code, Sec. 653.)

Source Law

Sec. 653. An execution in a guardianship matter shall be directed "to any sheriff or any constable within the State of Texas," made returnable in 60 days, and attested and signed by the clerk officially under the seal of the court. A proceeding under an execution in a guardianship matter is governed so far as applicable by the laws regulating a proceeding under an execution issued from the district court. An execution directed to the sheriff or a constable of a specific county in this state may not be held defective if the execution was properly executed within the county by the officer to whom the direction for execution was given.

Revisor's Note

Section 653, Texas Probate Code, provides that an execution in a guardianship matter directed to the sheriff or constable of a specific county is not defective if the execution is properly executed in that county by the sheriff or constable to whom the execution is directed. The revised law adds "[n]otwithstanding Subsection (a)" for the
convenience of the reader to clarify that this
provision is an exception to the requirement, revised
in Subsection (a) of this section, that an execution
must be directed to any sheriff or constable in this
state.

[Sections 1056.002-1056.050 reserved for expansion]

SUBCHAPTER B. ATTACHMENT OF ESTATE PROPERTY

Revised Law

Sec. 1056.051. ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT.

(a) If a person interested in the estate of an incapacitated person
files with the judge a written complaint made under oath alleging
that the guardian is about to remove the estate or a part of the
estate outside of the state, the judge may order a writ of
attachment to issue, directed "to any sheriff or any constable
within the State of Texas." The writ must order the sheriff or
constable to:

(1) seize the estate or a part of the estate; and
(2) hold that property subject to further court order.

(b) Notwithstanding Subsection (a), a writ of attachment
directed to the sheriff or constable of a specific county in this
state is not defective if the writ was properly executed within that
county by the sheriff or constable to whom the writ is directed.

(Tex. Prob. Code, Sec. 654 (part).)

Source Law

Sec. 654. When a complaint in writing and under
oath that the guardian is about to remove the estate or
any part of the estate beyond the limits of the state
is made to the judge by a person interested in the
estate of a minor or other incapacitated person, the
judge may order a writ to issue, directed "To any
sheriff or any constable within the State of Texas,"
commanding the sheriff or constable to seize the
estate or any part of the estate and to hold the estate
subject to further court order. . . . A writ of
attachment directed to the sheriff or a constable of a
specific county in this state is not defective if the
writ was properly executed within the county by the
officer to whom the direction to seize the estate was
given.

Revisor's Note

(1) Section 654, Texas Probate Code, refers to
"a minor or other incapacitated person." The revised law omits the reference to "minor" as unnecessary because Section 601(14), Texas Probate Code, revised as Section 1002.017 of this code, defines "incapacitated person" to include a minor.

(2) Section 654, Texas Probate Code, provides that a writ of attachment directed to the sheriff or constable of a specific county is not defective if the writ is properly executed in that county by the sheriff or constable to whom the writ is directed. The revised law adds "[n]otwithstanding Subsection (a)" for the convenience of the reader to clarify that this provision is an exception to the requirement, revised in Subsection (a) of this section, that a writ of attachment must be directed to any sheriff or constable in this state.

Revised Law

Sec. 1056.052. BOND. Before a judge may issue a writ of attachment ordered under Section 1056.051, the complainant must execute a bond that is:

(1) payable to the guardian of the estate;
(2) in an amount set by the judge; and
(3) conditioned on the payment of all damages and costs that are recovered for a wrongful suit out of the writ. (Tex. Prob. Code, Sec. 654 (part).)

Source Law

Sec. 654. . . . The judge may not issue a writ unless the complainant gives a bond, in the sum the judge requires, payable to the guardian of the estate and conditioned on payment of all damages and costs that shall be recovered for a wrongful suit out of the writ. . . .

[Sections 1056.053-1056.100 reserved for expansion]

SUBCHAPTER C. BILL OF REVIEW

Revised Law

Sec. 1056.101. REVISION AND CORRECTION OF ORDER OR JUDGMENT IN GUARDIANSHIP PROCEEDING. (a) An interested person, including a
ward, may, by a bill of review filed in the court in which the
guardianship proceeding was held, have an order or judgment
rendered by the court revised and corrected on a showing of error in
the order or judgment.

   (b) Except as provided by Subsection (c), a bill of review
to revise and correct an order or judgment may not be filed more
than two years after the date of the order or judgment.

   (c) A bill of review to revise and correct an order or
judgment filed by a person whose disability has been removed must be
filed not later than the second anniversary of the date the person's
disability was removed. (Tex. Prob. Code, Sec. 657 (part).)

Source Law

Sec. 657. A person interested, including a
ward, by bill of review filed in the court in which a
guardianship proceeding took place, may have a
decision, order, or judgment rendered by the court,
revised and corrected if an error is shown on the
decision, order, or judgment. . . . A bill of review
may not be filed after two years have elapsed from the
date of the decision, order, or judgment. A person
with a disability has two years after the removal of
the person’s respective disability to apply for a bill
of review.

Revisor’s Note

Section 657, Texas Probate Code, refers to a
"decision, order, or judgment" rendered by the court.
Throughout this subchapter, the revised law omits the
references to "decision" because, in context, a
"decision" of a court is entered in the records of the
court proceedings as an "order" of the court.

Revised Law

Sec. 1056.102. INJUNCTION. A process or action under a
court order or judgment subject to a bill of review filed under
Section 1056.101 may be stayed only by writ of injunction. (Tex.
Prob. Code, Sec. 657 (part).)

Source Law

Sec. 657. [A person interested, . . . by bill of
review . . . may have a decision, order, or judgment
rendered by the court, revised and corrected if an
error is shown . . . .] A process or action under the
decision, order, or judgment is not stayed except by
writ of injunction. . . .
CHAPTER 1057. CHANGE AND RESIGNATION OF RESIDENT AGENT OF GUARDIAN FOR SERVICE OF PROCESS

Sec. 1057.001. CHANGE OF RESIDENT AGENT

(a) A guardian may change the guardian's resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing with the court in which the guardianship proceeding is pending a statement titled "Designation of Successor Resident Agent" that states the names and addresses of:

(1) the guardian;

(2) the resident agent; and

(3) the successor resident agent.

(b) The designation of a successor resident agent takes effect on the date the statement is filed with the court. (Tex. Prob. Code, Sec. 760A.)

Sec. 1057.002. RESIGNATION OF RESIDENT AGENT

(a) A resident agent of a guardian may resign as resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement titled "Resignation of Resident Agent" that states:

Revised Law

Sec. 1057.001. CHANGE OF RESIDENT AGENT. (a) A guardian may change the guardian's resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. The statement must contain the names and addresses of the:

(1) guardian;

(2) resident agent; and

(3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Revised Law

Sec. 1057.002. RESIGNATION OF RESIDENT AGENT. (a) A resident agent of a guardian may resign as resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement titled "Resignation of Resident Agent" that states:
Sec. 760B. (a) A resident agent of a guardian may resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that:

1. contains the name of the guardian;
2. contains the address of the guardian most recently known by the resident agent;
3. states that notice of the resignation has been given to the guardian and that the guardian does not have a resident agent; and
4. contains the date on which the notice of the resignation was given to the guardian.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) to:

1. the guardian at the address most recently known by the guardian; and
2. each party in the case or the party's attorney or other designated representative of record.

(c) The resignation of the resident agent takes effect on the date the court enters an order accepting the resignation. A court may not enter an order accepting the agent's resignation unless the resident agent complies with this section. (Tex. Prob. Code, Sec. 760B.)
CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

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[Sections 1101.002-1101.050 reserved for expansion]

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Sec. 1101.052. JURY TRIAL

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Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY

Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY

Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING GUARDIAN
Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS. (a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

1. the proposed ward's name, sex, date of birth, and address;

2. the name, relationship, and address of the person the applicant seeks to have appointed as guardian;

3. whether guardianship of the person or estate, or both, is sought;

4. the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

   A. the right of a proposed ward who is 18 years of age or older to vote in a public election; and

   B. the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;

5. the facts requiring the appointment of a guardian;

6. the interest of the applicant in the appointment of a guardian;

7. the nature and description of any kind of guardianship existing for the proposed ward in any other state;

8. the name and address of any person or institution having the care and custody of the proposed ward;
the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and siblings are deceased, the names and addresses of the proposed ward's next of kin who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed
ward's children, if any, and either the child's address or that the
child is deceased; and

(E) if there is no living spouse, parent, adult
sibling, or adult child of the proposed ward, the names and
addresses of the proposed ward's next of kin who are adults;

(14) facts showing that the court has venue of the
proceeding; and

(15) if applicable, that the person whom the applicant
seeks to have appointed as a guardian is a private professional
guardian who is certified under Subchapter C, Chapter 111,
Government Code, and has complied with the requirements of
Subchapter G, Chapter 1104. (Tex. Prob. Code, Sec. 682.)

Source Law

Sec. 682. Any person may commence a proceeding
for the appointment of a guardian by filing a written
application in a court having jurisdiction and
venue. The application must be sworn to by the
applicant and state:

(1) the name, sex, date of birth, and
address of the proposed ward;

(2) the name, relationship, and address of
the person the applicant desires to have appointed as
guardian;

(3) whether guardianship of the person or
estate, or both, is sought;

(4) the nature and degree of the alleged
incapacity, the specific areas of protection and
assistance requested, and the limitation or
termination of rights requested to be included in the
court's order of appointment, including a termination
of:

(A) the right of a proposed ward who
is 18 years of age or older to vote in a public
election; and

(B) the proposed ward's eligibility
to hold or obtain a license to operate a motor vehicle
under Chapter 521, Transportation Code;

(5) the facts requiring that a guardian be
appointed and the interest of the applicant in the
appointment;

(6) the nature and description of any
guardianship of any kind existing for the proposed
ward in any other state;

(7) the name and address of any person or
institution having the care and custody of the
proposed ward;

(8) the approximate value and description
of the proposed ward's property, including any
compensation, pension, insurance, or allowance to
which the proposed ward may be entitled;

(9) the name and address of any person whom
the applicant knows to hold a power of attorney signed
by the proposed ward and a description of the type of
power of attorney;

(10) if the proposed ward is a minor and if
known by the applicant:

(A) the name of each parent of the
proposed ward and state the parent's address or that
the parent is deceased;

(B) the name and age of each sibling,
if any, of the proposed ward and state the sibling's
address or that the sibling is deceased; and

(C) if each of the proposed ward's
parents and siblings are deceased, the names and
addresses of the proposed ward's next of kin who are
adults;

(11) if the proposed ward is a minor,
whether the minor was the subject of a legal or
conservatorship proceeding within the preceding
two-year period and, if so, the court involved, the
nature of the proceeding, and the final disposition,
if any, of the proceeding;

(12) if the proposed ward is an adult and
if known by the applicant:

(A) the name of the proposed ward's
spouse, if any, and state the spouse's address or that
the spouse is deceased;

(B) the name of each of the proposed
ward's parents and state the parent's address or that
the parent is deceased;

(C) the name and age of each of the
proposed ward's siblings, if any, and state the
sibling's address or that the sibling is deceased;

(D) the name and age of each of the
proposed ward's children, if any, and state the child's
address or that the child is deceased; and

(E) if the proposed ward's spouse and
each of the proposed ward's parents, siblings, and
children are deceased, or, if there is no spouse, parent,
adult sibling, or adult child, the names and
addresses of the proposed ward's next of kin who are
adults;

(13) facts showing that the court has
venue over the proceeding; and

(14) if applicable, that the person whom
the applicant desires to have appointed as a guardian
is a private professional guardian who is certified
under Subchapter C, Chapter 111, Government Code, and
has complied with the requirements of Section 697 of
this code.

Revisor's Note

Section 682(14), Texas Probate Code, refers to a
private professional guardian who has complied with
the "requirements of Section 697 of this code." The
revised law substitutes "requirements of Subchapter G,
Chapter 1104" for the quoted language because the
relevant requirements of Section 697, Texas Probate
Code, governing registration requirements for a
private professional guardian are revised in the
provisions of Subchapter G, Chapter 1104, of this
code.

[Sections 1101.002-1101.050 reserved for expansion]
SUBCHAPTER B. HEARING; JURY TRIAL

Revised Law

Sec. 1101.051. HEARING. (a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;
(B) care for his or her own physical health; and
(C) manage his or her property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

(b) A proposed ward must be present at the hearing unless the court, on the record or in the order, determines that a personal appearance is not necessary.

(c) The court may close the hearing at the request of the proposed ward or the proposed ward's counsel. (Tex. Prob. Code, Secs. 685(a), (c).)

Source Law

Sec. 685. (a) A proposed ward must be present at a hearing to appoint a guardian unless the court, on the record or in the order, determines that a personal appearance is not necessary. The court may close the hearing if the proposed ward or the proposed ward's counsel requests a closed hearing.

(c) At the hearing, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult person to feed, clothe, and shelter himself or herself, to care for the individual's own physical health, and to manage the individual's property or financial affairs;
(2) ascertain the age of any proposed ward who is a minor;
(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and
(4) inquire into the qualifications,
abilities, and capabilities of the person seeking to be appointed guardian.

Revised Law
Sec. 1101.052. JURY TRIAL. A proposed ward is entitled to a jury trial on request. (Tex. Prob. Code, Sec. 685(b).)

Source Law
(b) The proposed ward is entitled, on request, to a jury trial.

Revised Law
Sec. 1101.053. PROVISION OF RECORDS REQUIRED; USE OF RECORDS. (a) Before a hearing may be held for the appointment of a guardian, current and relevant medical, psychological, and intellectual testing records of the proposed ward must be provided to the attorney ad litem appointed to represent the proposed ward unless:

(1) the proposed ward is a minor or a person who must have a guardian appointed to receive funds due the person from any governmental source; or

(2) the court makes a finding on the record that:
   (A) current or relevant records do not exist; and
   (B) examining the proposed ward for the purpose of creating the records is impractical.

(b) Current medical, psychological, and intellectual testing records are a sufficient basis for a determination of guardianship.

(c) The findings and recommendations contained in the medical, psychological, and intellectual testing records are not binding on the court. (Tex. Prob. Code, Sec. 686.)
(b) Current medical, psychological, and intellectual testing records are a sufficient basis for a determination of guardianship.

(c) The findings and recommendations contained in the medical, psychological, and intellectual testing records are not binding on the court.

[Sections 1101.054-1101.100 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF NECESSITY OF GUARDIANSHIP; FINDINGS AND PROOF

Revised Law

Sec. 1101.101. FINDINGS AND PROOF REQUIRED. (a) Before appointing a guardian for a proposed ward, the court must:

1. (1) find by clear and convincing evidence that:
   a. (A) the proposed ward is an incapacitated person;
   b. (B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; and
   c. (C) the proposed ward's rights or property will be protected by the appointment of a guardian; and

2. (2) find by a preponderance of the evidence that:
   a. (A) the court has venue of the case;
   b. (B) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;
   c. (C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and
   d. (D) the proposed ward:
      i. (i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or
      ii. (ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a
guardianship unless the applicant proves each element required by this title. (Tex. Prob. Code, Secs. 684(a), (b), (c) (part).)

**Source Law**

Sec. 684. (a) Before appointing a guardian, the court must find by clear and convincing evidence that:

1. the proposed ward is an incapacitated person;
2. it is in the best interest of the proposed ward to have the court appoint a person as guardian of the proposed ward; and
3. the rights of the proposed ward or the proposed ward's property will be protected by the appointment of a guardian.

(b) Before appointing a guardian, the court must find by a preponderance of the evidence that:

1. the court has venue of the case;
2. the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;
3. if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and
4. the proposed ward is totally without capacity as provided by this code to care for himself or herself and to manage the individual's property, or the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the individual's property.

(c) The court may not grant an application to create a guardianship unless the applicant proves each element required by this code.

**Revisor's Note**

1. Section 684(b)(4), Texas Probate Code, refers to a proposed ward who is totally without capacity "as provided by this code." The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code establishing whether a proposed ward is totally without capacity are revised in Title 3 of this code, and this chapter is included in that title.
2. Section 684(c), Texas Probate Code, provides that the court may not grant an application to create a guardianship unless the applicant proves each element required by "this code," meaning the Texas
Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code establishing the elements required for granting an application to create a guardianship are revised in Title 3 of this code, and this chapter is included in that title.

Revised Law

Sec. 1101.102. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: RECURRING ACTS OR OCCURRENCES. A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences in the preceding six months and not by isolated instances of negligence or bad judgment. (Tex. Prob. Code, Sec. 684(c) (part).)

Source Law

(c) . . . A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment.

Revised Law

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: PHYSICIAN EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician performed not earlier than the 120th day before the date the application is
(b) The letter or certificate must:

1. describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:
   (A) handle business and managerial matters;
   (B) manage financial matters;
   (C) operate a motor vehicle;
   (D) make personal decisions regarding residence, voting, and marriage; and
   (E) consent to medical, dental, psychological, or psychiatric treatment;

2. in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:
   (A) has the mental capacity to vote in a public election; and
   (B) has the ability to safely operate a motor vehicle;

3. provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history if reasonably available;

4. state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:
   (A) understand or communicate;
   (B) recognize familiar objects and individuals;
   (C) perform simple calculations;
   (D) reason logically; and
   (E) administer to daily life activities;

5. state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to

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participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting; and

(7) include any other information required by the court.

(c) If the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician that complies with the requirements of Subsections (a) and (b). (Tex. Prob. Code, Secs. 687(a), (b).)

Source Law

Sec. 687. (a) Except as provided by Subsection (c) of this section, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application and based on an examination the physician performed not earlier than the 120th day before the date of the filing of the application. The letter or certificate must:

(1) describe the nature, degree, and severity of incapacity, including functional deficits, if any, regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;
(C) operate a motor vehicle;
(D) make personal decisions regarding residence, voting, and marriage; and
(E) consent to medical, dental, psychological, or psychiatric treatment;
(2) provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history if reasonably available;
(3) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the person's physical or mental health, including the proposed ward's ability to:
(A) understand or communicate;
(B) recognize familiar objects and individuals;
(C) perform simple calculations;
(D) reason logically; and
(E) administer to daily life activities;
(4) state whether any current medication affects the demeanor of the proposed ward or the proposed ward's ability to participate fully in a court proceeding;
(5) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;
(6) in providing a description under Subdivision (1) of this subsection regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:
(A) has the mental capacity to vote in a public election; and
(B) has the ability to safely operate a motor vehicle; and
(7) include any other information required by the court.
(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing. A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c)(2) of this section, shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a written letter or certificate from the physician that complies with the requirements of Subsection (a) of this section.

Revised Law

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING MENTAL RETARDATION. If mental retardation is the basis of the proposed ward's alleged incapacity, the court may not grant an
application to create a guardianship for the proposed ward unless
the applicant presents to the court:

(1) a written letter or certificate that:

(A) complies with Sections 1101.103(a) and (b); and

(B) states that the physician has made a
determination of mental retardation in accordance with Section
593.005, Health and Safety Code; or

(2) both:

(A) written documentation showing that, not
earlier than 24 months before the hearing date, the proposed ward
has been examined by a physician or psychologist licensed in this
state or certified by the Department of Aging and Disability
Services to perform the examination, in accordance with rules of
the executive commissioner of the Health and Human Services
Commission governing examinations of that kind; and

(B) the physician's or psychologist's written
findings and recommendations, including a statement as to whether
the physician or psychologist has made a determination of mental
retardation in accordance with Section 593.005, Health and Safety
Code. (Tex. Prob. Code, Sec. 687(c).)

Source Law

(c) If the basis of the proposed ward's alleged
incapacity is mental retardation, the court may not
grant an application to create a guardianship for the
proposed ward unless the applicant presents to the
court:

(1) a written letter or certificate that:

(A) complies with Subsection (a) of
this section; and

(B) states that the physician has
made a determination of mental retardation in
accordance with Section 593.005, Health and Safety
Code; or

(2) both:

(A) written documentation showing
that, not earlier than 24 months before the date of the
hearing, the proposed ward has been examined by a
physician or psychologist licensed in this state or
certified by the Department of Aging and Disability
Services to perform the examination, in accordance
with rules of the executive commissioner of the Health
and Human Services Commission governing examinations
of that kind; and

(B) the physician's or psychologist's
written findings and recommendations, including a
statement as to whether the physician or psychologist has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code.

Revised Law

Sec. 1101.105. PROHIBITION AGAINST CONSIDERATION OF AGE AS SOLE FACTOR IN APPOINTMENT OF GUARDIAN FOR ADULTS. In determining whether to appoint a guardian for an incapacitated person who is not a minor, the court may not use age as the sole factor. (Tex. Prob. Code, Sec. 602 (part).)

Source Law

Sec. 602. [A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person.] If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. . . .

Revised Law

Sec. 1101.106. EVIDENCE OF NECESSITY OF GUARDIANSHIP TO RECEIVE GOVERNMENTAL FUNDS. A certificate of the executive head or a representative of a bureau, department, or agency of the government, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity, is prima facie evidence of the necessity for the appointment of a guardian. (Tex. Prob. Code, Sec. 684(e.).)

Source Law

(e) A certificate of the executive head or a representative of the bureau, department, or agency of the government, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity, is prima facie evidence of the necessity for the appointment of a guardian.

[Sections 1101.107-1101.150 reserved for expansion]

SUBCHAPTER D. COURT ACTION

Revised Law

Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY. (a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her
property, operate a motor vehicle, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);
(2) that the guardian has full authority over the incapacitated person;
(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;
(4) whether the person is totally incapacitated because of a mental condition; and
(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election. (Tex. Prob. Code, Sec. 693(a).)

Source Law

Sec. 693. (a) If it is found that the proposed ward is totally without capacity to care for himself or herself, to manage the individual's property, to operate a motor vehicle, and to vote in a public election, the court may appoint a guardian of the individual's person or estate, or both, with full authority over the incapacitated person except as provided by law. An order appointing a guardian under this subsection must contain findings of fact and specify:

(1) the information required by Subsection (c) of this section;
(2) that the guardian has full authority over the incapacitated person;
(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 776 of this code;
(4) whether the person is totally incapacitated because of a mental condition; and
(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election.

Revised Law

Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY. (a) If it is found that the proposed ward lacks the
capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person retains the right to vote in a public election or maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code. (Tex. Prob. Code, Sec. 693(b).)

Source Law

(b) If it is found that the person lacks the capacity to do some, but not all, of the tasks necessary to care for the individual's property, the court may appoint a guardian with limited powers and permit the individual to care for himself or herself or to manage the individual's property commensurate with the individual's ability. An order appointing a guardian under this subsection must contain findings of fact and specify:

(1) the information required by Subsection (c) of this section;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the person or the management of the person's property by the guardian;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 776 of this code; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person retains the right to vote in a public election or maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521,
Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING GUARDIAN. (a) A court order appointing a guardian must specify:

(1) the name of the person appointed;

(2) the name of the ward;

(3) whether the guardian is of the person or estate of the ward, or both;

(4) the amount of any bond required;

(5) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and

(6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law.

(b) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave. (Tex. Prob. Code, Secs. 693(c), (d), (e).)

Source Law

(c) The order of the court appointing a guardian must specify:

(1) the name of the person appointed;

(2) the name of the ward;

(3) whether the guardian is of the person or the estate, or of both, of the ward;

(4) the amount of any bond required;

(5) if it is a guardianship of the estate and the court deems an appraisal is necessary, one or more but not more than three disinterested persons to appraise the estate and to return the appraisement to the court; and

(6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law.

(d) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(e) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication

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that the incapacitated person no longer requires the guardianship may not be filed without special leave.

Revisor's Note
(1) Section 693(e), Texas Probate Code, provides that an order appointing a guardian or successor guardian may specify a period "of not more than one year" during which special leave is required to file a petition for adjudication that a ward no longer requires a guardianship. Section 693(e), Texas Probate Code, is identical to Section 694(c), Texas Probate Code, which is revised in this code as Section 1202.001(c). For the convenience of the reader and to avoid duplicative provisions in this title, the revised law substitutes a reference to Section 1202.001(c) for the quoted language.

(2) Section 693(e), Texas Probate Code, refers to "the incapacitated person" for whom a guardian or successor guardian has been appointed. Section 601(31), Texas Probate Code, revised in this code as Section 1002.030, defines "ward" as a person for whom a guardian has been appointed. The revised law substitutes "the ward" for "the incapacitated person" for consistency of terminology in this title.

Revised Law
Sec. 1101.154. APPOINTMENT OF GUARDIAN OF ESTATE FOR CERTAIN MINORS PROHIBITED. A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Chapter 1355. (Tex. Prob. Code, Sec. 684(d).)

Source Law
(d) A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Section 887 of this code.

Revised Law
Sec. 1101.155. DISMISSAL OF APPLICATION. If it is found that a proposed ward who is an adult possesses the capacity to care for himself or herself and manage his or her property as would a
reasonably prudent person, the court shall dismiss an application
for guardianship. (Tex. Prob. Code, Sec. 692.)

Sec. 692. If it is found that an adult person
possesses the capacity to care for himself or herself
and to manage the individual's property as would a
reasonably prudent person, the court shall dismiss the
application for guardianship.

Section 692, Texas Probate Code, refers to the
capacity of an adult "person" to care for himself or
herself and to manage the individual's property. The
revised law substitutes "proposed ward" for "person"
because, in context, it is clear that the referenced
adult person is the person for whom the guardianship is
proposed.

CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

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CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

Sec. 1102.001. COURT-INITIATED INVESTIGATION. If a court
has probable cause to believe that a person domiciled or found in
the county in which the court is located is an incapacitated person,
and the person does not have a guardian in this state, the court
shall appoint a guardian ad litem or court investigator to
investigate the person's conditions and circumstances to determine
whether:

(1) the person is an incapacitated person; and
(2) a guardianship is necessary. (Tex. Prob. Code,
Sec. 683(a) (part).)
Sec. 683. (a) If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate the person's conditions and circumstances to determine whether the person is an incapacitated person and whether a guardianship is necessary.

Revised Law

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION. To establish probable cause under Section 1102.001, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or

(2) a written letter or certificate from a physician who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

(A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and

(B) based on an examination the physician performed not earlier than the 120th day before that date. (Tex. Prob. Code, Sec. 683(b).)

Source Law

(b) To establish probable cause under this section, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 683A of this code; or

(2) a written letter or certificate from a physician who has examined the person believed to be incapacitated that satisfies the requirements of Section 687(a) of this code, except that the letter must be dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Subsection (a) of this section and be based on an examination the physician performed not earlier than the 120th day before that date.

Revisor's Note

(1) Section 683(b), Texas Probate Code,
provides that the court may require certain documents to "establish probable cause under this section," meaning Section 683. The relevant portion of Section 683 requiring a court to have "probable cause" to believe that a person is an incapacitated person for purposes of that section is revised in this chapter as Section 1102.001, and the revised law is drafted accordingly.

(2) Section 683(b)(2), Texas Probate Code, refers to the appointment of a guardian ad litem or court investigator under "Subsection (a) of this section," meaning Section 683(a), Texas Probate Code. Section 683(a) is revised as Sections 1102.001 and 1102.004 of this chapter. For clarity and the convenience of the reader, the revised law refers only to Section 1102.001 because the relevant portion of Section 683 relating to the appointment of the guardian ad litem or court investigator is revised as that section.

Revised Law
Sec. 1102.003. INFORMATION LETTER. An information letter under Section 1102.002(1) about a person believed to be incapacitated may:

(1) include the person's name, address, telephone number, county of residence, and date of birth;

(2) state whether the person's residence is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the person and the interested person submitting the letter;

(4) contain the names and telephone numbers of any known friends and relatives of the person;

(5) state whether a guardian of the person or estate has been appointed in this state for the person;

(6) state whether the person has executed a power of
attorney and, if so, the designee's name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list the amount and source of any monthly income of the person;

(9) describe the nature and degree of the person's alleged incapacity; and

(10) state whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate. (Tex. Prob. Code, Sec. 683A.)

Source Law

Sec. 683A. An information letter under Section 683(b)(1) of this code about a person believed to be incapacitated may:

(1) include the name, address, telephone number, county of residence, and date of birth of the person;

(2) state whether the residence of the person is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the interested person and the person;

(4) contain the names and telephone numbers of any known friends and relatives of the person;

(5) state whether a guardian of the person or estate of the person has been appointed in this state;

(6) state whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list any amount and source of monthly income of the person; and

(9) describe the nature and degree of the person's alleged incapacity and include a statement of whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

Revised Law

Sec. 1102.004. APPLICATION FOR GUARDIANSHIP FOLLOWING INVESTIGATION. A guardian ad litem or court investigator who, after an investigation as prescribed by Section 1102.001, believes that the person is an incapacitated person and that a guardianship is necessary shall file an application for the appointment of a guardian of the person or estate, or both, for the person. (Tex.
Prob. Code, Sec. 683(a) (part).

Source Law

Sec. 683. (a) . . . If after the investigation the guardian ad litem or court investigator believes that the person is an incapacitated person and that a guardianship is necessary, the guardian ad litem or court investigator shall file an application for the appointment of a guardian of the person or estate, or both, for the person.

Revised Law

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) A court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of the proposed ward's estate, regardless of whether a guardianship is created for the proposed ward.

(b) After examining the ward's or proposed ward's assets and determining that the ward or proposed ward is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury. (Tex. Prob. Code, Sec. 683(c).)

Source Law

(c) A court that appoints a guardian ad litem under Subsection (a) of this section may authorize compensation of the guardian ad litem from available funds of the proposed ward's estate, regardless of whether a guardianship is created for the proposed ward. If after examining the ward's or proposed ward's assets the court determines the ward or proposed ward is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Revisor's Note

Section 683(c), Texas Probate Code, refers to the appointment of a guardian ad litem under "Subsection (a) of this section," meaning Section 683(a), Texas Probate Code. The revised law refers only to Section 1102.001 of this chapter for the reason stated in the revisor's note to Section 1102.002 of this chapter.

CHAPTER 1103. PROCEDURE TO APPOINT GUARDIAN FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS AS ADULTS

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CHAPTER 1103. PROCEDURE TO APPoint GUARDIAN FOR CERTAIN MINORS
REQUIRING GUARDIANSHIPS AS ADULTS

Revised Law
Sec. 1103.001. APPLICATION FOR APPOINTMENT OF GUARDIAN.
Not earlier than the 180th day before the proposed ward's 18th
birthday, a person may file an application under Section 1101.001
for the appointment of a guardian of the person or estate, or both,
of a proposed ward who:
(1) is a minor; and
(2) because of incapacity will require a guardianship
after the proposed ward is no longer a minor. (Tex. Prob. Code, Sec.
682A(a) (part).)

Source Law
Sec. 682A. (a) If a minor is a person who,
because of incapacity, will require a guardianship
after the ward is no longer a minor, a person may file
an application under Section 682 of this code for the
appointment of a guardian of the person or the estate,
or both, of the proposed ward not earlier than the
180th day before the proposed ward's 18th
birthday. . . .

Revised Law
Sec. 1103.002. APPOINTMENT OF CONSERVATOR AS GUARDIAN
WITHOUT HEARING. (a) Notwithstanding any other law, if the
applicant who files an application under Section 1101.001 or
1103.001 is a person who was appointed conservator of a disabled
child for whom a court obtains jurisdiction under Section 606(k),
the applicant may present to the court a written letter or
certificate that meets the requirements of Sections 1101.103(a) and
(b).
(b) If, on receipt of the letter or certificate described by
Subsection (a), the court is able to make the findings required by
Section 1101.101, the court, notwithstanding Subchapter C, Chapter
1104, shall:

(1) appoint the conservator as guardian without conducting a hearing; and

(2) to the extent possible preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction under Section 606(k). (Tex. Prob. Code, Secs. 682A(a-1), (a-2).)

Source Law

(a-1) Notwithstanding any other law, if the applicant who files an application under Subsection (a) of this section or Section 682 of this code is a person who was appointed conservator of a disabled child for whom a court obtains jurisdiction under Section 606(k) of this code, the applicant may present to the court a written letter or certificate that meets the requirements of Section 687(a) of this code.

(a-2) If, on receipt of the letter or certificate described by Subsection (a-1) of this section, the court is able to make the findings required by Section 684 of this code, the court, notwithstanding Section 677 of this code, shall appoint the conservator as guardian without conducting a hearing and shall, to the extent possible, preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction under Section 606(k) of this code.

Revisor’s Note

(1) Section 682A(a-1), Texas Probate Code, refers to an application filed under "Subsection (a) of this section," meaning Section 682A(a), Texas Probate Code. Section 682A(a) is revised as Sections 1103.001 and 1103.003 of this chapter. For clarity and the convenience of the reader, the revised law refers only to Section 1103.001 because the relevant portion of Section 682A(a) relating to the filing of the application is revised as that section.

(2) Section 682A(a-2), Texas Probate Code, refers to "the findings required by Section 684 of this code." Section 684 is revised in this code as Sections 1101.101, 1101.102, 1101.106, and 1101.154. For clarity and the convenience of the reader, the revised law refers only to Section 1101.101 because the relevant portion of Section 684 relating to required
findings is revised as that section.

Revised Law

Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP. If the application filed under Section 1103.001 is heard before the proposed ward's 18th birthday, a guardianship created under this chapter may not take effect and the person appointed guardian may not take the oath as required under Section 1105.051 or give a bond as required under Section 1105.101 until the proposed ward's 18th birthday. (Tex. Prob. Code, Sec. 682A(a) (part).)

Source Law

(a) If the application is heard before the proposed ward's 18th birthday, a guardianship created under this section may not take effect and the person appointed guardian may not give a bond or take the oath as required under Section 700 or 702 of this code until the proposed ward's 18th birthday.

Revised Law

Sec. 1103.004. SETTLEMENT AND CLOSING OF PRIOR GUARDIANSHIP. Notwithstanding Section 1202.001(b), the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Section 1103.001 is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or

(2) the guardian appointed by the court, after a hearing on the application, has qualified under Section 1105.002.

(Tex. Prob. Code, Sec. 682A(b).)

Source Law

(b) Notwithstanding Section 694(b) of this code, the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Subsection (a) of this section is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or

(2) the guardian appointed by the court after a hearing on the application has qualified under Section 699 of this code.
Revisor's Note

Section 682A(b), Texas Probate Code, refers to an application filed under "Subsection (a) of this section," meaning Section 682A(a), Texas Probate Code. The revised law substitutes a reference to Section 1103.001 of this chapter for the reason stated in Revisor's Note (1) to Section 1103.002 of this chapter.

CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO APPOINTMENT OF GUARDIAN

Sec. 1104.001. GUARDIAN OF THE PERSON OR ESTATE

Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON

[Sections 1104.003-1104.050 reserved for expansion]

SUBCHAPTER B. SELECTION OF GUARDIAN FOR MINOR

Sec. 1104.051. GUARDIAN OF MINOR CHILDREN

Sec. 1104.052. GUARDIAN FOR MINOR ORPHAN

Sec. 1104.053. GUARDIAN DESIGNATED BY WILL OR WRITTEN DECLARATION

Sec. 1104.054. SELECTION OF GUARDIAN BY MINOR

[Sections 1104.055-1104.100 reserved for expansion]

SUBCHAPTER C. SELECTION OF GUARDIAN FOR INCAPACITATED PERSON OTHER THAN MINOR

Sec. 1104.101. APPOINTMENT ACCORDING TO CIRCUMSTANCES AND BEST INTERESTS

Sec. 1104.102. APPOINTMENT PREFERENCES

Sec. 1104.103. DESIGNATION OF GUARDIAN BY WILL OR WRITTEN DECLARATION

[Sections 1104.104-1104.150 reserved for expansion]

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SUBCHAPTER I. ACCESS TO CRIMINAL HISTORY RECORDS
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Sec. 1104.001. GUARDIAN OF THE PERSON OR ESTATE. (a) Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another person may be appointed guardian of the estate, if it is in the best interest of the incapacitated person or ward.

(b) Subsection (a) does not prohibit the joint appointment, if the court finds it to be in the best interest of the incapacitated person or ward, of:

(1) a husband and wife;
(2) joint managing conservators;
(3) co-guardians appointed under the laws of a jurisdiction other than this state; or
(4) both parents of an adult who is incapacitated if
the incapacitated person:
   (A) has not been the subject of a suit affecting
the parent-child relationship; or
   (B) has been the subject of a suit affecting the
parent-child relationship and both of the incapacitated person's
parents were named as joint managing conservators in the suit but
are no longer serving in that capacity. (Tex. Prob. Code, Sec. 690.)

Source Law
Sec. 690. Only one person may be appointed as
guardian of the person or estate, but one person may be
appointed guardian of the person and another of the
estate, if it is in the best interest of the ward.
Nothing in this section prohibits the joint
appointment, if the court finds it to be in the best
interest of the ward, of:
   (1) a husband and wife;
   (2) joint managing conservators;
   (3) co-guardians appointed under the laws
of a jurisdiction other than this state; or
   (4) both parents of an adult who is
incapacitated if the incapacitated person:
   (A) has not been the subject of a suit
affecting the parent-child relationship; or
   (B) has been the subject of a suit
affecting the parent-child relationship and both of
the incapacitated person's parents were named as joint
managing conservators in the suit but are no longer
serving in that capacity.

Revisor's Note
Section 690, Texas Probate Code, refers to
appointing a guardian for a "ward." Section 1002.030
defines "ward" to mean "a person for whom a guardian
has been appointed." Throughout this chapter, the
revised law adds or substitutes "incapacitated person," as appropriate, to include a person for whom a
guardian has not yet been appointed or to clarify that
a guardian has not yet been appointed for the person.

Revised Law
Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before
appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent consistent with other provisions of this title, shall give due consideration to the preference indicated by the incapacitated person. (Tex. Prob. Code, Sec. 689.)

Source Law
Sec. 689. Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent not inconsistent with other provisions of this chapter, shall give due consideration to the preference indicated by the incapacitated person.

[Sections 1104.003-1104.050 reserved for expansion]

SUBCHAPTER B. SELECTION OF GUARDIAN FOR MINOR

Revised Law
Sec. 1104.051. GUARDIAN OF MINOR CHILDREN. (a) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity.

(b) The rights of parents who do not live together are equal. The court shall assign the guardianship of their minor children to one parent considering only the best interests of the children.

(c) If one parent is deceased, the surviving parent is the natural guardian of the person of the minor children and is entitled to be appointed guardian of the minor children's estates. (Tex. Prob. Code, Sec. 676(b).)

Source Law
(b) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity. If one parent is
dead, the survivor is the natural guardian of the
person of the minor children and is entitled to be
appointed guardian of their estates. The rights of
parents who do not live together are equal, and the
guardianship of their minor children shall be assigned
to one or the other, considering only the best
interests of the children.

Revised Law

Sec. 1104.052. GUARDIAN FOR MINOR ORPHAN. In appointing a
guardian for a minor orphan:

(1) if the last surviving parent did not appoint a
guardian, the nearest ascendant in the direct line of the minor is
entitled to guardianship of both the person and the estate of the
minor;

(2) if more than one ascendant exists in the same
degree in the direct line of the minor, the court shall appoint one
ascendant according to circumstances and considering the minor’s
best interests;

(3) if the minor does not have an ascendant in the
direct line of the minor:

(A) the court shall appoint the nearest of kin;

or

(B) if two or more persons are in the same degree
of kinship to the minor, the court shall appoint one of those
persons according to circumstances and considering the minor’s best
interests; and

(4) if the minor does not have a relative who is
eligible to be guardian, or if none of the eligible persons apply to
be guardian, the court shall appoint a qualified person as
guardian. (Tex. Prob. Code, Sec. 676(c).)

Source Law

(c) In appointing a guardian for a minor orphan:

(1) if the last surviving parent did not
appoint a guardian, the nearest ascendant in the
direct line of the minor is entitled to guardianship of
both the person and the estate of the minor;

(2) if more than one ascendant exists in
the same degree in the direct line, one ascendant shall
be appointed, according to circumstances and
considering the best interests of the minor;

(3) if the minor has no ascendant in the
direct line, the nearest of kin shall be appointed, and
if there are two or more persons in the same degree of
kinship, one shall be appointed, according to
circumstances and considering the best interests of
the minor; and
(4) if no relative of the minor is eligible
to be guardian, or if no eligible person applies to be
guardian, the court shall appoint a qualified person
as guardian.

Revised Law
Sec. 1104.053. GUARDIAN DESIGNATED BY WILL OR WRITTEN
DECLARATION. (a) Notwithstanding Section 1104.001 or 1104.051,
the surviving parent of a minor may by will or written declaration
appoint any eligible person to be guardian of the person of the
parent's minor children after the parent dies or in the event of the
parent's incapacity.

(b) After the surviving parent of a minor dies or if the
court finds the surviving parent is an incapacitated person, the
court shall appoint the person designated in the will or
declaration to serve as guardian of the person of the parent's minor
children in preference to another otherwise entitled to serve as
guardian under this title, unless the court finds that the person
designated to serve as guardian:

(1) is disqualified;
(2) is deceased;
(3) refuses to serve; or
(4) would not serve the minor children's best
interests.

(c) On compliance with this title, an eligible person is
also entitled to be appointed guardian of the minor children's
estates after the surviving parent dies or in the event of the
surviving parent's incapacity. (Tex. Prob. Code, Secs. 676(d),
(e), (f).)

Source Law
(d) Notwithstanding Subsection (b) of this
section and Section 690 of this code, the surviving
parent of a minor may by will or written declaration
appoint any eligible person to be guardian of the
person of the parent's minor children after the death
of the parent or in the event of the parent's
incapacity.

(e) After the death of the surviving parent of a
minor or if the court finds the surviving parent is an
incapacitated person, as appropriate, the court shall
appoint the person designated in the will or
declaration to serve as guardian of the person of the
parent's minor children in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the minor children.

(f) On compliance with this chapter, an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent or in the event of the parent's incapacity.

Revised Law
Sec. 1104.054. SELECTION OF GUARDIAN BY MINOR. (a) Notwithstanding any other provision of this subchapter, if an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor may select the guardian by a writing filed with the clerk, if the court finds that the selection is in the minor's best interest and approves the selection.

(b) Notwithstanding any other provision of this subchapter, a minor at least 12 years of age may select another guardian of the minor's person or estate, or both, if the minor has a guardian appointed by the court, by will of the minor's parent, or by written declaration of the minor's parent, and that guardian dies, resigns, or is removed from guardianship. The minor must make the selection by filing an application in open court in person or by an attorney. The court shall make the appointment and revoke the letters of guardianship of the former guardian if the court is satisfied that:

(1) the person selected is suitable and competent; and

(2) the appointment of the person is in the minor's best interest. (Tex. Prob. Code, Secs. 676(a), 680.)

Source Law
Sec. 676. (a) Except as provided by Section 680 of this code, the selection of a guardian for a minor is governed by this section.

Sec. 680. (a) When an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor, by writing filed with the clerk, may choose the guardian if the court approves the choice and finds that the choice is in the best interest of the minor.

(b) A minor at least 12 years of age may select another guardian of either the minor's person or estate, or both, if the minor has a guardian appointed by the court or the minor has a guardian appointed by will or written declaration of the parent of the minor and that guardian dies, resigns, or is removed from
guardianship. If the court is satisfied that the person selected is suitable and competent and that the appointment of the person is in the best interest of the minor, it shall make the appointment and revoke the letters of guardianship of the former guardian. The minor shall make the selection by filing an application in open court in person or by attorney.

Revisor's Note

Section 676(a), Texas Probate Code, states that "[e]xcept as provided by Section 680 of this code, the selection of a guardian for a minor is governed by this section." With the exception of this section, this subchapter consists only of the revised provisions of Section 676. Consequently, the revised law for this section sets out the provisions of Section 680 and retains the concept that these provisions govern over any conflicting provisions of Section 676 by use of the phrase "[n]otwithstanding any other provision of this subchapter."

[Sections 1104.055-1104.100 reserved for expansion]

SUBCHAPTER C. SELECTION OF GUARDIAN FOR INCAPACITATED PERSON OTHER THAN MINOR

Revised Law

Sec. 1104.101. APPOINTMENT ACCORDING TO CIRCUMSTANCES AND BEST INTERESTS. The court shall appoint a guardian for an incapacitated person other than a minor according to the circumstances and considering the incapacitated person's best interests. (Tex. Prob. Code, Sec. 677(a) (part).)

Source Law

Sec. 677. (a) The court shall appoint a guardian for a person other than a minor according to the circumstances and considering the best interests of the ward. . . .

Revisor's Note

Section 677(a), Texas Probate Code, refers to a court appointment of a guardian for a "person other than a minor." The revised law substitutes "incapacitated person" for the reference to "person" because under Sections 684 and 693, Texas Probate
Code, the relevant parts of which are revised as Sections 1101.101, 1101.151, and 1101.152 of this code, a court may appoint a guardian for a person only if the court finds that the person is an incapacitated person.

Revised Law
Sec. 1104.102. APPOINTMENT PREFERENCES. If the court finds that two or more eligible persons are equally entitled to be appointed guardian of an incapacitated person:

(1) the incapacitated person's spouse is entitled to the guardianship in preference to any other person, if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the incapacitated person is entitled to the guardianship, if the incapacitated person's spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) are related in the same degree of kinship to the incapacitated person; or

(C) neither the incapacitated person's spouse nor any person related to the incapacitated person is an eligible person. (Tex. Prob. Code, Sec. 677(a) (part).)

Source Law
(a) . . . If the court finds that two or more eligible persons are equally entitled to be appointed guardian:

(1) the ward's spouse is entitled to the guardianship in preference to any other person if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the ward is entitled to the guardianship if the ward's spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) of this section refuse to serve;
(B) two or more persons entitled to
serve under Subdivision (2) of this section are
related in the same degree of kinship to the ward; or
(C) neither the ward's spouse or any
person related to the ward is an eligible person.

Revised Law

Sec. 1104.103. DESIGNATION OF GUARDIAN BY WILL OR WRITTEN DECLARATION. (a) The surviving parent of an adult individual who is an incapacitated person may, if the parent is the guardian of the person of the adult individual, by will or written declaration appoint an eligible person to serve as guardian of the person of the adult individual after the parent dies or in the event of the parent's incapacity.

(b) After the surviving parent dies or if the court finds the surviving parent has become an incapacitated person after being appointed the adult individual's guardian, the court shall appoint the person designated in the will or declaration to serve as guardian in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;
(2) is deceased;
(3) refuses to serve; or
(4) would not serve the adult individual's best interests.

(c) On compliance with this title, the eligible person appointed under Subsection (b) is also entitled to be appointed guardian of the estate of the adult individual after the surviving parent dies or in the event of the surviving parent's incapacity, if the surviving parent is the guardian of the estate of the adult individual. (Tex. Prob. Code, Secs. 677(b), (c), (d).)

Source Law

(b) The surviving parent of an adult individual who is an incapacitated person may by will or written declaration appoint an eligible person to be guardian of the person of the adult individual after the parent's death or in the event of the parent's incapacity if the parent is the guardian of the person of the adult individual.

(c) After the death of the surviving parent of an adult individual who is an incapacitated person or
if the court finds the surviving parent becomes an
incapacitated person after being appointed the
individual's guardian, as appropriate, the court shall
appoint the person designated in the will or
declaration to serve as guardian in preference to
those otherwise entitled to serve as guardian under
this chapter unless the court finds that the
designated guardian is disqualified, is dead, refuses
to serve, or would not serve the best interests of the
adult individual.

(d) On compliance with this chapter, the
eligible person appointed under Subsection (c) of this
section is also entitled to be appointed guardian of
the adult individual's estate after the death of the
individual's parent or in the event of the parent's
incapacity if the individual's parent is the guardian
of the individual's estate.

[Sections 1104.104-1104.150 reserved for expansion]

SUBCHAPTER D. WRITTEN DECLARATION BY CERTAIN PARENTS TO APPOINT
GUARDIAN FOR THEIR CHILDREN

Revised Law

Sec. 1104.151. DEFINITIONS. In this subchapter:

(1) "Declaration" means a written declaration of a
person that:

(A) appoints a guardian for the person's child
under Section 1104.053(a) or 1104.103(a); and

(B) satisfies the requirements of this
subdivision and Sections 1104.152, 1104.153, 1104.154, 1104.156,
1104.159, and 1104.160.

(2) "Self-proving affidavit" means an affidavit the
form and content of which substantially comply with the
requirements of Section 1104.153.

(3) "Self-proving declaration" includes a
self-proving affidavit that is attached or annexed to a
declaration. (Tex. Prob. Code, Secs. 677A(h), 677B(a).)

Source Law

[Sec. 677A]

(h) In this section, "self-proving affidavit"
means an affidavit the form and content of which
substantially complies with the requirements of
Subsection (g) of this section.

Sec. 677B. (a) In this section:

(1) "Declaration" means a written
declaration of a person that:

(A) appoints a guardian for the
person's child under Section 676(d) or 677(b) of this
code; and

(B) satisfies the requirements of
Section 677A of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 677A(g) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

Revised Law

Sec. 1104.152. REQUIREMENTS FOR DECLARATION. (a) A declaration appointing an eligible person to be guardian of the person of a parent's child under Section 1104.053(a) or 1104.103(a) must be signed by the declarant and be:

(1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is not written wholly in the declarant's handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:

(1) the competence of the declarant; and

(2) the execution of the declaration. (Tex. Prob. Code, Secs. 677A(a), (b), (c).)

Source Law

Sec. 677A. (a) A written declaration appointing an eligible person to be guardian of the person of the parent's child under Section 676(d) or 677(b) of this code must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) of this section may have attached a
self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

Revisor's Note

(1) Section 677A(a), Texas Probate Code, refers to certain "written" declarations under Section 676(d) or 677(b) of that code. The revised law omits the reference to "written" as unnecessary because Section 1104.151 of this chapter defines a "declaration" for purposes of this subchapter to mean a "written declaration" and because Sections 676(d) and 677(b), Texas Probate Code, revised as Sections 1104.053(a) and 1104.103(a) of this chapter, respectively, apply only to a will or "written declaration."

(2) Section 677A(b), Texas Probate Code, states that a declaration may be signed by another person for the declarant under certain circumstances. The revised law adds "[n]otwithstanding Subsection (a)" to clarify that the statement is an exception to the general requirement included in Subsection (a) of the revised law that a declaration must be signed by the declarant.

Revised Law

Sec. 1104.153. FORM AND CONTENT OF DECLARATION AND SELF-PROVING AFFIDAVIT. (a) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child.

(b) The following form may be used but is not required to be used:

DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN
IN THE EVENT OF MY DEATH OR INCAPACITY

I, __________, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

______________________________ ______________________________
______________________________ ______________________________
______________________________ ______________________________

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I designate ________ to serve as guardian of the person of my (child or children), ________ as first alternate guardian of the person of my (child or children), ________ as second alternate guardian of the person of my (child or children), and ________ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate ________ to serve as guardian of the estate of my (child or children), ________ as first alternate guardian of the estate of my (child or children), ________ as second alternate guardian of the estate of my (child or children), and ________ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this ________ day of ________, 20__.

______________________________                  ______________________________
Declarant                                                Witness

______________________________ ______________________________
Witness                                                Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared __________, the declarant, and ________ and ________ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the
declaration as witnesses, and that the declarant appeared to them
to be of sound mind.

______________________________
Declarant

______________________________ ______________________________
AffiantAFFIANTAFFIANT

Subscribed and sworn to before me by __________, the above
named declarant, and __________ (names of affiants) affiants, on
this ___ day of __________, 20__.

___________________________
Notary Public in and for the
State of Texas
My Commission expires:

(Tex. Prob. Code, Sec. 677A(g.).)

Source Law

(g) A declaration and affidavit may be in any
form adequate to clearly indicate the declarant's
intention to designate a guardian for the declarant's
child. The following form may, but need not, be used:

DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN
IN THE EVENT OF MY DEATH OR INCAPACITY
I, __________, make this Declaration to appoint
as guardian for my child or children, listed as
follows, in the event of my death or incapacity:
________________________ ________________________
________________________ ________________________
________________________ ________________________
(add blanks as appropriate)
I designate __________ to serve as guardian of
the person of my (child or children), __________ as first alternate guardian of the person of my (child or
children), __________ as second alternate guardian of
the person of my (child or children), and __________ as
third alternate guardian of the person of my (child or
children).
I direct that the guardian of the person of my
(child or children) serve (with or without) bond.

(If applicable) I designate __________ to serve
as guardian of the estate of my (child or children),
____________ as first alternate guardian of the estate
of my (child or children), __________ as second
alternate guardian of the estate of my (child or
children), and __________ as third alternate guardian
of the estate of my (child or children).
If any guardian or alternate guardian dies, does
not qualify, or resigns, the next named alternate
guardian becomes guardian of my (child or children).

Signed this __________ day of __________, 20__.

______________________________
Declarant
SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared __________, the declarant, and __________ and __________ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

______________________________
Declarant

________________________ ________________________
Affiant

Subscribed and sworn to before me by __________, the above named declarant, and __________ (names of affiants) affiants, on this ___ day of __________, 20__.  

_________________________
Notary Public in and for the State of Texas
My Commission expires:

Revised Law

Sec. 1104.154. ALTERNATIVE TO SELF-PROVING AFFIDAVIT. (a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _________________________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ___ day of ________, 20__.

_________________________
Declarant

The undersigned, __________ and __________, each being 14 years of age or older, after
being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of __________, 20__.

___________________________
Witness

___________________________
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of ______________, 20__.

___________________________
Notary Public in and for the State of Texas My Commission expires:

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.153 is considered self-proved. (Tex. Prob. Code, Secs. 677A(i), (j).)

Source Law

(i) As an alternative to the self-proving affidavit authorized by Subsection (g) of this section, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, ______________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of __________, 20__.
The undersigned, _____________________ and _____________________, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this _____ day of ______________, 20__.

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of ______________, 20__.

Notary Public in and for the State of Texas
My Commission Expires:____________________

(j) A declaration that is executed as provided by Subsection (i) of this section is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Subsection (g) of this section is considered self-proved.

Sec. 1104.155. ALTERNATE SELF-PROVING OF DECLARATION. At any time during the declarant's lifetime, a declaration described by Section 1104.152(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107. (Tex. Prob. Code, Sec. 677B(c).)

(c) At any time during the declarant's lifetime, a written declaration described by Section 677A(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

Section 677B(c), Texas Probate Code, authorizes certain written declarations to be self-proved in the same form and manner as a will written in the testator's handwriting is self-proved "under Section 60" of that code. The relevant part of Section 60 that relates to a written will that is self-proved was revised by Chapter 680, Acts of the 81st Legislature,
Regular Session, 2009, as Section 251.107 of this code. The revised law is drafted accordingly.

Revised Law
Sec. 1104.156. FILING OF DECLARATION AND SELF-PROVING AFFIDAVIT. The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. (Tex. Prob. Code, Sec. 677A(d).)

Source Law
(d) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

Revised Law
Sec. 1104.157. PROOF OF DECLARATION. (a) The court may admit a declaration that is self-proved into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(b) A declaration described by Section 1104.152(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator's handwriting is proved under Section 256.154.

(c) A declaration described by Section 1104.152(a)(2) that is not self-proved may be proved in the same manner that an attested written will produced in court is proved under Section 256.153.

(Tex. Prob. Code, Secs. 677B(b), (e), (f).)

Source Law
(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(e) A written declaration described by Section 677A(a)(1) of this code that is not self-proved may be
proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 677A(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will produced in court is proved under Section 84 of this code.

Revisor's Note

(1) Sections 677B(e) and (f), Texas Probate Code, refer to certain "written" declarations described by Section 677A(a) of that code, which is revised in Section 1104.152 of this chapter. The revised law omits the reference to "written" as unnecessary for the reasons stated in Revisor's Note (1) to Section 1104.152.

(2) Section 677B(e), Texas Probate Code, authorizes certain written declarations that are not self-proved to be proved in the same manner that a will written wholly in the testator's handwriting may be proved "under Section 84" of that code. The relevant part of Section 84 that relates to handwritten wills was revised by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, as Section 256.154 of this code. The revised law is drafted accordingly.

(3) Section 677B(f), Texas Probate Code, authorizes certain written declarations that are not self-proved to be proved in the same manner as certain attested wills may be proved "under Section 84" of that code. The relevant part of Section 84 that relates to attested wills was revised by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, as Section 256.153 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 1104.158. PRIMA FACIE EVIDENCE. A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.152(c), is
prima facie evidence that:

1. the declarant was competent at the time the declarant executed the declaration; and
2. the guardian named in the declaration would serve the best interests of the ward or incapacitated person. (Tex. Prob. Code, Sec. 677B(d).)

Source Law

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 677A(c) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

Revisor's Note

Section 677B(d), Texas Probate Code, refers to a "self-proving declaration and affidavit." The revised law omits the reference to "affidavit" because Section 677B(a)(3), Texas Probate Code, revised as Section 1104.151(3) of this chapter, defines a "self-proving declaration" to include a self-proving affidavit.

Revised Law

Sec. 1104.159. REVOCAUTION OF DECLARATION. The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution of the declaration in the manner required for the original declaration. (Tex. Prob. Code, Sec. 677A(f).)

Source Law

(f) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

Revised Law

Sec. 1104.160. ALTERNATE OR OTHER COURT-APPOINTED GUARDIAN. (a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable.
(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;
(2) are deceased;
(3) refuse to serve; or
(4) later die or resign. (Tex. Prob. Code, Sec. 677A(e).)

Source Law

(e) If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

Revisor's Note

Section 677A(e), Texas Probate Code, refers to appointing another person to serve as guardian as provided by "this code," meaning the Texas Probate Code. Throughout this chapter, the revised law substitutes "this title" for references to "this code" in the context of guardianships because the provisions of the Texas Probate Code that relate to guardianships are revised in Title 3 of this code, and this chapter is included in that title.

[Sections 1104.161-1104.200 reserved for expansion]

SUBCHAPTER E. WRITTEN DECLARATION TO DESIGNATE GUARDIAN BEFORE NEED ARISES

Revised Law

Sec. 1104.201. DEFINITIONS. In this subchapter:

(1) "Declaration" means a written declaration of a person that:

(A) designates another person to serve as a
guardian of the person or estate of the declarant; and

(B) satisfies the requirements of this subdivision and Sections 1104.202, 1104.203, 1104.204, 1104.205, 1104.207, 1104.210, 1104.211, and 1104.212.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.204.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration. (Tex. Prob. Code, Secs. 679(j), 679A(a).)

Source Law

[Sec. 679]

(j) In this section, "self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Subsection (i) of this section.

Sec. 679A. (a) In this section:

(1) "Declaration" means a written declaration of a person that:

(A) designates another person to serve as a guardian of the person or estate of the declarant; and

(B) satisfies the requirements of Section 679 of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 679(i) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

Revised Law

Sec. 1104.202. DESIGNATION OF GUARDIAN FOR DECLARANT. (a) A person other than an incapacitated person may designate by declaration a person to serve as guardian of the person or estate of the declarant if the declarant becomes incapacitated. The court shall appoint the person designated in the declaration to serve as guardian in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified; or

(2) would not serve the ward's best interests.

(b) A declarant may, in the declaration, disqualify a named
person from serving as guardian of the declarant's person or estate. The court may not under any circumstances appoint as guardian a person named under this subsection. (Tex. Prob. Code, Secs. 679(a) (part), (b), (f) (part).)

Source Law

Sec. 679. (a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. . . .

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(f) Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. . . .

Revisor's Note

Section 679(a), Texas Probate Code, refers to a "written" declaration. Throughout this subchapter, the revised law omits the reference to "written" in this context as unnecessary because Section 1104.201 defines "declaration" for purposes of this subchapter to mean a "written declaration."

Revised Law

Sec. 1104.203. REQUIREMENTS FOR DECLARATION. (a) A declaration under this subchapter must be signed by the declarant and be:

(1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is not written wholly in the declarant's handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.
(c) A declaration described by Subsection (a)(2) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:

(1) the competence of the declarant; and
(2) the execution of the declaration. (Tex. Prob. Code, Secs. 679(a) (part), (c), (d).)

Source Law

(a) ... The declaration must be signed by the declarant and be:
(1) written wholly in the handwriting of the declarant; or
(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

Revisor's Note

Section 679(c), Texas Probate Code, states that a declaration may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(d) A declaration described by Subsection (a)(2) of this section may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

Revised Law

Sec. 1104.204. FORM AND CONTENT OF DECLARATION AND SELF-PROVING AFFIDAVIT. (a) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian.

(b) The following form may be used but is not required to be used:

DECLARATION OF GUARDIAN

IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, __________, make this Declaration of Guardian, to operate
if the need for a guardian for me later arises.

1. I designate ________ to serve as guardian of my person, ________ as first alternate guardian of my person, ________ as second alternate guardian of my person, and ________ as third alternate guardian of my person.

2. I designate ________ to serve as guardian of my estate, ________ as first alternate guardian of my estate, ________ as second alternate guardian of my estate, and ________ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: ________, ________, and ________.

5. I expressly disqualify the following persons from serving as guardian of my estate: ________, ________, and ________.

Signed this ___ day of __________, 20__. 

______________________________
Declarant

______________________________
Witness

______________________________
Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared __________, the declarant, and __________ and __________ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.
Declarant

Subscribed and sworn to before me by the above named declarant and affiants on this ___ day of __________, 20__.

Notary Public in and for the State of Texas

My Commission expires:

(Tex. Prob. Code, Sec. 679(i).)

Source Law

(i) A declaration and affidavit may be in any form adequate to clearly indicate the declarant’s intention to designate a guardian. The following form may, but need not, be used:

DECLARATION OF GUARDIAN

IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, __________, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate __________ to serve as guardian of my person, __________ as first alternate guardian of my person, __________ as second alternate guardian of my person, and __________ as third alternate guardian of my person.

2. I designate __________ to serve as guardian of my estate, __________ as first alternate guardian of my estate, __________ as second alternate guardian of my estate, and __________ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: __________, __________, and __________.

5. I expressly disqualify the following persons from serving as guardian of my estate: __________, __________, and __________.

Signed this ___ day of __________, 20__.

Declarant

Witness

Before me, the undersigned authority, on this date personally appeared __________, the declarant, and __________ and __________ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they

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are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

______________________________  
Declarant

_______________________A ________________  
AffiantAAAAAAAAAAAAAAAAAAAAaffiant

Subscribed and sworn to before me by the above named declarant and affiants on this ___ day of ____________, 20__.  

__________________________  
Notary Public in and for the State of Texas  
My Commission expires:

Revised Law

Sec. 1104.205. ALTERNATIVE TO SELF-PROVING AFFIDAVIT. (a)  

As an alternative to the self-proving affidavit authorized by Section 1104.204, a declaration of guardian in the event of later incapacity or need of guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _________________________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of ________, 20__.  

___________________________  
Declarant

The undersigned, _____________________ and ________________, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day
of __________, 20___.

___________________________
Witness

___________________________
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ___ day of ________________, 20__.

__________________________
Notary Public in and for the State of Texas
My Commission expires:

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.204 is considered self-proved. (Tex. Prob. Code, Secs. 679(k), (l).)

Source Law

(k) As an alternative to the self-proving affidavit authorized by Subsection (i) of this section, a Declaration of Guardian in the Event of Later Incapacity or Need of Guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, ______________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of ________, 20__.

______________________________
Declarant

The undersigned, ____________ and ____________, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of ____________, 20__.

______________________________
Witness

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Subscribed and sworn to before me by the above named declarant, and affiants, this ___ day of ________________, 20__.  

Notary Public in and for the State of Texas  
My Commission Expires: ____________________  

(1) A declaration that is executed as provided by Subsection (k) of this section is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Subsection (i) of this section is considered self-proved.

Sec. 1104.206. ALTERNATE SELF-PROVING OF DECLARATION. At any time during the declarant's lifetime, a declaration described by Section 1104.203(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107. (Tex. Prob. Code, Sec. 679A(c).)

(c) At any time during the declarant's lifetime, a written declaration described by Section 679(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

Section 679A(c), Texas Probate Code, authorizes certain written declarations to be self-proved in the same form and manner as a will written in the testator's handwriting is self-proved "under Section 60" of that code. The relevant part of Section 60 that relates to a handwritten will that is self-proved was revised by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, as Section 251.107 of this code. The revised law is drafted accordingly.

Sec. 1104.207. FILING OF DECLARATION AND SELF-PROVING AFFIDAVIT. The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. (Tex. Prob. Code, Sec. 679(e).)
(e) The declaration and any self-proving affidavit may be filed with the court at any time after
the application for appointment of a guardian is filed
and before a guardian is appointed.

Revised Law

Sec. 1104.208. PROOF OF DECLARATION. (a) The court may
admit a declaration that is self-proved into evidence without the
testimony of witnesses attesting to the competency of the declarant
and the execution of the declaration. Additional proof of the
execution of the declaration with the formalities and solemnities
and under the circumstances required to make it a valid declaration
is not necessary.

(b) A declaration described by Section 1104.203(a)(1) that
is not self-proved may be proved in the same manner that a will
written wholly in the testator's handwriting is proved under
Section 256.154.

(c) A declaration described by Section 1104.203(a)(2) that
is not self-proved may be proved in the same manner that an attested
written will produced in court is proved under Section 256.153.

(Tex. Prob. Code, Secs. 679A(b), (e), (f).)

Source Law

(b) If a declaration is self-proved, the court
may admit the declaration into evidence without the
testimony of witnesses attesting to the competency of
the declarant and the execution of the declaration.
Additional proof of the execution of the declaration
with the formalities and solemnities and under the
circumstances required to make it a valid declaration
is not necessary.

(e) A written declaration described by Section
679(a)(1) of this code that is not self-proved may be
proved in the same manner a will written wholly in the
handwriting of the testator is proved under Section 84
of this code.

(f) A written declaration described by Section
679(a)(2) of this code that is not self-proved may be
proved in the same manner an attested written will
produced in court is proved under Section 84 of this
code.

Revisor's Note

(1) Section 679A(e), Texas Probate Code,
authorizes certain written declarations that are not
self-proved to be proved in the same manner that a will
written wholly in the testator's handwriting may be proved "under Section 84" of that code. The relevant part of Section 84 that relates to handwritten wills was revised by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, as Section 256.154 of this code. The revised law is drafted accordingly.

(2) Section 679A(f), Texas Probate Code, authorizes certain written declarations that are not self-proved to be proved in the same manner as certain attested wills may be proved "under Section 84" of that code. The relevant part of Section 84 that relates to attested wills was revised by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, as Section 256.153 of this code. The revised law is drafted accordingly.

Revised Law
Sec. 1104.209. PRIMA FACIE EVIDENCE. A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.203(c), is prima facie evidence that:

(1) the declarant was competent at the time the declarant executed the declaration; and

(2) the guardian named in the declaration would serve the best interests of the ward or incapacitated person. (Tex. Prob. Code, Sec. 679A(d).)

Source Law
(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 679(d) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

Revisor's Note
Section 679A(d), Texas Probate Code, refers to a "self-proving declaration and affidavit." The revised law omits the reference to "affidavit" because Section
679A(a)(3), Texas Probate Code, revised as Section 1104.201(3) of this chapter, defines a "self-proving declaration" to include a self-proving affidavit.

**Revised Law**

Sec. 1104.210. REVOCATION OF DECLARATION. The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution of the declaration in the manner required for the original declaration. (Tex. Prob. Code, Sec. 679(g).)

**Source Law**

(g) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

**Revised Law**

Sec. 1104.211. EFFECT OF DIVORCE ON DESIGNATION OF SPOUSE. If a declarant designates the declarant's spouse to serve as guardian under this subchapter, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect. (Tex. Prob. Code, Sec. 679(h).)

**Source Law**

(h) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

**Revisor's Note**

Section 679(h), Texas Probate Code, refers to a declarant who designates the declarant's spouse to serve as guardian under "this section." The revised law substitutes "this subchapter" for the reference to "this section" because Section 679 is revised in various provisions of this subchapter. Moreover, the reference is intended to apply to a declaration in which a declarant designates the declarant's spouse to serve as guardian if the declarant becomes
incapacitated, and this subchapter governs that type of declaration.

Revised Law

Sec. 1104.212. ALTERNATE OR OTHER COURT-APPOINTED GUARDIAN. (a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian.

(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;
(2) are deceased;
(3) refuse to serve; or
(4) later die or resign. (Tex. Prob. Code, Sec. 679(f) part).

Source Law

(f) ... If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

[Sections 1104.213-1104.250 reserved for expansion]

SUBCHAPTER F. CERTIFICATION REQUIREMENTS FOR CERTAIN GUARDIANS

Revised Law

Sec. 1104.251. CERTIFICATION REQUIRED FOR CERTAIN GUARDIANS. (a) An individual must be certified under Subchapter C, Chapter 111, Government Code, if the individual:

(1) is a private professional guardian;
(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;
(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; or

(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward of the program.

(Tex. Prob. Code, Secs. 696A, 697B(a).)

Source Law

Sec. 696A. (a) An individual employed by or contracting with a guardianship program must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the guardianship program.

(b) An employee of the Department of Aging and Disability Services must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the department.

Sec. 697B. (a) The following persons must be certified under Subchapter C, Chapter 111, Government Code:

(1) an individual who is a private professional guardian;

(2) an individual who will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) an individual providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Subsection (d) of this section; and

(4) an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

Revised Law

Sec. 1104.252. EFFECT OF PROVISIONAL CERTIFICATE. For purposes of this subchapter, a person who holds a provisional certificate issued under Section 111.0421, Government Code, is considered to be certified. (Tex. Prob. Code, Sec. 697B(e).)

Source Law

(e) In this section, "certified" includes holding a provisional certificate under Section 111.0421, Government Code.

Revisor's Note

Section 697B(e), Texas Probate Code, states that
"[i]n this section, 'certified' includes holding a provisional certificate under Section 111.0421, Government Code." To clarify the meaning and effect of this definition, the revised law states that "[f]or purposes of this subchapter, a person who holds a provisional certificate issued under Section 111.0421, Government Code, is considered to be certified." The revised law substitutes "this subchapter" for "this section" because Section 697B is revised in various provisions of this subchapter and the meaning revised in this section does not affect the meaning of any other source law provision revised in this subchapter.

Revised Law
Sec. 1104.253. EXCEPTION FOR FAMILY MEMBERS AND FRIENDS. A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 111, Government Code, or any other law to serve as the person's guardian. (Tex. Prob. Code, Sec. 696B.)

Source Law
Sec. 696B. A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 111, Government Code, or any other law to serve as the person's guardian.

Revised Law
Sec. 1104.254. EXCEPTION FOR CERTAIN VOLUNTEERS. An individual volunteering with a guardianship program is not required to be certified as provided by Section 1104.251 to provide guardianship services on the program's behalf. (Tex. Prob. Code, Sec. 697B(d).)

Source Law
(d) An individual volunteering with a guardianship program is not required to be certified as provided by this section to provide guardianship services on the program's behalf.

Revisor's Note
Section 697B(d), Texas Probate Code, provides
that certain individuals are not required to be certified to provide guardianship services "as provided by this section," meaning Section 697B. The relevant portion of Section 697B requiring certification is revised in this chapter as Section 1104.251, and the revised law is drafted accordingly.

Revised Law

Sec. 1104.255. EXPIRATION OF CERTIFICATION. A person whose certification under Subchapter C, Chapter 111, Government Code, has expired must obtain a new certification under that subchapter to provide or continue providing guardianship services to a ward or incapacitated person under this title. (Tex. Prob. Code, Sec. 697B(b).)

Source Law

(b) A person whose certification has expired must obtain a new certification under Subchapter C, Chapter 111, Government Code, to be allowed to provide or continue to provide guardianship services to a ward under this code.

Revised Law

Sec. 1104.256. FAILURE TO COMPLY; COURT'S DUTY TO NOTIFY. The court shall notify the Guardianship Certification Board if the court becomes aware of a person who is not complying with:

(1) the terms of a certification issued under Subchapter C, Chapter 111, Government Code; or

(2) the standards and rules adopted under that subchapter. (Tex. Prob. Code, Sec. 697B(c).)

Source Law

(c) The court shall notify the Guardianship Certification Board if the court becomes aware of a person who is not complying with the terms of a certification issued under Subchapter C, Chapter 111, Government Code, or with the standards and rules adopted under that subchapter.

Revised Law

Sec. 1104.257. INFORMATION REGARDING SERVICES PROVIDED BY GUARDIANSHIP PROGRAM. Not later than January 31 of each year, each guardianship program operating in a county shall submit to the county clerk a copy of the report submitted to the Guardianship...
Certification Board under Section 111.044, Government Code. (Tex. Prob. Code, Sec. 697A(a).)

Source Law

Sec. 697A. (a) Not later than January 31 of each year, each guardianship program operating in a county shall submit to the county clerk a copy of the report submitted to the Guardianship Certification Board under Section 111.044, Government Code.

Revised Law

Sec. 1104.258. INFORMATION REGARDING CERTAIN STATE EMPLOYEES PROVIDING GUARDIANSHIP SERVICES. Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the Guardianship Certification Board a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on the department's behalf; and

(2) the name of each county in which each employee named in Subdivision (1) is providing or is authorized to provide those services. (Tex. Prob. Code, Sec. 697A(b).)

Source Law

(b) Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the Guardianship Certification Board a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and

(2) the name of each county in which each employee named in Subdivision (1) of this subsection is providing or is authorized to provide those services.

[Sections 1104.259-1104.300 reserved for expansion]

SUBCHAPTER G. PRIVATE PROFESSIONAL GUARDIANS

Revised Law

Sec. 1104.301. CERTIFICATION AND REGISTRATION REQUIRED. A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this title if the private professional guardian is not:

(1) certified as provided by Section 1104.251(a),
1104.252, 1104.255, or 1104.256; or

(2) in compliance with the registration requirements of this subchapter. (Tex. Prob. Code, Sec. 696.)

Source Law

Sec. 696. A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this code if the private professional guardian:

1. has not complied with the requirements of Section 697 of this code; or
2. is not certified as provided by Section 697B of this code.

Revisor's Note

(1) Section 696, Texas Probate Code, refers to a private professional guardian who has not complied with the "requirements of Section 697 of this code." The revised law substitutes "registration requirements of this subchapter" for the quoted language because the relevant requirements of Section 697, Texas Probate Code, are revised in the provisions of this subchapter governing registration requirements for a private professional guardian.

(2) Section 696, Texas Probate Code, refers to a private professional guardian who is not certified as provided by "Section 697B of this code." The revised law substitutes "Section 1104.251(a), 1104.252, 1104.255, or 1104.256" for the quoted language because the relevant provisions of Section 697B, Texas Probate Code, regarding certification of private professional guardians are revised in Sections 1104.251(a), 1104.252, 1104.255, and 1104.256 of this chapter.

Revised Law

Sec. 1104.302. ANNUAL CERTIFICATE OF REGISTRATION. A private professional guardian must annually apply for a certificate of registration. (Tex. Prob. Code, Sec. 697(a) (part).)
Sec. 1104.303. REQUIREMENTS OF APPLICATION. (a) An application for a certificate of registration must include a sworn statement containing the following information concerning a private professional guardian or each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

(1) place of residence;
(2) business address and business telephone number;
(3) educational background and professional experience;
(4) three or more professional references;
(5) the name of each ward the private professional guardian or person is or will be serving as a guardian;
(6) the aggregate fair market value of the property of all wards that is or will be managed by the private professional guardian or person;
(7) whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so:
   (A) a description of the circumstances causing the removal or resignation; and
   (B) the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and
(8) the certification number or provisional certification number issued to the private professional guardian or person by the Guardianship Certification Board.

(b) The application must be:

(1) made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and
(2) accompanied by a nonrefundable fee set by the clerk in an amount necessary to cover the cost of administering this subchapter. (Tex. Prob. Code, Secs. 697(a) (part), (b).)
(a) A private professional guardian must apply annually to the clerk of the county having venue over the proceeding for the appointment of a guardian for a certificate of registration. The application must include a sworn statement containing the following information concerning a private professional guardian or each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

1. educational background and professional experience;
2. three or more professional references;
3. the names of all of the wards the private professional guardian or person is or will be serving as a guardian;
4. the aggregate fair market value of the property of all wards that is being or will be managed by the private professional guardian or person;
5. place of residence, business address, and business telephone number;
6. whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and
7. the certification number or provisional certification number issued by the Guardianship Certification Board to the private professional guardian or person.

The application must be accompanied by a nonrefundable fee set by the clerk in an amount necessary to cover the cost of administering this section.

Revisor's Note

Section 697(b), Texas Probate Code, refers to a fee set in an amount necessary to cover the cost of administering "this section." The revised law substitutes "this subchapter" for the reference to "this section" because Section 697 is revised in various provisions of this subchapter.

Revised Law

Sec. 1104.304. TERM OF REGISTRATION; RENEWAL. (a) The term of an initial registration begins on the date the requirements under Section 1104.303 are met and extends through December 31 of the year in which the application is made. After the term of the initial registration, the term of registration begins on January 1 and extends through December 31 of each year.

(b) An application to renew a registration must be completed
during December of the year preceding the year for which the renewal is requested. (Tex. Prob. Code, Sec. 697(c).)

Source Law

(c) The term of the registration begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of registration, the term of the registration begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested.

Revisor's Note

Section 697(c), Texas Probate Code, states that the term of a registration begins on the date "the requirements" are met. Preceding provisions of Section 697, Texas Probate Code, include all requirements for registration as a private professional guardian. Those provisions are revised in Section 1104.303 of this chapter. Accordingly, the revised law adds a reference to Section 1104.303 for the convenience of the reader to clarify that the reference to "the requirements" is intended as a reference to the requirements that are revised in Section 1104.303.

Revised Law

Sec. 1104.305. USE OF REGISTRATION INFORMATION. (a) The clerk shall bring the information received under Section 1104.303 to the judge's attention for review.

(b) The judge shall use the information only to determine whether to appoint, remove, or continue the appointment of a private professional guardian. (Tex. Prob. Code, Sec. 697(d).)

Source Law

(d) The clerk shall bring the information received under this section to the judge's attention for review. The judge shall use the information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

Revisor's Note

Section 697(d), Texas Probate Code, states that "[t]he clerk shall bring the information received
under this section to the judge's attention for
review." The revised law substitutes "Section
1104.303" for "this section" because the relevant
portion of Section 697, Texas Probate Code, regarding
the information included in an application for a
certificate of registration is revised in Section
1104.303 of this chapter.

Revised Law
Sec. 1104.306. USE OF NAMES AND BUSINESS ADDRESSES. Not
later than January 31 of each year, the clerk shall submit to the
Guardianship Certification Board the name and business address of
each private professional guardian who has satisfied the
registration requirements of this subchapter during the preceding
year. (Tex. Prob. Code, Sec. 697(e).)

Source Law
(e) Not later than January 31 of each year, the
clerk shall submit to the Guardianship Certification
Board the names and business addresses of private
professional guardians who have satisfied the
registration requirements under this section during
the preceding year.

Revisor's Note
Section 697(e), Texas Probate Code, refers to the
registration requirements of "this section." The
revised law substitutes "this subchapter" for the
reference to "this section" because the registration
requirements of Section 697, Texas Probate Code, are
revised in various provisions of this subchapter.
[Sections 1104.307-1104.350 reserved for expansion]

SUBCHAPTER H. GROUNDS FOR DISQUALIFICATION

Revised Law
Sec. 1104.351. INCAPACITY OR INEXPERIENCE. A person may
not be appointed guardian if the person is:
(1) a minor or other incapacitated person; or
(2) a person who, because of inexperience, lack of
education, or other good reason, is incapable of properly and
prudently managing and controlling the person or estate of the
ward. (Tex. Prob. Code, Sec. 681 (part).)

Source Law

Sec. 681. A person may not be appointed guardian if the person is:
(1) a minor;
(3) an incapacitated person;
(7) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward or the ward's estate;

Revised Law

Sec. 1104.352. UNSUITABILITY. A person may not be appointed guardian if the court finds the person to be unsuitable.

Source Law

Sec. 681. A person may not be appointed guardian if the person is:
(8) a person, institution, or corporation found unsuitable by the court;

Revisor's Note

Section 681(8), Texas Probate Code, states that a person may not be appointed guardian if the person "is a person, institution, or corporation found unsuitable by the court." The revised law omits the references to "institution" and "corporation" because that subdivision by its own terms disqualifies only "persons" so it is unnecessary to specify any particular class of persons such as "institutions" or "corporations."

Revised Law

Sec. 1104.353. NOTORIously BAD CONDUCT; PREsumption CONCERNING BEST INTEREST. (a) A person may not be appointed guardian if the person's conduct is notoriously bad.

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:
(1) any sexual offense, including sexual assault,
aggravated sexual assault, and prohibited sexual conduct;

(2) aggravated assault;

(3) injury to a child, elderly individual, or disabled individual; or

(4) abandoning or endangering a child. (Tex. Prob. Code, Secs. 678, 681 (part).)

Source Law

Sec. 678. It is presumed not to be in the best interests of a ward to appoint a person as guardian of the ward if the person has been finally convicted of any sexual offense, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, to an elderly individual, or to a disabled individual, abandoning or endangering a child, or incest.

Sec. 681. A person may not be appointed guardian if the person is:

(2) a person whose conduct is notoriously bad;

Revisor's Note

Section 678, Texas Probate Code, refers to a person who is finally convicted of "incest." The revised law substitutes "prohibited sexual conduct" for the reference to "incest" because that is the terminology used in the Penal Code.

Revised Law

Sec. 1104.354. CONFLICT OF INTEREST. A person may not be appointed guardian if the person:

(1) is a party or is a person whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court:

(A) determines that the lawsuit claim of the person who has applied to be appointed guardian is not in conflict with the lawsuit claim of the proposed ward; or

(B) appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward's lawsuit claim;

(2) is indebted to the proposed ward, unless the person pays the debt before appointment; or
(3) asserts a claim adverse to the proposed ward or the
proposed ward's property. (Tex. Prob. Code, Sec. 681 (part).)

Source Law

Sec. 681. A person may not be appointed guardian
if the person is:

... (4) a person who is a party or whose parent
is a party to a lawsuit concerning or affecting the
welfare of the proposed ward, unless the court:

(A) determines that the lawsuit claim
of the person who has applied to be appointed guardian
is not in conflict with the lawsuit claim of the
proposed ward; or

(B) appoints a guardian ad litem to
represent the interests of the proposed ward
throughout the litigation of the ward's lawsuit claim;

(5) a person indebted to the proposed ward
unless the person pays the debt before appointment;

(6) a person asserting a claim adverse to
the proposed ward or the proposed ward's property, real
or personal;...

Revisor's Note

Section 681, Texas Probate Code, refers to "real
or personal" property. The revised law omits the
reference to "real or personal" as unnecessary because
Section 311.005(4), Government Code (Code
Construction Act), applicable to the revised law,
defines "property" to mean real and personal property.

Revised Law

Sec. 1104.355. DISQUALIFIED IN DECLARATION. A person may
not be appointed guardian if the person is disqualified in a
declaration under Section 1104.202(b). (Tex. Prob. Code, Sec. 681
(part).)

Source Law

Sec. 681. A person may not be appointed guardian
if the person is:

... (9) a person disqualified in a declaration
made under Section 679 of this code;

Revisor's Note

Section 681, Texas Probate Code, refers to a
person who is disqualified in a declaration "made
under Section 679 of this code." The revised law
substitutes "under Section 1104.202(b)" for the quoted
language because the specific provision under which a person may be disqualified in a declaration made under Section 679 is revised in Section 1104.202(b) of this chapter.

Revised Law

Sec. 1104.356. LACK OF CERTAIN REQUIRED CERTIFICATION. A person may not be appointed guardian if the person does not have the certification to serve as guardian that is required by Subchapter F. (Tex. Prob. Code, Sec. 681 (part).)

Source Law

Sec. 681. A person may not be appointed guardian if the person is:

(11) a person who does not have the certification to serve as guardian that is required by Section 697B of this code.

Revisor's Note

Section 681, Texas Probate Code, refers to "the certification to serve as guardian that is required by Section 697B." The revised law substitutes "Subchapter F" for the reference to "Section 697B" because Section 697B is revised in various provisions of that subchapter.

Revised Law

Sec. 1104.357. NONRESIDENT WITHOUT RESIDENT AGENT. A person may not be appointed guardian if the person is a nonresident who has failed to file with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship. (Tex. Prob. Code, Sec. 681 (part).)

Source Law

Sec. 681. A person may not be appointed guardian if the person is:

(10) a nonresident person who has not filed with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship; or

[Sections 1104.358-1104.400 reserved for expansion]
SUBCHAPTER I. ACCESS TO CRIMINAL HISTORY RECORDS

Revised Law

Sec. 1104.401. DEFINITION. In this subchapter, "department" means the Department of Aging and Disability Services.

(New.)

Revisor's Note

The definition of "department" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE. (a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

1. a private professional guardian;
2. each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
3. each person employed by a private professional guardian who will:
   - have personal contact with a ward or proposed ward;
   - exercise control over and manage a ward's estate; or
   - perform any duties with respect to the management of a ward's estate;
4. each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
5. any other person proposed to serve as a guardian.
under this title, including a proposed temporary guardian and a
proposed successor guardian, other than the ward's or proposed
ward's family member or an attorney.

(b) The clerk may charge a $10 fee to recover the costs of
obtaining criminal history record information under Subsection
(a). (Tex. Prob. Code, Secs. 698(a), (e).)

Source Law

Sec. 698. (a) Except as provided by Subsections
(a-1), (a-5), and (a-6) of this section, the clerk of
the county having venue over the proceeding for the
appointment of a guardian shall obtain criminal
history record information that is maintained by the
Department of Public Safety or the Federal Bureau of
Investigation identification division relating to:

(1) a private professional guardian;
(2) each person who represents or plans to
represent the interests of a ward as a guardian on
behalf of the private professional guardian;
(3) each person employed by a private
professional guardian who will:
(A) have personal contact with a ward
or proposed ward;
(B) exercise control over and manage
a ward's estate; or
(C) perform any duties with respect
to the management of a ward's estate;
(4) each person employed by or
volunteering or contracting with a guardianship
program to provide guardianship services to a ward of
the program on the program's behalf; or
(5) any other person proposed to serve as a
guardian under this chapter, including a proposed
temporary guardian and a proposed successor guardian,
other than the ward's or proposed ward's family member
or an attorney.

(e) The clerk may charge a $10 fee to recover the
costs of obtaining criminal history information
records authorized by Subsection (a) of this section.

Revised Law

Sec. 1104.403. SUBMISSION OF CRIMINAL HISTORY RECORD
INFORMATION BY PROPOSED GUARDIAN. Not later than the 10th day
before the date of the hearing to appoint a guardian, a person may
submit to the clerk a copy of the person's criminal history record
information required under Section 1104.402(a)(5) that the person
obtains not earlier than the 30th day before the date of the hearing
from:

(1) the Department of Public Safety; or
(2) the Federal Bureau of Investigation. (Tex. Prob.
Code, Sec. 698(a-5).)
Source Law

(a-5) Not later than the 10th day before the date of the hearing to appoint a guardian, a person may submit to the clerk a copy of the person's criminal history record information required under Subsection (a)(5) of this section that the person obtains from the Department of Public Safety or the Federal Bureau of Investigation not earlier than the 30th day before the date of the hearing.

Revised Law

Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS HOLDING A CERTIFICATE. (a) The clerk described by Section 1104.402 is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042, Government Code, or a provisional certificate issued under Section 111.0421, Government Code, if the Guardianship Certification Board conducted a criminal history check on the person before issuing or renewing the certificate.

(b) The board shall provide to the clerk at the court's request the criminal history record information that was obtained from the Department of Public Safety or the Federal Bureau of Investigation. (Tex. Prob. Code, Sec. 698(a-6).)

Source Law

(a-6) The clerk described by Subsection (a) of this section is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042, Government Code, or a provisional certificate issued under Section 111.0421, Government Code, if the Guardianship Certification Board conducted a criminal history check on the person before issuing or renewing the certificate. The board shall provide to the clerk at the court's request the criminal history record information that was obtained from the Department of Public Safety or the Federal Bureau of Investigation.

Revised Law

Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF COURT. (a) Criminal history record information obtained or provided under Section 1104.402, 1104.403, or 1104.404 is privileged and confidential and is for the exclusive use of the court. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated.
(b) The county clerk may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter. (Tex. Prob. Code, Sec. 698(b).)

Source Law

(b) The criminal history record information obtained or provided under Subsection (a), (a-5), or (a-6) of this section is for the exclusive use of the court and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk may destroy the criminal history information records after the records are used for the purposes authorized by this section.

Revisor's Note

Section 698(b), Texas Probate Code, refers to the use of "criminal history information records" for the purposes authorized by "this section." The revised law substitutes "criminal history record information" for "criminal history information records" because that is the language used in Chapter 411, Government Code, and in various provisions of this chapter. Throughout this subchapter, the revised law also substitutes "this subchapter" for the reference to "this section" in this context because Section 698, Texas Probate Code, is revised in various provisions of this subchapter.

Revised Law

Sec. 1104.406. DEPARTMENT'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) The department shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the department;

(2) a volunteer or an applicant selected to volunteer with the department;
(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department to provide guardianship services to a ward referred by the department; and

(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3).

(b) The department must obtain the information in Subsection (a) before:

(1) making an offer of employment to an applicant for an employment position; or

(2) a volunteer contacts a ward of or referred by the department.

(c) The department must annually obtain the information in Subsection (a) regarding employees or volunteers providing guardianship services. (Tex. Prob. Code, Secs. 698(a-1), (a-2), (a-3).)

Source Law

(a-1) The Department of Aging and Disability Services shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;

(2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;

(3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward referred by the department; and

(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3) of this subsection.

(a-2) The information in Subsection (a-1) of this section regarding applicants for employment positions must be obtained before an offer of employment, and the information regarding applicant volunteers must be obtained before the person's contact with a ward of or referred by the Department of Aging and Disability Services.

(a-3) The information in Subsection (a-1) of this section regarding employees or volunteers providing guardianship services must be obtained.
annually.

Revised Law
Sec. 1104.407. DUTY TO PROVIDE INFORMATION ON REQUEST. The
department shall provide the information obtained under Section
1102.406(a) to:

(1) the clerk of the county having venue of the

guardianship proceeding at the court's request; and

(2) the Guardianship Certification Board at the

board's request. (Tex. Prob. Code, Sec. 698(a-4).)

Source Law
(a-4) The Department of Aging and Disability
Services shall provide the information obtained under
Subsection (a-1) of this section to:

(1) the clerk of the county having venue

over the guardianship proceeding at the request of the
court; and

(2) the Guardianship Certification Board

at the request of the board.

Revised Law
Sec. 1104.408. INFORMATION FOR EXCLUSIVE USE OF COURT OR
GUARDIANSHIP CERTIFICATION BOARD. (a) Criminal history record
information obtained under Section 1104.407 is privileged and
confidential and is for the exclusive use of the court or
Guardianship Certification Board, as appropriate. The information
may not be released or otherwise disclosed to any person or agency
except:

(1) on court order;

(2) with the consent of the person being investigated;

or

(3) as authorized by Section 1104.404 of this code or
Section 411.1386(a-6), Government Code.

(b) The county clerk or Guardianship Certification Board
may destroy the criminal history record information after the
information is used for the purposes authorized by this subchapter.
(Tex. Prob. Code, Sec. 698(b-1).)

Source Law
(b-1) The criminal history record information
obtained under Subsection (a-4) of this section is for
the exclusive use of the court or Guardianship
Certification Board, as appropriate, and is privileged
and confidential. The information may not be released or otherwise disclosed to any person or agency except on court order, with the consent of the person being investigated, or as authorized by Subsection (a-6) of this section or Section 411.1386(a-6), Government Code. The county clerk or Guardianship Certification Board may destroy the criminal history record information after the information is used for the purposes authorized by this section.

Revised Law

Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or

(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney. (Tex. Prob. Code, Sec. 698(c).)

Source Law

Sec. 1104.410. USE OF INFORMATION BY GUARDIANSHIP CERTIFICATION BOARD. Criminal history record information obtained by the Guardianship Certification Board under Section 1104.407(2) may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board. (Tex. Prob. Code, Sec. 698(c-1).)

Source Law

(c-1) Criminal history record information obtained by the Guardianship Certification Board under Subsection (a-4)(2) of this section may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by
Revised Law

Sec. 1104.411. CRIMINAL OFFENSE FOR UNAUTHORIZED RELEASE OR DISCLOSURE. (a) A person commits an offense if the person releases or discloses any information received under this subchapter without the authorization prescribed by Section 1104.405 or 1104.408.

(b) An offense under this section is a Class A misdemeanor.

(Tex. Prob. Code, Sec. 698(d).)

Source Law

(d) A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (b) or (b-1) of this section. An offense under this subsection is a Class A misdemeanor.

Revised Law

Sec. 1104.412. EFFECT OF SUBCHAPTER ON DEPARTMENT'S AUTHORITY TO OBTAIN OR USE INFORMATION. This subchapter does not prohibit the department from obtaining and using criminal history record information as provided by other law. (Tex. Prob. Code, Sec. 698(f).)

Source Law

(f) This section does not prohibit the Department of Aging and Disability Services from obtaining and using criminal history record information as provided by other law.

CHAPTER 1105. QUALIFICATION OF GUARDIANS

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CHAPTER 1105. QUALIFICATION OF GUARDIANS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1105.001. DEFINITIONS. In this chapter:

(1) "Bond" means a bond required by this chapter to be
given by a person appointed to serve as a guardian.

(2) "Oath" means an oath required by this chapter to be
taken by a person appointed to serve as a guardian. (New.)

Revisor's Note

The definitions of "bond" and "oath" are added to
the revised law for drafting convenience and to
eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 1105.002. MANNER OF QUALIFICATION OF GUARDIAN. (a) Except as provided by Subsection (b), a guardian is considered to have qualified when the guardian has:

(1) taken and filed the oath required under Section 1105.051;
(2) given the required bond;
(3) filed the bond with the clerk; and
(4) obtained the judge's approval of the bond.

(b) A guardian who is not required to give a bond is considered to have qualified when the guardian has taken and filed the required oath. (Tex. Prob. Code, Sec. 699.)

Source Law

Sec. 699. A guardian is deemed to have duly qualified when the guardian has taken and filed the oath required under Section 700 of this code, has made the required bond, and has filed it with the clerk, and has the bond approved by the judge. A guardian who is not required to make bond, is deemed to have duly qualified when the guardian has taken and filed the required oath.

Revisor's Note

Section 699, Texas Probate Code, prescribes the actions that a guardian must take to be considered to have "duly qualified." The revised law omits "duly" in this context because the requirement that the guardian take the prescribed actions to qualify is sufficient to convey that the actions must be taken before the guardian may exercise the powers of that position.

Revised Law

Sec. 1105.003. PERIOD FOR TAKING OATH AND GIVING BOND. (a) Except as provided by Section 1103.003, an oath may be taken and subscribed and a bond may be given and approved at any time before:

(1) the 21st day after the date of the order granting letters of guardianship; or
(2) the letters of guardianship are revoked for a
failure to qualify within the period allowed.

(b) A guardian of an estate must give a bond before being issued letters of guardianship unless a bond is not required under this title. (Tex. Prob. Code, Secs. 701 (part), 703(a) (part).)

Source Law

Sec. 701. Except as provided by Section 682A(a) of this code, the oath of a guardian may be taken and subscribed, or the bond of a guardian may be given and approved, at any time before the expiration of the 20th day after the date of the order granting letters of guardianship, or before the letters have been revoked for a failure to qualify within the time allowed.

... 

Sec. 703. (a) Except when bond is not required under this chapter, before being issued letters of guardianship of estates, the recipient of letters shall give a bond.

[Sections 1105.004-1105.050 reserved for expansion]

SUBCHAPTER B. OATHS

Revised Law

Sec. 1105.051. OATH OF GUARDIAN. (a) A guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) If the Department of Aging and Disability Services is appointed guardian, a department representative shall take the oath required by Subsection (a). (Tex. Prob. Code, Sec. 700.)

Source Law

Sec. 700. (a) The guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) A representative of the Department of Aging and Disability Services shall take the oath required by Subsection (a) of this section if the department is appointed guardian.

Revised Law

Sec. 1105.052. ADMINISTRATION OF OATH. An oath may be taken before any person authorized to administer oaths under the laws of this state. (Tex. Prob. Code, Sec. 701 (part).)

Source Law

Sec. 701. ... An oath may be taken before any person authorized to administer oaths under the laws of this state.

[Sections 1105.053-1105.100 reserved for expansion]
SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

Revised Law

Sec. 1105.101. BOND GENERALLY REQUIRED; EXCEPTIONS. (a) Except as provided by this section, a guardian of the person or the estate of a ward shall give a bond.

(b) A bond is not required if the guardian is:

(1) a corporate fiduciary; or

(2) a guardianship program operated by a county.

(c) The court shall issue letters of guardianship of the person to a person without the requirement of a bond if:

(1) the person is named to be appointed guardian in a will made by a surviving parent that is probated by a court in this state, or in a written declaration made by a surviving parent, and the will or declaration directs that the guardian serve without a bond; and

(2) the court finds that the guardian is qualified.

(d) The court may not waive the requirement of bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or written declaration directs the court to waive the bond. (Tex. Prob. Code, Sec. 702.)

Source Law

Sec. 702. (a) Except as provided by Subsections (b) and (c) of this section, a guardian of the person or of the estate of a ward is required to give bond.

(b) A bond is not required to be given by a guardian that is:

(1) a corporate fiduciary, as defined by Section 601 of this code; or

(2) a guardianship program operated by a county.

(c) When a will that is made by a surviving parent and is probated in a court in this state or a written declaration that is made by a surviving parent directs that the guardian appointed in the will or declaration serve without bond, the court finding that the person is qualified shall issue letters of guardianship of the person to the person named to be appointed guardian in the will or declaration without requirement of bond. The court may not waive the requirement of a bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or declaration directs the court to waive the bond.

Revisor's Note

Section 702(b)(1), Texas Probate Code, refers to
a corporate fiduciary, "as defined by Section 601 of this code," meaning the Texas Probate Code. The revised law omits the quoted language as unnecessary. Section 601(6), Texas Probate Code, revised in this code as Section 1002.007, defines "corporate fiduciary" and applies by its own terms to this section.

Revised Law
Sec. 1105.102. BOND FOR CERTAIN GUARDIANS OF THE PERSON.
(a) This section applies only to a bond required to be posted by a guardian of the person of a ward when there is no guardian of the ward's estate.
(b) To ensure the performance of the guardian's duties, a court may accept only:
   (1) a corporate surety bond;
   (2) a personal surety bond;
   (3) a deposit of money instead of a surety bond; or
   (4) a personal bond.
(c) In determining the appropriate type and amount of bond to set for the guardian, the court shall consider:
   (1) the familial relationship of the guardian to the ward;
   (2) the guardian's ties to the community;
   (3) the guardian's financial condition;
   (4) the guardian's past history of compliance with the court; and
   (5) the reason the guardian may have previously been denied a corporate surety bond. (Tex. Prob. Code, Sec. 702A.)

Source Law
Sec. 702A. (a) This section applies only to a bond required to be posted by a guardian of the person of a ward when there is no guardian of the ward's estate.
(b) To ensure the performance of the guardian's duties, the court may accept only:
   (1) a corporate surety bond;
   (2) a personal surety bond;
   (3) a deposit of money instead of a surety bond; or
(4) a personal bond.

(c) In determining the appropriate type and amount of bond to set for the guardian, the court shall consider:

(1) the familial relationship of the guardian to the ward;
(2) the guardian's ties to the community;
(3) the guardian's financial condition;
(4) the guardian's past history of compliance with the court; and
(5) the reason the guardian may have previously been denied a corporate surety bond.

Revised Law

Sec. 1105.103. BOND REQUIRED FROM GUARDIAN OTHERWISE EXEMPT. (a) This section applies only to an individual guardian of the estate from whom a bond was not required.

(b) A person who has a debt, claim, or demand against the guardianship, with respect to the justice of which an oath has been made by the person, the person's agent or attorney, or another person interested in the guardianship, in person or as the representative of another person, may file a written complaint under oath in the court in which the guardian was appointed.

(c) After a complaint is filed under Subsection (b), the court shall cite the guardian to appear and show cause why the guardian should not be required to give a bond.

(d) On hearing a complaint filed under Subsection (b), if it appears to the court that the guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose the creditor's debt, or that a person's interest in the guardianship may be diminished or lost, the court shall enter an order requiring the guardian to give a bond not later than the 10th day after the date of the order.

(e) A bond required under Subsection (d) must be:

(1) in an amount sufficient to protect the guardianship and the guardianship's creditors;
(2) approved by and payable to the judge; and
(3) conditioned that the guardian:

(A) will well and truly administer the guardianship; and
(B) will not waste, mismanage, or misapply the
(f) If the guardian fails to give the bond required under Subsection (d) and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the guardian and appoint a competent person as guardian, who shall:

1. administer the guardianship according to the provisions of a will or law;
2. take the oath required of a guardian under Section 1105.051 before the person enters on the administration of the guardianship; and
3. give bond in the same manner and in the same amount provided by this title for the issuance of original letters of guardianship. (Tex. Prob. Code, Secs. 722, 723, 724, 725.)

Source Law

Sec. 722. If a bond is not required of an individual guardian of the estate, a person who has a debt, claim, or demand against the guardianship, to the justice of which oath has been made by the person, the person's agent or attorney, or any other person interested in the guardianship, in person or as the representative of another person, may file a complaint under oath in writing in the court in which the guardian was appointed, and the court, after a complaint is filed under this section, shall cite the guardian to appear and show cause why the guardian should not be required to give bond.

Sec. 723. On hearing a complaint under Section 722 of this code, if it appears to the court that a guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose his debt, or that a person's interest in the guardianship may be diminished or lost, the court shall enter an order requiring the guardian to give a bond not later than the 10th day after the date of the order.

Sec. 724. A bond that is required under Section 723 of this code shall be in an amount that is sufficient to protect the guardianship and its creditors. The bond shall be approved by and payable to the judge and shall be conditioned that the guardian will well and truly administer the guardianship and that the guardian will not waste, mismanage, or misapply the guardianship estate.

Sec. 725. If the guardian fails to give the bond required under Section 723 of this code, and the judge does not extend the time, the judge, without citation, shall remove the guardian and appoint a competent person as guardian of the ward who:

1. shall administer the guardianship according to the provisions of a will or law;
2. shall take the oath required of a guardian as the case may be before the person enters on the administration of the guardianship; and
3. shall give bond in the same manner and
in the same amount provided in this chapter for the issuance of original letters of guardianship.

Revisor's Note

Section 725(2), Texas Probate Code, requires the successor guardian to take the required oath before the person enters on the administration of the guardianship. For the convenience of the reader, the revised law adds a reference to Section 1105.051 of this chapter, which is the provision that specifically addresses the relevant oath.

Revised Law

Sec. 1105.104. BONDS OF JOINT GUARDIANS. If two or more persons are appointed as guardians and are required to give a bond by the court or under this title, the court may require:

(1) a separate bond from each person; or

(2) a joint bond from all of the persons. (Tex. Prob. Code, Sec. 706.)

Source Law

Sec. 706. When two or more persons are appointed guardians and are required to give a bond by the court or under this chapter, the court may require either a separate bond from each person or one joint bond from all of the persons.

Revised Law

Sec. 1105.105. BOND OF MARRIED PERSON. (a) A married person appointed as guardian may jointly execute, with or without, the person's spouse, a bond required by law.

(b) A bond executed by a married person:

(1) binds the person's separate estate; and

(2) may bind the person's spouse only if the spouse signs the bond. (Tex. Prob. Code, Sec. 707.)

Source Law

Sec. 707. When a married person is appointed guardian, the person may jointly execute, with or without, the person's spouse, the bond required by law. The bond shall bind the person's separate estate and may bind the person's spouse only if the bond is signed by the spouse.

Revised Law

Sec. 1105.106. BOND OF MARRIED PERSON YOUNGER THAN 18 YEARS
OF AGE. A bond required to be executed by a person who is younger than 18 years of age, is or has been married, and accepts and qualifies as guardian is as valid and binding for all purposes as if the person were of legal age. (Tex. Prob. Code, Sec. 708.)

Source Law

Sec. 708. When a person who is younger than 18 years of age and is or has been married accepts and qualifies as guardian, a bond required to be executed by the person shall be as valid and binding for all purposes as if the person were of lawful age.

Revisor's Note

Section 708, Texas Probate Code, refers to the treatment of a bond of a person younger than 18 years of age as if the person were of "lawful age." The revised law substitutes "legal" for "lawful" in this context because the terms are synonymous and "legal" is more consistent with modern usage.

Revised Law

Sec. 1105.107. BOND OF GUARDIANSHIP PROGRAM. The judge may require a guardianship program appointed guardian under this title to file one bond that:

(1) meets all the conditions required under this title; and

(2) is in an amount sufficient to protect all of the guardianships and the creditors of the guardianships of the wards receiving services from the guardianship program. (Tex. Prob. Code, Sec. 708A.)

Source Law

Sec. 708A. The judge may require a guardianship program that is appointed guardian under this chapter to file one bond that:

(1) meets all the conditions required under this chapter; and

(2) is in an amount that is sufficient to protect the guardianship and the creditors of the guardianship of all of the wards of the guardianship program.

Revised Law

Sec. 1105.108. SUBSCRIPTION OF BOND BY PRINCIPALS AND SURETIES. A bond required under this title shall be subscribed by
the principals and sureties. (Tex. Prob. Code, Sec. 705 (part).)

Source Law

Sec. 705. A bond required under this chapter shall be subscribed by the principals and sureties, and . . . .

Revised Law

Sec. 1105.109. FORM OF BOND. The following form, or a form with the same substance, may be used for the bond of a guardian:

"The State of Texas

"County of _________

"Know all persons by these presents that we, _____ (insert name of each principal), as principal, and ____ (insert name of each surety), as sureties, are held and firmly bound to the judge of ____ (insert reference to appropriate judge), and that judge's successors in office, in the sum of $_____; conditioned that the above bound principal or principals, appointed by the judge as guardian or temporary guardian of the person or of the estate, or both, of _________ (insert name of ward, stating in each case whether the person is a minor or an incapacitated person other than a minor), shall well and truly perform all of the duties required of the guardian or temporary guardian by law under appointment."

(Tex. Prob. Code, Sec. 704.)

Source Law

Sec. 704. The following form, or the same in substance, may be used for the bonds of guardians:

"The State of Texas

"County of _________

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound to the county judge of the County of _________ and his successors in office, in the sum of $_____; conditioned that the above bound A. B., who has been appointed by the judge of the county as guardian or temporary guardian of the person or of the estate, or both, _________, stating in each case whether or not the person is a minor or an incapacitated person other than a minor, shall well and truly perform all of the duties required of the guardian or temporary guardian of the estate by law under appointment."

Revisor's Note

(1) Section 704, Texas Probate Code, prescribes a form that may be used for providing a guardian's bond, and within that form states that the principal
and sureties are bound to the "county judge of the
County of ________" and refers to the guardian being
appointed by "the judge of the county." Section 3(f),
Texas Probate Code, defines "county judge," "probate
judge," and "judge" identically as interchangeable
terms, with each term meaning the presiding judge of a
court having original jurisdiction over probate
proceedings. That section, revised as Section 22.019
of this code and enacted by Chapter 680, Acts of the
81st Legislature, Regular Session, 2009, applies to
the revised law. Section 22.019 omits the terms
"county judge" and "probate judge." See the revisor's
note to Section 22.019. Section 606, Texas Probate
Code, redesignated as Section 606 of this code,
requires guardianship proceedings to be filed in the
court having jurisdiction of probate proceedings.
Therefore, a guardianship proceeding may be originally
filed in a county court, statutory county court, or
statutory probate court, determined according to the
types of courts that exist in a county, and a contested
portion of a guardianship proceeding may be
transferred to a district court and heard as if
originally filed in that court. Because it is clear
from Section 704 that the bond is payable to the judge
that appoints the guardian, and because the appointing
judge may be a judge of a county court, statutory
county court, statutory probate court, or district
court, it is misleading to refer to the "county judge
of the County of ________" or the "judge of the county"
in the bond form language. For that reason, the
revised law substitutes "judge of ________ (insert
reference to appropriate judge)" and "judge" for the
quoted terms, respectively.

Addendum: In 2011, the 82nd Legislature repealed

(2) Section 704, Texas Probate Code, provides bond form language that requires a guardian or temporary guardian to well and truly perform all of the duties required of "the guardian or temporary guardian of the estate." It is clear that the quoted language refers to the preceding reference in the form to the "guardian or temporary guardian of the person or of the estate, or both." Therefore, the revised law refers to the duties required of "the guardian or temporary guardian," omitting the phrase "of the estate," for consistency of terminology.

Revised Law
Sec. 1105.110. FILING OF BOND. A bond required under this title shall be filed with the clerk after the court approves the bond. (Tex. Prob. Code, Sec. 705 (part).)

Source Law
Sec. 705. A bond required under this chapter . . . shall be filed with the clerk when approved by the court.

Revised Law
Sec. 1105.111. FAILURE TO GIVE BOND. Another person may be appointed as guardian to replace a guardian who fails to give the bond required by the court within the period required under this title. (Tex. Prob. Code, Sec. 721.)

Source Law
Sec. 721. If a guardian of a ward fails to give the bond required by the court within the time required under this chapter, another person may be appointed guardian of the ward.

Revised Law
Sec. 1105.112. BOND NOT VOID ON FIRST RECOVERY. A
guardian's bond is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the entire amount of the bond is recovered. (Tex. Prob. Code, Sec. 726.)

Source Law

Sec. 726. The bond of a guardian is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the whole amount of the bond is recovered.

[Sections 1105.113-1105.150 reserved for expansion]

SUBCHAPTER D. OTHER PROVISIONS RELATING TO BONDS OF GUARDIANS OF THE ESTATE

Revised Law

Sec. 1105.151. GENERAL FORMALITIES. A bond given by a guardian of the estate must:

(1) be conditioned as required by law;
(2) be payable to the judge or that judge's successors in office;
(3) have the written approval of the judge in the judge's official capacity; and
(4) be executed and approved in accordance with this subchapter. (Tex. Prob. Code, Sec. 703(a) (part).)

Source Law

(a) . . . [before being issued letters of guardianship of estates, the recipient of letters shall give a bond] that is conditioned as required by law and that is payable to the judge of the county in which the guardianship proceedings are pending or to the judge's successors in office. A bond of the guardian of the estate must have the written approval of either of the judges in the judge's official capacity and shall be executed and approved in accordance with Subsections (b)-(q) of this section.

Revisor's Note

(1) Section 703(a), Texas Probate Code, refers to the "judge of the county in which the guardianship proceedings are pending." For the reasons stated in Revisor's Note (1) to Section 1105.109 of this chapter, the revised law substitutes "judge" for the quoted language.
(2) Section 703(a), Texas Probate Code, refers
to obtaining the written approval of a bond from "either of the judges." The preceding language in the section refers to the bond being payable to the judge or the judge's successors. However, at the time the bond is approved, there would be only one judge in office to give the approval. For that reason, the revised law substitutes a reference to the approval of "the judge" for the reference to the approval of "either of the judges."

(3) Section 703(a), Texas Probate Code, provides that a guardian's bond shall be executed and approved in accordance with "Subsections (b)-(q) of this section." Subsections (b)-(q) are revised in this subchapter. Although this subchapter includes the revision of provisions other than Subsections (b)-(q), the revised law substitutes a reference to the entire subchapter because to the extent the other provisions relate to the execution and approval of a bond, those provisions do so by their own terms, and therefore their inclusion in the reference makes no substantive change.

Revised Law
Sec. 1105.152. GENERAL STANDARD REGARDING AMOUNT OF BOND.
(a) The judge shall set the amount of a bond for a guardian of an estate in an amount sufficient to protect the guardianship and the guardianship's creditors, as provided by this title.
(b) In determining the amount of the bond, the court may not consider estate assets placed in a management trust under Chapter 1301. (Tex. Prob. Code, Secs. 703(b), (a).)

Source Law
[(a) . . . before being issued letters of guardianship of estates, the recipient of letters shall give a bond . . . .]
(b) The judge shall set the penalty of the bond in an amount that is sufficient to protect the guardianship and its creditors, as provided by this chapter.
In determining the amount of the bond, the court may not take into account the assets of the estate that are placed in a management trust under Subpart N, Part 4, of this code.

Revisor's Note

Section 703(b), Texas Probate Code, refers to the "penalty of the bond" that the judge shall set in a prescribed amount. The revised law omits the reference to the "penalty" and refers only to the "amount of a bond." In context, it is clear that the "penalty of the bond" is synonymous with the "amount of a bond," and the latter is more consistent with modern usage. Throughout this chapter, the revised law makes similar changes to other language that refers to "the penalty" of a bond.

Revised Law

Sec. 1105.153. EVIDENTIAL HEARING ON AMOUNT OF BOND. Before setting the amount of a bond required of a guardian of an estate, the court shall hear evidence and determine:

1. the amount of cash on hand and where that cash is deposited;
2. the amount of cash estimated to be needed for administrative purposes, including the operation of a business, factory, farm, or ranch owned by the guardianship estate, and administrative expenses for one year;
3. the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;
4. the estimated value of certificates of stock, bonds, notes, or other securities of the ward, and the name of the depository in which the stocks, bonds, notes, or other securities are deposited;
5. the face value of life insurance or other policies payable to the ward or the ward's estate;
6. the estimated value of other personal property
that is owned by the guardianship, or by a person with a disability; and

(7) the estimated amount of debts due and owing by the ward. (Tex. Prob. Code, Sec. 703(c).)

Source Law

(c) If a bond is or will be required of a guardian of an estate, the court, before setting the penalty of the bond, shall hear evidence and determine:

(1) the amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including the operation of a business, factory, farm, or ranch owned by the guardianship estate, and administrative expenses for one year;

(2) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of real or personal property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;

(3) the estimated value of certificates of stock, bonds, notes, or securities of the ward, the name of the depository in which the stocks, bonds, notes, or securities of the ward are held for safekeeping, the face value of life insurance or other policies payable to the person on whose guardianship administration is sought or to the person's estate, and other personal property that is owned by the guardianship, or by a person with a disability; and

(4) the estimated amount of debts due and owing by the ward.

Revisor's Note

(1) Section 703(c)(2), Texas Probate Code, refers to "real or personal property." Except where otherwise noted, the revised law throughout this chapter omits references to "real or personal" in this context as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(2) Section 703(c)(3), Texas Probate Code, refers to the name of the depository in which assets "are held for safekeeping." The revised law substitutes "are deposited" for "are held for safekeeping." As discussed in Revisor's Note (1) to Section 1105.154 of this chapter, the terms have the same meaning in this context, and the substitution of
"deposited" in this section provides for consistent use of terminology in this chapter.

(3) Section 703(c)(3), Texas Probate Code, refers to the value of life insurance or other policies payable to "the person on whose guardianship administration is sought or to the person's estate."

The quoted language is inaccurate, in that a guardian does not seek to administer a guardianship. A guardian exercises authority with respect to a ward or a ward's estate pursuant to a guardianship. The revised law substitutes "the ward or the ward's estate" for the quoted language for the above stated reason and because it is clear from the context that the quoted language refers to the ward or the ward's estate.

(4) Section 703(c)(3), Texas Probate Code, refers to "other personal property that is owned by the guardianship, or by a person with a disability." The revised law adds "the estimated value of" to the quoted language for consistency with the reference in Subdivision (3) to "the estimated value of certificates of stock, bonds, notes, or securities."

Revised Law
Sec. 1105.154. SPECIFIC BOND AMOUNT. (a) Except as otherwise provided by this section, the judge shall set the amount of a bond of a guardian of an estate in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the ward; and

(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:

(A) interest and dividends;

(B) collectible claims;

(C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from
federal social security payments; and

(D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or

(2) voluntarily deposited by the guardian or the sureties on the guardian's bond as provided in Sections 1105.156 and 1105.157(a).

(c) The judge shall set the amount of the bond for a temporary guardian. (Tex. Prob. Code, Secs. 703(d), (q).)

Source Law

[(a) ... before being issued letters of guardianship of estates, the recipient of letters shall give a bond ... ]

(d) The judge shall set the penalty of the bond in an amount equal to the estimated value of all personal property belonging to the ward, with an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from interest, dividends, collectible claims, the aggregate amount of any installments or periodic payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property, provided that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by court order, or voluntarily made by the guardian or by the sureties on the bond of the guardian as provided in Subsections (f) and (g) of this section.

(q) If the guardian is a temporary guardian, the judge shall set the amount of the bond.

Revisor's Note

(1) Section 703(d), Texas Probate Code, refers to cash, securities, or other assets "deposited or placed in safekeeping." Throughout this chapter, the revised law omits "placed in safekeeping" and other references to "safekeeping" as unnecessary because, in this context, the concept of placing cash, securities, or other assets "in safekeeping" has the same meaning as "depositing" the assets. There is no substantive
distinction between the terms, as further indicated by the fact that other provisions of the Texas Probate Code revised in this chapter refer only to the "deposit" of assets.

(2) Section 703(d), Texas Probate Code, refers to the amount of cash or value of securities or other assets "made by" the guardian or the sureties on the guardian's bond in accordance with other specified provisions. The revised law substitutes "deposited" for "made" for clarity and consistency with other terminology in Section 703(d).

(3) Section 703(d), Texas Probate Code, refers to the voluntary deposit of assets under Sections 703(f) and (g), Texas Probate Code, by the guardian or the sureties on the guardian's bond. Section 703(f) is revised as Section 1105.156 of this chapter, and the portion of Section 703(g) that authorizes a voluntary deposit is revised as Section 1105.157(a) of this chapter. The revised law is drafted accordingly.

Revised Law

Sec. 1105.155. AGREEMENT REGARDING DEPOSIT OF ESTATE ASSETS. (a) If the court considers it to be in the best interests of the ward, the court may require the guardian of the estate and the corporate or personal sureties on the guardian's bond to agree to deposit cash and other assets of the guardianship estate in a depository described by Subsection (b). If the depository is otherwise proper, the court may require the deposit to be made in a manner so as to prevent the withdrawal of the money or other assets in the guardianship estate without the written consent of the surety or on court order made after notice to the surety.

(b) Cash and assets must be deposited under this section in a financial institution as defined by Section 201.101, Finance Code, that:

(1) has its main office or a branch office in this
(2) is qualified to act as a depository in this state under the laws of this state or the United States.

(c) An agreement made by a guardian and the sureties on the guardian's bond under this section does not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond.

(Tex. Prob. Code, Sec. 703(e).)

Source Law

[(a) . . . before being issued letters of guardianship of estates, the recipient of letters shall give a bond . . . .]

(e) If the court considers it to be in the best interests of the ward, the court may require that the guardian and the corporate or personal sureties on the bond of the guardian of the ward agree to deposit any or all cash and safekeeping of other assets of the guardianship estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this state under the laws of this state or of the United States, and, if the depository is otherwise proper, the court may require the deposit to be made in a manner so as to prevent the withdrawal of the money or other assets in the guardianship estate without the written consent of the surety or on court order made on the notice to the surety. An agreement made by a guardian and the sureties on the bond of the guardian under this section does not release from liability or change the liability of the principal or sureties as established by the terms of the bond.

Revisor's Note

Section 703(e), Texas Probate Code, refers to an "agreement made by a guardian and the sureties on the bond of the guardian under this section." The reference to "this section" means Section 703, Texas Probate Code. The relevant portion of Section 703 providing for the agreement of the guardian and sureties on the bond to deposit certain estate assets is contained in Section 703(e), Texas Probate Code, revised as this section. For this reason, the revised law retains the reference to "this section."

Revised Law

Sec. 1105.156. DEPOSIT OF ESTATE ASSETS ON TERMS PRESCRIBED
BY COURT. (a) Cash, securities, or other personal assets of a ward to which the ward is entitled may, or if considered by the court to be in the best interests of the ward, shall, be deposited in one or more depositaries described by this subchapter on terms prescribed by the court.

(b) The court in which the guardianship proceeding is pending may authorize or require additional estate assets currently on hand or that accrue during the pendency of the proceeding to be deposited as provided by Subsection (a) on:

(1) the court's own motion; or
(2) the written application of the guardian or any other person interested in the ward.

(c) The amount of the bond required to be given by the guardian of the estate shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

(d) Cash, securities, or other assets deposited under this section may be withdrawn wholly or partly from the depository only in accordance with a court order, and the amount of the guardian's bond shall be increased in proportion to the amount of the cash or the value of the securities or other assets authorized to be withdrawn. (Tex. Prob. Code, Sec. 703(f).)

Source Law

[(a) . . . before being issued letters of guardianship of estates, the recipient of letters shall give a bond . . . .]

(f) Cash, securities, or other personal assets of a ward that a ward is entitled to receive may, and if it is deemed by the court in the best interests of the ward shall, be deposited or placed in safekeeping in one or more of the depositaries described in this section on the terms prescribed by the court. The court in which the guardianship proceeding is pending, on its own motion or on written application of the guardian or of any other person interested in the ward, may authorize or require additional assets of the guardianship estate then on hand or as they accrue during the pendency of the guardianship proceeding to be deposited or held in safekeeping as provided by this section. The amount of the guardian's bond shall be reduced in proportion to the cash deposited or the value of the securities or other assets placed in safekeeping. Cash that is deposited, securities or other assets held in safekeeping, or portions of the
cash, securities, or other assets held in safekeeping may be withdrawn from a depository only on court order. The bond of the guardian shall be increased in proportion to the amount of cash or the value of securities or other assets that are authorized to be withdrawn.

Revised Law

Sec. 1105.157. DEPOSITS OF GUARDIAN. (a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, the guardian of an estate may deposit the guardian's own cash or securities acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, that has its main office or a branch office in this state.

(b) If the deposit is otherwise proper, the deposit must be in an amount or value equal to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(c) A depository that receives a deposit made under Subsection (a) shall issue a receipt for the deposit that:

(1) shows the amount of cash deposited or the amount and description of the securities deposited, as applicable; and

(2) states that the depository agrees to disburse or deliver the cash or securities only on receipt of a certified copy of an order of the court in which the proceeding is pending.

(d) A receipt issued by a depository under Subsection (c) must be attached to the guardian's bond and be delivered to and filed by the county clerk after the receipt is approved by the judge.

(e) The amount of cash or securities on deposit may be increased or decreased, by court order from time to time, as the interests of the guardianship require.

(f) A deposit of cash or securities made instead of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(g) A creditor has the same rights against a guardian of the estate and the deposits as are provided for recovery against sureties on a bond. (Tex. Prob. Code, Secs. 703(g), (h), (i), (j), (k).)
(g) In lieu of giving a surety or sureties on a bond that is required of the guardian, or for purposes of reducing the amount of the bond, the guardian of an estate may deposit out of the guardian's own assets cash or securities that are acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state. If the deposit is otherwise proper, the deposit must be equal in amount or value to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(h) The depository shall issue a receipt for a deposit in lieu of a surety showing the amount of cash or, if securities, the amount and description of the securities and agreeing not to disburse or deliver the cash or securities except on receipt of a certified copy of an order of the court in which the proceeding is pending. The receipt must be attached to the guardian's bond and be delivered to and filed by the county clerk after the receipt is approved by the judge.

(i) The amount of cash or securities on deposit may be increased or decreased by court order from time to time as the interests of the guardianship shall require.

(j) A cash or security deposit in lieu of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(k) A creditor has the same rights against the guardian and the deposits as are provided for recovery against sureties on a bond.

Revised Law

Sec. 1105.158. BOND REQUIRED INSTEAD OF DEPOSITS. (a) The court may on its own motion or on the written application by the guardian of an estate or any other person interested in the guardianship:

(1) require the guardian to give adequate bond instead of the deposit; or

(2) authorize withdrawal of the deposit and substitution of a bond with sureties.

(b) Before the 21st day after the date the guardian is personally served with notice of the filing of the application or the date the court enters the court's motion, the guardian shall file a sworn statement showing the condition of the guardianship.

(c) A guardian who fails to comply with Subsection (b) is subject to removal as in other cases.

(d) The deposit may not be released or withdrawn until the court:
(1) is satisfied as to the condition of the
guardianship estate;
(2) determines the amount of the bond; and
(3) receives and approves the bond. (Tex. Prob. Code, Sec. 703(1).)

Source Law
[(a) ... before being issued letters of
guardianship of estates, the recipient of letters
shall give a bond. ... .]

(1) The court on its own motion or on written
application by the guardian or any other person
interested in the guardianship may require that the
guardian give adequate bond in lieu of the deposit or
may authorize withdrawal of the deposit and
substitution of a bond with sureties on the bond. In
either case, the guardian shall file a sworn statement
showing the condition of the guardianship. The
guardian is subject to removal as in other cases if the
guardian does not file the sworn statement before the
21st day after the guardian is personally served with
notice of the filing of the application or before the
21st day after the date the court enters its motion.
The deposit may not be released or withdrawn until the
court is satisfied as to the condition of the
guardianship estate, determines the amount of bond,
and receives and approves the bond.

Revised Law
Sec. 1105.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF
GUARDIANSHIP. (a) Any deposit of assets of the guardian of an
estate, the guardianship, or a surety that remains at the time a
guardianship is closed shall be released by court order and paid to
the person entitled to the assets.

(b) Except as provided by Subsection (c), a writ of
attachment or garnishment does not lie against a deposit described
by Subsection (a).

(c) A writ of attachment or garnishment may lie against a
deposit described by Subsection (a) as to a claim of a creditor of
the guardianship or a person interested in the guardianship,
including a distributee or ward, only to the extent the court has
ordered distribution. (Tex. Prob. Code, Sec. 703(m).)
(m) On the closing of a guardianship, a deposit or a portion of a deposit that remains on hand, whether of the assets of the guardian, the guardianship, or surety, shall be released by court order and paid to the person entitled to the assets. A writ of attachment or garnishment does not lie against the deposit except as to claims of creditors of the guardianship being administered or of persons interested in the guardianship, including distributees and wards, and only if the court has ordered distribution, and only to the extent of the ordered distribution.

Revised Law

Sec. 1105.160. AUTHORIZED CORPORATE OR PERSONAL SURETIES.

(a) The surety on a bond of a guardian of an estate may be an authorized corporate or personal surety.

(b) A bond of a guardian of an estate with sureties who are individuals must have at least two sureties, each of whom must:

(1) execute an affidavit in the manner provided by Subchapter E; and

(2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as otherwise provided by law.

(Tex. Prob. Code, Secs. 703(n), (p) (part).)

Source Law

[(a) . . . before being issued letters of guardianship of estates, the recipient of letters shall give a bond . . . .]

(n) The surety on the bond may be an authorized corporate or personal surety.

(p) If the sureties are natural persons, there may not be less than two sureties, each of whom shall make affidavit in the manner prescribed by this chapter. The judge must be satisfied that each surety owns property in this state, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as otherwise provided by law, only one surety is required if the surety is an authorized corporate surety. . . .

Revisor’s Note

Section 703(p), Texas Probate Code, requires a surety on a guardian's bond who is an individual to execute an affidavit in the manner prescribed by "this chapter," meaning Chapter XIII, Texas Probate Code.
The revised law substitutes a reference to "Subchapter E" for "this chapter" because the provisions of the Texas Probate Code that relate to an individual surety's affidavit are revised in Subchapter E of this chapter.

Revised Law
Sec. 1105.161. SURETIES FOR CERTAIN BONDS. (a) If the amount of the bond of a guardian of an estate exceeds $50,000, the court may require that the bond be signed by:
   (1) at least two authorized corporate sureties; or
   (2) one corporate surety and at least two good and sufficient personal sureties.
(b) The guardianship shall pay the cost of a bond with corporate sureties. (Tex. Prob. Code, Sec. 703(o).)

Source Law
[(a) . . . before being issued letters of guardianship of estates, the recipient of letters shall give a bond . . . .] (o) When the bond is more than $50,000, the court may require that the bond be signed by two or more authorized corporate sureties or by one corporate surety and two or more good and sufficient personal sureties. The guardianship shall pay the cost of a bond with corporate sureties.

Revised Law
Sec. 1105.162. DEPOSITS BY PERSONAL SURETY. Instead of executing an affidavit under Section 1105.201 or creating a lien under Section 1105.202 when required, a personal surety may deposit the surety's own cash or securities in the same manner as a guardian instead of pledging real property as security, subject to the provisions governing the deposits if made by a guardian. (Tex. Prob. Code, Sec. 703(p) (part).)

Source Law
(p) . . . A personal surety, instead of making an affidavit or creating a lien on specific real estate when an affidavit or lien is required, may deposit the personal surety's own cash or securities in the same manner as a guardian in lieu of pledging real property as security, subject to the provisions covering the deposits when made by guardians.
Revisor's Note

Section 703(p), Texas Probate Code, refers to "making an affidavit." For the convenience of the reader, the revised law adds a reference to Section 1105.201 of this chapter, which is the provision that addresses the relevant affidavit. Section 703(p) also refers to "creating a lien on specific real estate."
The revised law substitutes "creating a lien under Section 1105.202" for the convenience of the reader because that is the provision of this chapter that addresses the relevant lien.

Revised Law

Sec. 1105.163. APPLICABILITY OF SUBCHAPTER TO CERTAIN COURT ORDERS. To the extent applicable, the provisions of this subchapter relating to the deposit of cash and securities cover the orders entered by the court when:

(1) property of a guardianship has been authorized to be sold or rented;
(2) money is borrowed from the guardianship;
(3) real property, or an interest in real property, has been authorized to be leased for mineral development or made subject to unitization;
(4) the general bond has been found insufficient; or
(5) money is borrowed or invested on behalf of a ward.

(Tex. Prob. Code, Sec. 703(r).)

Source Law

(r) The provisions of this section relating to the deposit of cash and safekeeping of securities cover, as far as they may apply, the orders entered by the court when:

(1) real or personal property of a guardianship has been authorized to be sold or rented;
(2) money is borrowed from the guardianship;
(3) real property, or an interest in real property, has been authorized to be leased for mineral development or made subject to unitization;
(4) the general bond has been found insufficient; or
(5) money is borrowed or invested on behalf of a ward.
Revisor's Note

Section 703(r), Texas Probate Code, refers to "[t]he provisions of this section relating to the deposit of cash and safekeeping of securities." The provisions of Section 703, Texas Probate Code, relating to the deposit of cash and securities are revised in this subchapter, and the revised law is drafted accordingly.

[Sections 1105.164-1105.200 reserved for expansion]

SUBCHAPTER E. PROVISIONS RELATING TO PERSONAL SURETIES

Revised Law

Sec. 1105.201. AFFIDAVIT OF PERSONAL SURETY. (a) Before a judge considers a bond with a personal surety, each personal surety must execute an affidavit stating the amount by which the surety's assets that are reachable by creditors exceed the surety's liabilities. The total of the surety's worth must equal at least twice the amount of the bond.

(b) Each affidavit must be presented to the judge for consideration and, if approved, shall be attached to and form part of the bond. (Tex. Prob. Code, Sec. 709(a).)

Source Law

Sec. 709. (a) Before a judge considers a bond with a personal surety, each personal surety shall execute an affidavit stating the amount of the surety's assets, reachable by creditors, of a value over and above the surety's liabilities. The total of the surety's worth must be equal to at least double the amount of the bond. The affidavit shall be presented to the judge for the judge's consideration and, if approved, shall be attached to and form part of the bond.

Revised Law

Sec. 1105.202. LIEN ON REAL PROPERTY OWNED BY PERSONAL SURETY. (a) If a judge finds that the estimated value of personal property of the guardianship that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on the real property owned by the sureties, the judge shall enter an order requiring each surety to designate real property that is owned by the surety,
located in this state, and subject to execution. The designated property must have a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond and must have an adequate legal description, all of which the surety shall incorporate in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(b) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(c) Before letters of guardianship are issued to the guardian whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:

(1) a sufficient description of the real property;
(2) the names of the principal and sureties on the bond;
(3) the amount of the bond;
(4) the name of the guardianship; and
(5) the name of the court in which the bond is given.

(d) Each county clerk who receives a statement required by Subsection (c) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the lien described in the statement.

(e) The recording and indexing required by Subsection (d) is constructive notice to a person regarding the existence of the lien on the real property located in the county, effective as of the date of the indexing.

(f) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:

(1) an authorized corporate surety; or
(2) an authorized corporate surety and at least two personal sureties. (Tex. Prob. Code, Secs. 709(b), 710.)

**Source Law**

[Sec. 709]

(b) If the judge finds that the estimated value of personal property of the guardianship that cannot be deposited or held in safekeeping as provided by this section is such that personal sureties cannot be accepted without the creation of a specific lien on the real property of the sureties, the judge shall enter an order requiring that each surety designate real property owned by the surety in this state subject to execution. The designated property must be of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of the property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and attached to and form part of the bond. If the surety does not comply with the order, the judge may require that the bond be signed by an authorized corporate surety or by an authorized corporate surety and two or more personal sureties.

Sec. 710. When a personal surety is required by the court to create a lien on specific real property as a condition of the personal surety's acceptance as surety on a bond, a lien on the surety's real property in this state that is described in the affidavit of the surety, and only on the property, shall arise as security for the performance of the obligation of the bond. Before letters are issued to the guardian, the clerk of the court shall mail to the office of the county clerk of each county in which any real property set forth in the surety's affidavit is located a statement signed by the clerk that gives a sufficient description of the real property, the name of the principal and sureties, the amount of the bond, the name of the guardianship, and the court in which the bond is given. The county clerk to whom such statement is sent shall record the statement in the deed records of the county. The recorded statement shall be duly indexed in such a manner that the existence and character of a lien may conveniently be determined, and the recording and indexing of the statement is constructive notice to a person of the existence of the lien on the real property located in the county, effective as of the date of the indexing.

**Revisor's Note**

(1) Section 709(b), Texas Probate Code, refers to the deposit of personal property of the guardianship "as provided by this section." Section 709 does not contain provisions addressing the deposit of personal property of the guardianship. However, Section 703, Texas Probate Code, revised in this chapter in Subchapter D, does address the deposit of personal property of the guardianship, and it is clear.
in this context that the relevant provisions in that
section are the provisions intended to be referenced
in Section 709. The revised law therefore substitutes
"as provided by Subchapter D" for "as provided by this
section."

(2) Section 710, Texas Probate Code, requires
the court clerk to take a specified action before
issuing "letters" to certain guardians. The revised
law substitutes "letters of guardianship" because it
is clear from the context that the letters to which
this section refers are letters of guardianship.

(3) Section 710, Texas Probate Code, requires
that certain recorded statements be "duly" indexed in
a specified manner. The revised law omits "duly" in
this context because it does not add to the clear
meaning of the law. The requirement that the
statements be indexed in the specified manner is a
sufficient statement of the necessary action.

Revised Law

Sec. 1105.203. SUBORDINATION OF LIEN ON REAL PROPERTY OWNED
BY PERSONAL SURETY. (a) A personal surety required to create a
lien on specific real property under Section 1105.202 who wishes to
lease the real property for mineral development may file a written
application in the court in which the proceeding is pending
requesting subordination of the lien to the proposed lease.

(b) The judge may enter an order granting the application.

(c) A certified copy of an order entered under this section
that is filed and recorded in the deed records of the proper county
is sufficient to subordinate the lien to the rights of a lessee
under the proposed lease. (Tex. Prob. Code, Sec. 709(c).)

Source Law

(c) If a personal surety who has been required to
create a lien on specific real estate desires to lease
the real property for mineral development, the
personal surety may file the surety's written
application in the court in which the proceeding is
pending to request subordination of the lien to the
proposed lease. The judge of the court in which the proceeding is pending may enter an order granting the application. A certified copy of an order entered under this subsection that is filed and recorded in the deed records of the proper county is sufficient to subordinate the lien to the rights of a lessee in the proposed lease.

Revisor's Note
Section 709(c), Texas Probate Code, refers to "a personal surety who has been required to create a lien on specific real estate." For the convenience of the reader, the revised law adds a reference to Section 1105.202 of this chapter, which is the provision under which a personal surety may be required to create a lien. The revised law also substitutes "real property" for "real estate" for consistency with the terminology subsequently used in Section 709(c) and used in Section 1105.202 of this chapter.

Revised Law
Sec. 1105.204. RELEASE OF LIEN ON REAL PROPERTY OWNED BY PERSONAL SURETIES. (a) A personal surety who has given a lien under Section 1105.202 may apply to the court to have the lien released.

(b) The court shall order the lien released if:

(1) the court is satisfied that the bond is sufficient without the lien; or

(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.

(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the guardian to appear and give a new bond.

(d) A certified copy of the court's order releasing the lien and describing the property that was subject to the lien has the effect of canceling the lien if the order is filed with the county clerk and recorded in the deed records of the county in which the
property is located. (Tex. Prob. Code, Secs. 719, 720.)

Source Law

Sec. 719. If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested if the court is satisfied that the bond is sufficient without the lien on the property or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien that is to be released. If the personal surety who requests the release of the lien does not offer a lien on other real or personal property and if the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the guardian to appear and give a new bond.

Sec. 720. A certified copy of the court order that describes the property, releases the lien, and is filed with the county clerk and recorded in the deed records of the county in which the property is located has the effect of cancelling the lien on the property.

Revisor's Note

(1) Section 719, Texas Probate Code, refers to "a personal surety who has given a lien on specific real property as security." The revised law adds a reference to Section 1105.202 of this chapter for the reason stated in the revisor's note to Section 1105.203 of this chapter.

(2) Section 719, Texas Probate Code, refers to the substitution of "other real or personal property of the surety." In most circumstances, the revised law omits "real or personal" as unnecessary for the reason stated in Revisor's Note (1) to Section 1105.153 of this chapter. In this provision, however, the revised law retains "real or personal" to maintain the distinction between the real property subject to the original lien and the real or personal property that may be substituted.

(3) Section 719, Texas Probate Code, refers to the "terms and conditions" required for a lien that is to be released. The revised law omits "conditions" because "conditions" is included in the meaning of "terms."
Sec. A1105.251. GROUNDS FOR REQUIRING NEW BOND. (a) A guardian may be required to give a new bond if:

(1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;

(2) in the court's opinion:
   (A) the sureties on a bond are insufficient; or
   (B) a bond is defective;

(3) the amount of a bond is insufficient;

(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or

(5) a bond and the record of the bond have been lost or destroyed.

(b) A person interested in the guardianship may have the guardian cited to appear and show cause why the guardian should not be required to give a new bond by filing a written application with the county clerk of the county in which the guardianship proceeding is pending. The application must allege that:

(1) the bond is insufficient or defective; or

(2) the bond and the record of the bond have been lost or destroyed. (Tex. Prob. Code, Secs. 711, 712.)

Sec. 711. A guardian may be required to give a new bond when:

(1) one of the sureties on the bond dies, removes beyond the limits of the state, or becomes insolvent;

(2) in the opinion of the court, the sureties on the bond are insufficient;

(3) in the opinion of the court, the bond is defective;

(4) the amount of the bond is insufficient;

(5) one of the sureties petitions the court to be discharged from future liability on the bond; or

(6) the bond and the record of the bond has been lost or destroyed.

Sec. 712. A person interested in a guardianship may allege, on application in writing that is filed with the county clerk of the county in which the guardianship proceeding is pending, that the
guardian's bond is insufficient or defective or has been, with the record of the bond, lost or destroyed, and may cause the guardian to be cited to appear and show cause why the guardian should not give a new bond.

Revised Law

Sec. 1105.252. COURT ORDER OR CITATION ON NEW BOND. (a) When a judge is made aware that a bond is insufficient or that a bond and the record of the bond have been lost or destroyed, the judge shall:

(1) without delay and without notice enter an order requiring the guardian to give a new bond; or

(2) without delay have the guardian cited to show cause why the guardian should not be required to give a new bond.

(b) An order entered under Subsection (a)(1) must state:

(1) the reasons for requiring a new bond;

(2) the amount of the new bond; and

(3) the period within which the new bond must be given, which may not expire earlier than the 10th day after the date of the order.

(c) A guardian who opposes an order entered under Subsection (a)(1) may demand a hearing on the order. The hearing must be held before the expiration of the period within which the new bond must be given. (Tex. Prob. Code, Secs. 713, 714(a).)

Source Law

Sec. 713. When it is made known to a judge that a bond is insufficient or that the bond has, with the record of the bond, been lost or destroyed, the judge shall:

(1) without delay and without notice enter an order requiring the guardian to give a new bond; or

(2) without delay cause the guardian to be cited to show cause why the guardian should not give a new bond.

Sec. 714. (a) The order entered under Section 713(1) of this code must state the reasons for requiring a new bond, the amount of the new bond, and the time within which the new bond must be given, which may not be earlier than the 10th day after the date of the order. If the guardian opposes the order, the guardian may demand a hearing on the order. The hearing must be held before the expiration of the time within which the new bond must be given.

Revised Law

Sec. 1105.253. SHOW CAUSE HEARING ON NEW BOND REQUIREMENT. (a) On the return of a citation ordering a guardian to show cause
why the guardian should not be required to give a new bond, the
judge shall, on the date specified in the return of citation for the
hearing of the matter, inquire into the sufficiency of the reasons
for requiring a new bond.

(b) If the judge is satisfied that a new bond should be
required, the judge shall enter an order requiring a new bond. The
order must state:

1. the amount of the new bond; and
2. the period within which the new bond must be given,
which may not expire later than the 20th day after the date of the
order. (Tex. Prob. Code, Sec. 714(b).)

Source Law

(b) On the return of a citation ordering a
guardian to show cause why the guardian should not give
a new bond, the judge on the day contained in the
return of citation as the day for the hearing of the
matter, shall proceed to inquire into the sufficiency
of the reasons for requiring a new bond. If the judge
is satisfied that a new bond should be required, the
judge shall enter an order to that effect that states
the amount of the new bond and the time within which
the new bond shall be given, which may not be later
than 20 days from the date of the order issued by the
judge under this subsection.

Revised Law

Sec. 1105.254. EFFECT OF ORDER REQUIRING NEW BOND. (a) An
order requiring a guardian to give a new bond has the effect of
suspending the guardian's powers.

(b) After the order is entered, the guardian may not pay out
any of the guardianship's money or take any other official action,
except to preserve the guardianship's property, until the new bond
is given and approved. (Tex. Prob. Code, Sec. 715.)

Source Law

Sec. 715. When a guardian is required to give a
new bond, the order requiring the bond has the effect
of suspending the guardian's powers, and the guardian
may not pay out any money of the guardianship or do any
other official act, except to preserve the property of
the guardianship, until a new bond has been given and
approved.

Revised Law

Sec. 1105.255. NEW BOND IN DECREASED AMOUNT. (a) A
guardian required to give a bond may at any time file with the clerk
a written application requesting that the court reduce the amount of the bond.

(b) After the guardian files an application under Subsection (a), the clerk shall issue and have posted notice to all persons interested in the estate and to a surety on the bond. The notice must inform the interested persons and surety of:

(1) the fact that the application has been filed;
(2) the nature of the application; and
(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the guardianship; and
(2) the judge approves an accounting filed at the time of the application. (Tex. Prob. Code, Sec. 716.)

Source Law
Sec. 716. A guardian required to give bond at any time may file with the clerk a written application to the court to have the bond reduced. After an application has been filed by the guardian under this section, the clerk shall issue and cause to be posted notice to all persons interested in the estate and to a surety on the bond, apprising the persons and surety of the fact and nature of the application and of the time at which the judge will hear the application. The judge may permit the filing of a new bond in a reduced amount on the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the guardianship and on the approval of an accounting filed at the time of the application.

Revised Law
Sec. 1105.256. REQUEST BY SURETY FOR NEW BOND. (a) A surety on a guardian's bond may at any time file with the clerk a petition requesting that the court in which the proceeding is pending:

(1) require the guardian to give a new bond; and
(2) discharge the petitioner from all liability for the future acts of the guardian.

(b) If a petition is filed under Subsection (a), the
guardian shall be cited to appear and give a new bond. (Tex. Prob. Code, Sec. 718.)

Source Law

Sec. 718. A surety on the guardian's bond at any time may file with the clerk a petition with the court in which the proceeding is pending, praying that the guardian be required to give a new bond and that the petitioner be discharged from all liability for the future acts of the guardian. If a petition is filed, the guardian shall be cited to appear and give a new bond.

Revised Law

Sec. 1105.257. DISCHARGE OF FORMER SURETIES ON APPROVAL OF NEW BOND. When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond. (Tex. Prob. Code, Sec. 717.)

Source Law

Sec. 717. When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal.

CHAPTER 1106. LETTERS OF GUARDIANSHIP

Sec. 1106.001. ISSUANCE OF CERTIFICATE AS LETTERS OF GUARDIANSHIP

Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP

Sec. 1106.003. RENEWAL OF LETTERS OF GUARDIANSHIP

Sec. 1106.004. REPLACEMENT AND OTHER ADDITIONAL LETTERS OF GUARDIANSHIP

Sec. 1106.005. EFFECT OF LETTERS OR CERTIFICATE

Sec. 1106.006. VALIDATION OF CERTAIN LETTERS OF GUARDIANSHIP

CHAPTER 1106. LETTERS OF GUARDIANSHIP

Revised Law

Sec. 1106.001. ISSUANCE OF CERTIFICATE AS LETTERS OF GUARDIANSHIP. (a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under seal stating:

(1) the fact of the appointment and of the...
qualification;
(2) the date of the appointment and of the qualification; and
(3) the date the letters of guardianship expire.
(b) The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship. (Tex. Prob. Code, Sec. 659(a).)

Source Law
Sec. 659. (a) When a person who is appointed guardian has qualified under Section 699 of this code, the clerk shall issue to the guardian a certificate under seal, stating the fact of the appointment, of the qualification, the date of the appointment and qualification, and the date the letters of guardianship expire. The certificate issued by the clerk constitutes letters of guardianship.

Revised Law
Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP. Letters of guardianship expire one year and four months after the date the letters are issued, unless renewed. (Tex. Prob. Code, Sec. 659(b).)

Source Law
(b) All letters of guardianship expire one year and four months after the date of issuance unless renewed.

Revised Law
Sec. 1106.003. RENEWAL OF LETTERS OF GUARDIANSHIP. (a) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the estate until the court receives and approves the guardian's annual account.
(b) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the person until the court receives and approves the guardian's annual report.
(c) If a guardian's annual account or annual report is disapproved or is not timely filed, the clerk may not issue further letters of guardianship to the delinquent guardian unless ordered by the court.
(d) Except as otherwise provided by this subsection, regardless of the date the court approves an annual account or
annual report for purposes of this section, a renewal of letters of
guardianship relates back to the date the original letters were
issued. If the accounting period has been changed as provided by
this title, a renewal relates back to the first day of the
accounting period. (Tex. Prob. Code, Secs. 659(c), (d).)

(c) The clerk may not renew letters of
guardianship relating to the appointment of a guardian
of the estate until the court receives and approves the
guardian's annual accounting. The clerk may not renew
letters of guardianship relating to the appointment of
a guardian of the person until the court receives and
approves the annual report. If the guardian's annual
accounting or annual report is disapproved or not
timely filed, the clerk may not issue further letters
of guardianship to the delinquent guardian unless
ordered by the court.

(d) Regardless of the date the court approves an
annual accounting or annual report for purposes of
this section, a renewal relates back to the date the
original letters of guardianship are issued, unless
the accounting period has been changed as provided by
this chapter, in which case a renewal relates back to
the first day of the accounting period.

Revisor's Note

(1) Sections 659(c) and (d), Texas Probate Code,
refer to a guardian's "annual accounting." Under
Section 741, Texas Probate Code, revised as Subchapter
A, Chapter 1163, of this code, a guardian of the estate
is required to file with the court an annual account of
the ward's estate, including information about the
ward's property and claims against the estate. Section
742, Texas Probate Code, revised as Subchapter B,
Chapter 1163, of this code, governs the filing and
approval of these "annual accounts." For accuracy,
the revised law substitutes "annual account" for
"annual accounting."

(2) Section 659(d), Texas Probate Code, refers
to the approval of certain annual accounts and reports
for the purposes of "this section," meaning Section
659. In the context of Section 659, the purpose for
which the approved accounts and reports are used
relates to the renewal of letters of guardianship. The
relevant portions of Section 659 relating to the 
renewal of letters of guardianship are revised in this 
section, and consequently, the revised law retains the 
reference to "this section."

Revised Law

Sec. 1106.004. REPLACEMENT AND OTHER ADDITIONAL LETTERS OF 
GUARDIANSHIP. When letters of guardianship have been destroyed or 
lost, the clerk shall issue new letters that have the same effect as 
the original letters. The clerk shall also issue any number of 
letters on request of the person who holds the letters. (Tex. Prob. 
Code, Sec. 661.)

Source Law

Sec. 661. When letters of guardianship have 
been destroyed or lost, the clerk shall issue new 
letters that have the same force and effect as the 
original letters. The clerk shall also issue any 
number of letters on request of the person who holds 
the letters.

Revisor's Note

Section 661, Texas Probate Code, refers to the 
"force and effect" of letters issued to replace 
original letters of guardianship. The revised law 
omits the reference to "force" because, in context, 
the meaning of the term is included within the meaning 
of "effect."

Revised Law

Sec. 1106.005. EFFECT OF LETTERS OR CERTIFICATE. (a) 
Letters of guardianship or a certificate issued under Section 
1106.001 under seal of the clerk of the court that granted the 
letters is sufficient evidence of:

(1) the appointment and qualification of the guardian; 
and

(2) the date of qualification.

(b) The court order that appoints the guardian is evidence 
of the authority granted to the guardian and of the scope of the 
powers and duties that the guardian may exercise only after the date 
letters of guardianship or a certificate has been issued under
Section 1106.001. (Tex. Prob. Code, Sec. 660.)

Source Law

Sec. 660. (a) Letters of guardianship or a certificate under seal of the clerk of the court that granted the letters issued under Section 659 of this code is sufficient evidence of the appointment and qualification of the guardian and of the date of qualification.

(b) The court order that appoints the guardian is evidence of the authority granted to the guardian and of the scope of the powers and duties that the guardian may exercise only after the date letters of guardianship or a certificate has been issued under Section 659 of this code.

Revisor's Note

Section 660, Texas Probate Code, refers to letters of guardianship or a certificate issued under Section 659, Texas Probate Code. The relevant portions of Section 659 relating to the issuance of letters of guardianship or a certificate are revised as Section 1106.001 of this chapter. The revised law is drafted accordingly.

Revised Law

Sec. 1106.006. VALIDATION OF CERTAIN LETTERS OF GUARDIANSHIP. (a) Letters of guardianship existing on September 1, 1993, that were issued to a nonresident guardian without the procedure or any part of the procedure provided in this chapter, or without a notice or citation required of a resident guardian, are validated as of the letters' dates, to the extent that the absence of the procedure, notice, or citation is concerned. An otherwise valid conveyance, mineral lease, or other act of a nonresident guardian qualified and acting in connection with the letters of guardianship and under supporting orders of a county or probate court of this state is validated.

(b) This section does not apply to letters of guardianship, a conveyance, a lease, or another act of a nonresident guardian under this section if the absence of the procedure, notice, or citation involving the letters, conveyance, lease, or other act of the nonresident guardian is an issue in a lawsuit pending in this state on September 1, 1993. (Tex. Prob. Code, Sec. 663.)
Sec. 663. All presently existing letters of guardianship issued to a nonresident guardian, with or without the procedure provided in this subpart, in whole or in part, and with or without a notice or citation required of resident guardians, are validated as of each letter's date, insofar as the absence of the procedure, notice, or citations is concerned. An otherwise valid conveyance, mineral lease, or other act of a nonresident guardian qualified and acting in connection with the letters of guardianship under supporting orders of a county or probate court of this state are validated. This section does not apply to any letters, conveyance, lease, or other act of a nonresident guardian under this section if the absence of the procedure, notice, or citation involving the letters, conveyance, lease, or other act of the nonresident guardian is an issue in a lawsuit pending in this state on September 1, 1993.

Revisor's Note

Section 663, Texas Probate Code, refers to certain "presently existing letters of guardianship." For accuracy and clarity in the law, the revised law substitutes "letters of guardianship existing on September 1, 1993," for the quoted language because Section 663, Texas Probate Code, took effect on September 1, 1993.

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CHAPTER 1151. RIGHTS, POWERS, AND DUTIES UNDER GUARDIANSHIP

SUBCHAPTER A. RIGHTS, POWERS, AND DUTIES IN GENERAL

Revised Law

Sec. 1151.001. RIGHTS AND POWERS RETAINED BY WARD. An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of having been specifically granted to the guardian. (Tex. Prob. Code, Sec. 675.)

Source Law

Sec. 675. An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of having been specifically granted to the guardian.

Revised Law

Sec. 1151.002. RIGHTS OF GOOD FAITH PURCHASERS. (a) This section applies only to a guardian who has qualified acting as guardian and in conformity with the law and the guardian's authority.

(b) A guardian's act is valid for all purposes regarding the rights of an innocent purchaser of property of the guardianship estate who purchased the property from the guardian for valuable consideration, in good faith, and without notice of any illegality in the title to the property, regardless of whether the guardian's act or the authority under which the act was performed is subsequently set aside, annulled, or declared invalid. (Tex. Prob. Code, Sec. 662.)

Source Law

Sec. 662. When a guardian who has qualified performs any act as guardian that is in conformity with the guardian's authority and the law, the guardian's act continues to be valid for all intents and purposes in regard to the rights of an innocent purchaser of the property of the guardianship estate who purchased the
property from the guardian for a valuable consideration, in good faith, and without notice of any illegality in the title to the property, even if the guardian's act or the authority under which the act was performed may later be set aside, annulled, or declared invalid.

Revisor's Note
Section 662, Texas Probate Code, provides that in certain circumstances a guardian's act continues to be valid "for all intents and purposes." The revised law substitutes "for all purposes" for the quoted phrase because, in context, "intents" is included in the meaning of "purposes."

Revised Law
Sec. 1151.003. GUARDIAN MAY NOT DISPUTE WARD'S RIGHT TO PROPERTY; EXCEPTION. A guardian, or an heir, executor, administrator, or assignee of a guardian, may not dispute the right of the ward to any property that came into the guardian's possession as guardian of the ward, except property:

(1) that is recovered from the guardian; or
(2) on which there is a personal action pending. (Tex. Prob. Code, Sec. 778.)

Source Law
Sec. 778. A guardian or the heirs, executors, administrators, or assigns of a guardian may not dispute the right of the ward to any property that came into the possession of the guardian as guardian of the ward, except property that is recovered from the guardian or property on which there is a personal action pending.

Revised Law
Sec. 1151.004. POWERS AND DUTIES OF PERSON SERVING AS GUARDIAN OF BOTH PERSON AND ESTATE. The guardian of both the person and the estate of a ward has all the rights and powers and shall perform all the duties of the guardian of the person and the guardian of the estate. (Tex. Prob. Code, Sec. 769.)

Source Law
Sec. 769. The guardian of both the person of and estate of a ward has all the rights and powers and shall perform all the duties of the guardian of the person and of the guardian of the estate.

[Sections 1151.005-1151.050 reserved for expansion]
Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a) The guardian of the person of a ward is entitled to take charge of the person of the ward. (b) The duties of the guardian of the person correspond with the rights of the guardian. (c) A guardian of the person has: (1) the right to have physical possession of the ward and to establish the ward's legal domicile; (2) the duty to provide care, supervision, and protection for the ward; (3) the duty to provide the ward with clothing, food, medical care, and shelter; (4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward; and (5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code. (d) Notwithstanding Subsection (c)(4), a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code. (Tex. Prob. Code, Sec. 767.)

Sec. 767. (a) The guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has: (1) the right to have physical possession of the ward and to establish the ward's legal domicile;
(2) the duty to provide care, supervision, and protection for the ward;
(3) the duty to provide the ward with clothing, food, medical care, and shelter;
(4) the power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward; and
(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward’s eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) Notwithstanding Subsection (a)(4) of this section, a guardian of the person of a ward has the power to personally transport the ward or to direct the ward’s transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

Revised Law
Sec. 1151.052. CARE OF ADULT WARD. (a) The guardian of an adult ward may spend funds of the guardianship as provided by court order to care for and maintain the ward.

(b) The guardian of an adult ward who has decision-making ability may apply on the ward’s behalf for residential care and services provided by a public or private facility if the ward agrees to be placed in the facility. The guardian shall report the condition of the ward to the court at regular intervals at least annually, unless the court orders more frequent reports. The guardian shall include in a report of an adult ward who is receiving residential care in a public or private residential care facility a statement as to the necessity for continued care in the facility.

(Tex. Prob. Code, Sec. 770(a).)

Source Law
Sec. 770. (a) The guardian of an adult may expend funds of the guardianship as provided by court order to care for and maintain the incapacitated person. The guardian may apply for residential care and services provided by a public or private facility on behalf of an incapacitated person who has decision-making ability if the person agrees to be placed in the facility. The guardian shall report the condition of the person to the court at regular intervals at least annually, unless the court orders more frequent reports. If the person is receiving residential care in a public or private residential care facility, the guardian shall include in any report to the court a statement as to the necessity for continued care in the facility.
Revisor's Note

Section 770(a), Texas Probate Code, refers to an "incapacitated person," the guardian of whom has certain powers and duties. Section 601(31), Texas Probate Code, revised in this title as Section 1002.030, defines a person for whom a guardian has been appointed as a "ward." For consistency of terminology in this title, throughout this chapter the revised law substitutes references to a "ward" for references to an "incapacitated person" or "person" for whom a guardian has been appointed when it is apparent from the context that "incapacitated person" or "person" refers to the ward.

Revised Law

Sec. 1151.053. COMMITMENT OF WARD. (a) Except as provided by Subsection (b) or (c), a guardian may not voluntarily admit a ward to a public or private inpatient psychiatric facility operated by the Department of State Health Services for care and treatment or to a residential facility operated by the Department of Aging and Disability Services for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the ward or the ward's guardian may:

(1) apply for services under Section 593.027 or 593.028, Health and Safety Code;
(2) apply to a court to commit the person under Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462, Health and Safety Code; or
(3) transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(b) A guardian of a person younger than 16 years of age may voluntarily admit an incapacitated person to a public or private inpatient psychiatric facility for care and treatment.

(c) A guardian of a person may voluntarily admit an
incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code. (Tex. Prob. Code, Secs. 770(b), (c), (d).)

(b) Except as provided by Subsection (c) or (d) of this section, a guardian may not voluntarily admit an incapacitated person to a public or private in-patient psychiatric facility or to a residential facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment. If care and treatment in a psychiatric or a residential facility are necessary, the person or the person's guardian may:

1. apply for services under Section 593.027 or 593.028, Health and Safety Code;
2. apply to a court to commit the person under Subtitle D, Title 7, Health and Safety Code (Persons with Mental Retardation Act), Subtitle C, Title 7, Health and Safety Code (Texas Mental Health Code), or Chapter 462, Health and Safety Code; or
3. transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(c) A guardian of a person younger than 16 years of age may voluntarily admit an incapacitated person to a public or private inpatient psychiatric facility for care and treatment.

(d) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

Revisor's Note

Section 770(b), Texas Probate Code, refers to a "residential facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment." Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, abolished the Texas Department of Mental Health and Mental Retardation and transferred the functions and services related to residential facilities for individuals with mental retardation to the Department of Aging and Disability Services and the functions and services related to inpatient facilities for individuals with mental illness to the Department of State Health Services. The revised law is drafted accordingly.

Revised Law

Sec. 1151.054. ADMINISTRATION OF MEDICATION. (a) In this
section, "psychoactive medication" has the meaning assigned by
Section 574.101, Health and Safety Code.

(b) The guardian of the person of a ward who is not a minor
and who is under a protective custody order as provided by
Subchapter B, Chapter 574, Health and Safety Code, may consent to
the administration of psychoactive medication as prescribed by the
ward's treating physician regardless of the ward's expressed
preferences regarding treatment with psychoactive medication.

(Tex. Prob. Code, Sec. 770A.)

Source Law
Sec. 770A. (a) In this section, "psychoactive
medication" has the meaning assigned by Section

(b) If a person under a protective custody order
as provided by Subchapter B, Chapter 574, Health and
Safety Code, is a ward who is not a minor, the guardian
of the person of the ward may consent to the
administration of psychoactive medication as
prescribed by the ward's treating physician regardless
of the ward's expressed preferences regarding
treatment with psychoactive medication.

[Sections 1151.055–1151.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE ESTATE

Revised Law
Sec. 1151.101. GENERAL POWERS AND DUTIES. (a) Subject to
Subsection (b), the guardian of the estate of a ward is entitled to:

(1) possess and manage all property belonging to the
ward;

(2) collect all debts, rentals, or claims that are due
to the ward;

(3) enforce all obligations in favor of the ward; and

(4) bring and defend suits by or against the ward.

(b) In the management of a ward's estate, the guardian of
the estate is governed by the provisions of this title. (Tex. Prob.
Code, Sec. 768 (part).)

Source Law
Sec. 768. The guardian of the estate of a ward is
entitled to the possession and management of all
property belonging to the ward, to collect all debts,
rentals, or claims that are due to the ward, to enforce
all obligations in favor of the ward, and to bring and
defend suits by or against the ward; but, in the
management of the estate, the guardian is governed by
the provisions of this chapter.

Revised Law
Sec. 1151.102. EXERCISE OF AUTHORITY UNDER COURT ORDER.
(a) The guardian of the estate may renew or extend any obligation
owed by or to the ward on application and if authorized by order.
(b) On written application to the court, a guardian of the
estate may take an action described by Subsection (c) if:
(1) the guardian considers the action in the best
interests of the estate; and
(2) the action is authorized by court order.
(c) A guardian of the estate who complies with Subsection
(b) may:
(1) purchase or exchange property;
(2) take a claim or property for the use and benefit of
the estate in payment of a debt due or owing to the estate;
(3) compound a bad or doubtful debt due or owing to the
estate;
(4) make a compromise or a settlement in relation to
property or a claim in dispute or litigation;
(5) compromise or pay in full any secured claim that
has been allowed and approved as required by law against the estate
by conveying to the holder of the secured claim the real estate or
personal property securing the claim:
(A) in full payment, liquidation, and
satisfaction of the claim; and
(B) in consideration of cancellation of a note,
deed of trust, mortgage, chattel mortgage, or other evidence of a
lien that secures the payment of the claim;
(6) abandon worthless or burdensome property and the
administration of that property;
(7) purchase a prepaid funeral benefits contract; and
(8) establish a trust in accordance with 42 U.S.C.
Section 1396p(d)(4)(B), and direct that the income of the ward as
defined by that section be paid directly to the trust, solely for
the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

(d) A mortgagee, another secured party, or a trustee may foreclose on property abandoned under Subsection (c)(6) without further court order. (Tex. Prob. Code, Sec. 774(a).)

Source Law

Sec. 774. (a) On application, and if authorized by an order, the guardian of the estate may renew or extend any obligation owed by or to the ward. On written application to the court and when a guardian of the estate deems it is in the best interest of the estate, the guardian may, if authorized by an order of the court:

(1) purchase or exchange property;
(2) take a claim or property for the use and benefit of the estate in payment of a debt due or owing to the estate;
(3) compound a bad or doubtful debt due or owing to the estate;
(4) make a compromise or a settlement in relation to property or a claim in dispute or litigation;
(5) compromise or pay in full any secured claim that has been allowed and approved as required by law against the estate by conveying to the holder of the secured claim the real estate or personalty securing the claim, in full payment, liquidation, and satisfaction of the claim, and in consideration of cancellation of a note, deed of trust, mortgage, chattel mortgage, or other evidence of a lien that secures the payment of the claim;
(6) abandon worthless or burdensome property and the administration of that property. Abandoned real or personal property may be foreclosed on by a secured party, trustee, or mortgagee without further order of the court;
(7) purchase a prepaid funeral benefits contract; and
(8) establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

Revisor's Note

Section 774(a)(6), Texas Probate Code, refers to "real or personal property." Throughout this chapter, the revised law omits the references to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.
Sec. 1151.103. EXERCISE OF AUTHORITY WITHOUT COURT ORDER.
(a) The guardian of the estate of a ward may, without application to
or order of the court:
   (1) release a lien on payment at maturity of the debt
   secured by the lien;
   (2) vote stocks by limited or general proxy;
   (3) pay calls and assessments;
   (4) insure the estate against liability in appropriate
cases;
   (5) insure estate property against fire, theft, and
other hazards; and
   (6) pay taxes, court costs, and bond premiums.
(b) A guardian of the estate may apply and obtain a court
order if the guardian doubts the propriety of the exercise of any
power listed in Subsection (a). (Tex. Prob. Code, Sec. 774(b).)

Sec. 1151.104. AUTHORITY TO COMMENCE SUITS. (a) The
guardian of the estate of a ward appointed in this state may
commence a suit for:
   (1) the recovery of personal property, debts, or
damages; or
   (2) title to or possession of land, any right attached
to or arising from that land, or injury or damage done.
(b) A judgment in a suit described by Subsection (a) is
conclusive, but may be set aside by any person interested for fraud or collusion on the guardian's part. (Tex. Prob. Code, Sec. 773.)

Source Law

Sec. 773. A guardian of a ward's estate appointed in this state may institute suits for the recovery of personal property, debts, or damages and suits for title to or possession of land or for any right attached to or growing out of the same or for injury or damage done. Judgment in those cases shall be conclusive but may be set aside by any person interested for fraud or collusion on the part of the guardian.

Revised Law

Sec. 1151.105. ORDINARY DILIGENCE REQUIRED. (a) If there is a reasonable prospect of collecting the claims or recovering the property, the guardian of the estate shall use ordinary diligence to:

(1) collect all claims and debts due the ward; and

(2) recover possession of all property to which the ward has claim or title.

(b) If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian's bond are liable, on the suit of any person interested in the estate, for the use of the estate, the amount of the claims, or the value of the property that has been lost due to the guardian's neglect. (Tex. Prob. Code, Sec. 772.)

Source Law

Sec. 772. Every guardian of an estate shall use ordinary diligence to collect all claims and debts due the ward and to recover possession of all property of the ward to which the ward has claim or title, if there is a reasonable prospect of collecting the claims or of recovering the property. If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian's bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of the claims or for the value of the property that has been lost due to the guardian's neglect.

[Sections 1151.106-1151.150 reserved for expansion]
estate shall take care of and manage the estate as a prudent person
would manage the person's own property, except as otherwise
provided by this title.

(b) The guardian of the estate shall account for all rents,
profits, and revenues that the estate would have produced by
prudent management as required by Subsection (a). (Tex. Prob.
Code, Sec. 768 (part).)

Source Law
Sec. 768. . . . It is the duty of the guardian of
the estate to take care of and manage the estate as a
prudent person would manage the person's own property,
except as otherwise provided by this chapter. The
guardian of the estate shall account for all rents,
profits, and revenues that the estate would have
produced by such prudent management.

Revised Law
Sec. 1151.152. POSSESSION OF PERSONAL PROPERTY AND RECORDS.
(a) Immediately after receiving letters of guardianship, the
guardian of the estate shall collect and take possession of the
ward's personal property, record books, title papers, and other
business papers.

(b) The guardian of the estate shall deliver the ward's
personal property, record books, title papers, and other business
papers to a person legally entitled to that property when:
(1) the guardianship has been closed; or
(2) a successor guardian has received letters of
guardianship. (Tex. Prob. Code, Sec. 771.)

Source Law
Sec. 771. The guardian of an estate, immediately
after receiving letters of guardianship, shall collect
and take into possession the personal property, record
books, title papers, and other business papers of the
ward and shall deliver the personal property, books,
or papers, of the ward to a person who is legally
entitled to that property when the guardianship has
been closed or a successor guardian has received
letters.

Revised Law
Sec. 1151.153. POSSESSION OF PROPERTY HELD IN COMMON
OWNERSHIP. The guardian of the estate is entitled to possession of
a ward's property held or owned in common with a part owner in the
same manner as another owner in common or joint owner is entitled.

(Tex. Prob. Code, Sec. 775.)

Source Law

Sec. 775. If the ward holds or owns any property in common, or as part owner with another person, the guardian of the estate is entitled to possession of the property of the ward held or owned in common with a part owner in the same manner as another owner in common or joint owner would be entitled.

Revised Law

Sec. 1151.154. ADMINISTRATION OF PARTNERSHIP INTEREST. (a)

This section applies only to a general partnership governed by a partnership agreement or articles of partnership that provide that, on the incapacity of a partner, the guardian of the estate of the partner is entitled to the place of the incapacitated partner in the partnership.

(b) If a ward was a partner in a general partnership, the guardian who contracts to come into the partnership is, to the extent allowed by law, liable to a third person only to the extent of:

(1) the incapacitated partner’s capital in the partnership; and

(2) the assets of the incapacitated partner’s estate that are held by the guardian.

(c) This section does not exonerate a guardian from liability for the guardian's negligence. (Tex. Prob. Code, Sec. 780.)

Source Law

Sec. 780. If the ward was a partner in a general partnership and the articles of partnership provide that, on the incapacity of a partner, the guardian of the estate of the partner is entitled to the place of the incapacitated partner in the firm, the guardian who contracts to come into the partnership shall, to the extent allowed by law, be liable to a third person only to the extent of the incapacitated partner’s capital in the partnership and the assets of the estate of the partner that are held by the guardian. This section does not exonerate a guardian from liability for the negligence of the guardian.

Revisor's Note

Section 780, Texas Probate Code, refers to
"articles of partnership." The revised law adds a
reference to a "partnership agreement" because the
terms are synonymous and "partnership agreement" is
the term used in the Business Organizations Code,
which governs entities organized as partnerships in
this state.

Revised Law

Sec. 1151.155. OPERATION OR RENTAL OF FARM, RANCH, FACTORY,
OR OTHER BUSINESS. (a) If the ward owns a farm, ranch, factory, or
other business that is not required to be immediately sold for the
payment of a debt or other lawful purpose, the guardian of the
estate on order of the court shall, as it appears to be in the
estate's best interests:

(1) continue to operate, or cause the continued
operation of, the farm, ranch, factory, or other business; or
(2) rent the farm, ranch, factory, or other business.

(b) In deciding whether to issue an order under Subsection
(a), the court:

(1) shall consider:

(A) the condition of the estate; and
(B) the necessity that may exist for the future
sale of the property or business for the payment of a debt, claim,
or other lawful expenditure; and

(2) may not extend the time of renting any of the
property beyond what appears consistent with the maintenance and
education of a ward or the settlement of the ward's estate. (Tex.
Prob. Code, Sec. 779.)

Source Law

Sec. 779. If the ward owns a farm, ranch, factory, or other business and if the farm, ranch, factory, or other business is not required to be sold
at once for the payment of debts or other lawful purposes, the guardian of the estate on order of the
court shall carry on the operation of the farm, ranch, factory, or other business, or cause the same to be
done, or rent the same, as shall appear to be for the best interests of the estate. In deciding, the court
shall consider the condition of the estate and the necessity that may exist for the future sale of the
property or business for the payment of a debt, claim,
or other lawful expenditure and may not extend the time of renting any of the property beyond what appears consistent with the maintenance and education of a ward or the settlement of the estate of the ward.

[Sections 1151.156-1151.200 reserved for expansion]

SUBCHAPTER E. AUTHORITY OF GUARDIAN TO ENGAGE IN CERTAIN BORROWING

Revised Law

Sec. 1151.201. MORTGAGE OR PLEDGE OF ESTATE PROPERTY AUTHORIZED IN CERTAIN CIRCUMSTANCES. (a) Under court order, the guardian may mortgage or pledge any property of a guardianship estate by deed of trust or otherwise as security for an indebtedness when necessary for:

1. the payment of any ad valorem, income, gift, or transfer tax due from a ward, regardless of whether the tax is assessed by a state, a political subdivision of the state, the federal government, or a foreign country;

2. the payment of any expense of administration, including amounts necessary for the operation of a business, farm, or ranch owned by the estate;

3. the payment of any claim allowed and approved, or established by suit, against the ward or the ward's estate;

4. the renewal and extension of an existing lien;

5. an improvement or repair to the ward's real estate if:

   (A) the real estate is not revenue producing but could be made revenue producing by certain improvements and repairs; or

   (B) the revenue from the real estate could be increased by making improvements or repairs to the real estate;

6. the purchase of a residence for the ward or a dependent of the ward, if the court finds that borrowing money for that purpose is in the ward's best interests; and

7. funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the ward's death.

(b) Under court order, the guardian of the estate may also
receive an extension of credit on the ward's behalf that is wholly
or partly secured by a lien on real property that is the ward's
homestead when necessary to:

(1) make an improvement or repair to the homestead; or
(2) pay for the ward's education or medical expenses.

(c) Proceeds of a home equity loan described by Subsection
(b) may be used only for the purposes authorized under Subsection
(b) and to pay the outstanding balance of the loan. (Tex. Prob.
Code, Secs. 781(a), (a-1), (a-2).)

Sec. 781. (a) The guardian may mortgage or
pledge any real or personal property of a guardianship
estate by deed of trust or otherwise as security for an
indebtedness, under court order, when necessary for
any of the following purposes:

(1) for the payment of any ad valorem,
income, gift, or transfer taxes due from a ward,
regardless of whether the taxes are assessed by a
state, a political subdivision of the state, the
federal government, or a foreign country;
(2) for the payment of any expenses of
administration, including sums necessary for the
operation of a business, farm, or ranch owned by the
estate;
(3) for the payment of any claims allowed
and approved, or established by suit, against the ward
or the estate of the ward;
(4) to renew and extend a valid, existing
lien;
(5) to make improvements or repairs to the
real estate of the ward if:
(A) the real estate of the ward is not
revenue producing but could be made revenue producing
by certain improvements and repairs; or
(B) the revenue from the real estate
could be increased by making improvements or repairs
to the real estate;
(6) court-authorized borrowing of money
that the court finds to be in the best interests of the
ward for the purchase of a residence for the ward or a
dependent of the ward; and
(7) if the guardianship is kept open after
the death of the ward, funeral expenses of the ward and
expenses of the ward's last illness.

(a-1) The guardian of the estate may also
receive an extension of credit on the ward's behalf
that is secured, wholly or partly, by a lien on real
property that is the homestead of the ward, under court
order, when necessary to:

(1) make improvements or repairs to the
homestead; or
(2) pay for education or medical expenses
of the ward.

(a-2) Proceeds of a home equity loan described
by Subsection (a-1) of this section may be used only
for the purposes authorized under Subsection (a-1) of
this section and to pay the outstanding balance of the
loan.
Revisor's Note

Section 781(a)(4), Texas Probate Code, refers to a "valid, existing lien." The revised law omits the reference to "valid" as unnecessary because a lien is not a lien if it does not comply with the legal requirements for establishing a lien.

Revised Law

Sec. 1151.202. APPLICATION; ORDER. (a) The guardian of the estate must file a sworn application with the court for authority to:

(1) borrow money for a purpose authorized by Section 1151.201(a) or (b); or

(2) create or extend a lien on estate property as security.

(b) The application must state fully and in detail the circumstances that the guardian of the estate believes make the granting of the authority necessary.

(c) On the filing of an application under Subsection (a), the clerk shall issue and have posted a citation to all interested persons stating the nature of the application and requiring the interested persons to appear and show cause why the application should not be granted.

(d) If the court is satisfied by the evidence presented at the hearing on an application filed under Subsection (a) that it is in the interest of the ward or the ward's estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms of the authority granted.

(e) If a new lien is created on guardianship estate property, the court may require, for the protection of the guardianship estate and the estate's creditors, that the guardian's general bond be increased or an additional bond be given, as for the sale of real property belonging to the estate. (Tex. Prob. Code, Secs. 781(b), (c) (part).)
(b) When it is necessary to borrow money for any of the purposes authorized under Subsection (a) or (a-1) of this section, or to create or extend a lien on property of the estate as security, a sworn application for the authority to borrow money shall be filed with the court, stating fully and in detail the circumstances that the guardian of the estate believes make necessary the granting of the authority. On the filing of an application under this subsection, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring the interested persons to appear and show cause why the application should not be granted.

(c) If the court is satisfied by the evidence adduced at the hearing on the application that it is in the interest of the ward or the ward's estate to borrow money under Subsection (b) of this section, or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms and conditions of the authority granted. . . . If a new lien is created on the property of a guardianship estate, the court may require that the guardian's general bond be increased, or that an additional bond be given, for the protection of the guardianship estate and its creditors, as for the sale of real property belonging to the estate.

Revisor's Note
Section 781(c), Texas Probate Code, refers to the "terms and conditions" under which certain authority is granted. The revised law omits the reference to "conditions" because, in context, "conditions" is included within the meaning of "terms."

Revised Law
Sec. 1151.203. TERM OF LOAN OR RENEWAL. The term of a loan or renewal authorized under Section 1151.202 must be for the length of time that the court determines to be in the best interests of the ward or the ward's estate. (Tex. Prob. Code, Sec. 781(c) (part).)

Source Law
(c) . . . The term of the loan or renewal shall be for the length of time that the court determines to be for the best interests of the ward or the ward's estate. . . .

[Sections 1151.204-1151.250 reserved for expansion]

SUBCHAPTER F. GUARDIANS APPOINTED FOR WARD TO RECEIVE GOVERNMENT FUNDS

Revised Law
Sec. 1151.251. POWERS AND DUTIES OF GUARDIAN APPOINTED AS
NECESSARY FOR WARD TO RECEIVE GOVERNMENT FUNDS. (a) A guardian of
the person for whom it is necessary to have a guardian appointed to
receive funds from a governmental source may:

(1) administer only:

(A) the funds received from the governmental
source;

(B) all earnings, interest, or profits derived
from the funds; and

(C) all property acquired with the funds; and

(2) receive the funds and pay the expenses of
administering the guardianship and the expenses for the support,
maintenance, or education of the ward or the ward's dependents.

(b) Expenditures under Subsection (a)(2) for the support,
maintenance, or education of the ward or the ward's dependents may
not exceed $12,000 during any 12-month period without the court's
approval. (Tex. Prob. Code, Sec. 782(a).)

Source Law
Sec. 782. (a) A guardian of the person for whom
it is necessary to have a guardian appointed to receive
funds from a governmental source has the power to
administer only the funds received from the
governmental source, all earnings, interest, or
profits derived from the funds, and all property
acquired with the funds. The guardian has the power to
receive the funds and pay out the expenses of
administering the guardianship and the expenses for
the support, maintenance, or education of the ward or
the ward's dependents. Expenditures for the support,
maintenance, or education of the ward or the ward's
dependents may not exceed $12,000 during any 12-month
period without the court's approval.

Revised Law
Sec. 1151.252. VALIDATION OF CERTAIN PRIOR ACTS OF
GUARDIAN. An act performed before September 1, 1993, by a guardian
of the estate of a person for whom it is necessary to have a guardian
appointed to receive and disburse funds that are due the person from
a governmental source is validated if the act was performed in
conformance with an order of a court that has venue with respect to
the support, maintenance, and education of the ward or the ward's
dependents and the investment of surplus funds of the ward under
this title and if the validity of the act was not an issue in a
probate proceeding or civil lawsuit that was pending on September 1, 1993. (Tex. Prob. Code, Sec. 782(b).)

**Source Law**

(b) All acts performed before September 1, 1993, by guardians of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse funds that are due the person from a governmental source are validated if the acts are performed in conformance with orders of a court that has venue with respect to the support, maintenance, and education of the ward or the ward’s dependents and the investment of surplus funds of the ward under this chapter and if the validity of the act is not an issue in a probate proceeding or civil lawsuit that is pending on September 1, 1993.

[Sections 1151.253-1151.300 reserved for expansion]

**SUBCHAPTER G. NOTICE BY GUARDIAN TO DEPARTMENT OF VETERANS AFFAIRS**

**Revised Law**

Sec. 1151.301. NOTICE OF FILING REQUIRED; HEARING DATE.

(a) This section applies only to:

(1) a filing by a guardian whose ward is a beneficiary of the Department of Veterans Affairs of:

(A) an annual or other account of funds; or

(B) an application for the expenditure or investment of funds; or

(2) a filing of a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs.

(b) The court shall set a date for a hearing of a matter initiated by a filing to which this section applies not earlier than 20 days from the date of the filing.

(c) Not later than the fifth day after the date of a filing to which this section applies, the person who makes the filing shall give notice of the date of the filing by mailing a certified copy of the filing to the office of the Department of Veterans Affairs in whose territory the court is located.

(d) An office of the Department of Veterans Affairs through its attorney may waive the service of notice or the time required for setting a hearing under this section. (Tex. Prob. Code, Sec. 636.)
Sec. 636. When an annual or other account of funds, or an application for the expenditure of or investment of funds is filed by a guardian whose ward is a beneficiary of the Department of Veterans Affairs, or when a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs is filed, the court shall set a date for the hearing of the account, application, petition, or claim to be held not less than 20 days from the date of the filing of the account, application, petition, or claim. The person who files the account, application, petition, or claim shall give notice of the date of the filing to the office of the Department of Veterans Affairs in whose territory the court is located by mailing to the office a certified copy of the account, application, petition, or claim not later than five days after the date of the filing. An office of the Department of Veterans Affairs, through its attorney, may waive the service of notice and the time within which a hearing may be had in those cases.

CHAPTER 1152. GUARDIANSHIP PENDING APPEAL OF APPOINTMENT

Sec. 1152.001. GUARDIAN TO SERVE PENDING APPEAL OF APPOINTMENT

Sec. 1152.002. APPEAL BOND

CHAPTER 1152. GUARDIANSHIP PENDING APPEAL OF APPOINTMENT

Revised Law

Sec. 1152.001. GUARDIAN TO SERVE PENDING APPEAL OF APPOINTMENT. Pending an appeal from an order or judgment appointing a guardian, the appointee shall continue to:

(1) act as guardian; and

(2) prosecute a pending suit in favor of the guardianship. (Tex. Prob. Code, Sec. 655.)

Source Law

Sec. 655. Pending an appeal from an order or judgment appointing a guardian, an appointee shall continue to act as guardian and shall continue the prosecution of a pending suit in favor of the guardianship.

Revised Law

Sec. 1152.002. APPEAL BOND. (a) Except as provided by Subsection (b), if a guardian appeals, an appeal bond is not required.

(b) A guardian must give an appeal bond if the appeal personally concerns the guardian. (Tex. Prob. Code, Sec. 656.)
Sec. 656. When a guardian appeals, a bond is not required, unless the appeal personally concerns the guardian, in which case the guardian must give the bond.

CHAPTER 1153. NOTICE TO CLAIMANTS

Sec. 1153.001. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL

Sec. 1153.002. PROOF OF PUBLICATION

Sec. 1153.003. REQUIRED NOTICE TO CERTAIN CLAIMANTS

Sec. 1153.004. PERMISSIVE NOTICE TO UNSECURED CREDITOR REGARDING PERIOD FOR PRESENTMENT OF CLAIM

Sec. 1153.005. ONE NOTICE SUFFICIENT; LIABILITY FOR FAILURE TO GIVE REQUIRED NOTICE

CHAPTER 1153. NOTICE TO CLAIMANTS

Sec. 1153.001. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL. (a) Within one month after receiving letters of guardianship, a guardian of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law. The notice must be:

(1) published in a newspaper printed in the county in which the letters were issued; and

(2) sent to the comptroller by certified or registered mail, if the ward remitted or should have remitted taxes administered by the comptroller.

(b) Notice provided under Subsection (a) must include:

(1) the date the letters of guardianship were issued to the guardian of the estate;

(2) the address to which a claim may be presented; and

(3) an instruction of the guardian's choice that the claim be addressed in care of:

(A) the guardian;

(B) the guardian's attorney; or

(C) "Guardian, Estate of ____________" (naming
the estate).

(c) If a newspaper is not printed in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title. (Tex. Prob. Code, Secs. 783(a), (c).)

Source Law

Sec. 783. (a) Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the ward remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having a claim against the estate being administered to present the claim within the time prescribed by law. The notice must include the time of issuance of letters held by the representative, the address to which a claim may be presented, and an instruction of the representative's choice that a claim be addressed in care of the representative, in care of the representative's attorney, or in care of "Representative, Estate of __________" (naming the estate).

(c) When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this chapter.

Revisor's Note

(1) Section 783(a), Texas Probate Code, requires "personal representatives" to take certain actions regarding providing notice to persons having claims against the estate within one month after receiving "letters." Section 783(a) subsequently prescribes the requirements of that notice and contains additional references to the "representative."

Section 3(aa), Texas Probate Code, revised as Section 22.031 of this code, defines "personal representative" and "representative" to include executors and administrators for purposes of this code. Section 601(23), Texas Probate Code, revised as Section 1002.028 of this code, further provides that, for purposes of Chapter XIII, Texas Probate Code, which includes Section 783, revised as this section...
and Section 1153.002 of this code, the terms include a
guardian.

The Texas Probate Code provides for the receipt
of letters by executors, administrators, and
guardians. Although a "personal representative" who
receives letters and on whom Section 783(a) imposes
the notice requirements could be an executor,
administrator, or guardian in accordance with the
definitions provided by Sections 3(aa) and 601(23),
Section 294, Texas Probate Code, contains notice
requirements applicable when an executor or
administrator receives letters that are substantively
identical to those imposed by Section 783(a). It is
therefore unnecessary to impose the notice
requirements on executors and administrators through
this section. Therefore, the revised law substitutes
"guardian" for "personal representative" and
"representative" for clarity.

The revised law also substitutes "letters of
guardianship" for "letters" throughout this chapter
because those are the type of letters issued to
guardians and this chapter applies to guardians.

(2) Section 783(a), Texas Probate Code, refers
to the "comptroller of public accounts." The revised
law substitutes "comptroller" for the quoted language
because Section 403.001, Government Code, defines
"comptroller" in any state statute to mean the
comptroller of public accounts of the State of Texas.

(3) Section 783(a), Texas Probate Code,
requires that notice provided to persons having claims
against an estate include the "time" the letters of
guardianship were issued. The revised law substitutes
"date" for "time" because the specific time of day of
the issuance is inconsequential in computing any
period that would begin with the issuance of the
letters because under general rules of statutory
construction, the first day is excluded for purposes
of computing a period of days.

Revised Law
Sec. 1153.002. PROOF OF PUBLICATION. A copy of the
published notice required by Section 1153.001(a)(1), with the
publisher's affidavit, sworn to and subscribed before a proper
officer, to the effect that the notice was published as provided in
this title for the service of citation or notice by publication,
shall be filed in the court in which the cause is pending. (Tex.
Prob. Code, Sec. 783(b).)

Source Law
(b) A copy of the printed notice, with the
affidavit of the publisher, duly sworn to and
subscribed before a proper officer, to the effect that
the notice was published as provided in this chapter
for the service of citation or notice by publication,
shall be filed in the court in which the cause is
pending.

Revisor's Note
Section 783(b), Texas Probate Code, refers to an
affidavit that is "duly sworn to . . . before a proper
officer." The revised law omits "duly" in this context
because the word does not add to the clear meaning of
the law.

Revised Law
Sec. 1153.003. REQUIRED NOTICE TO CERTAIN CLAIMANTS. (a)
Within four months after receiving letters of guardianship, the
guardian of an estate shall give notice of the issuance of the
letters to each person who has a claim for money against the ward's
estate:

(1) that is secured by a deed of trust, mortgage, or
vendor's, mechanic's, or other contractor's lien on real estate
belonging to the estate; or

(2) about which the guardian has actual knowledge.

(b) Notice provided under this section must be:
sent by certified or registered mail, return receipt requested; and

(2) addressed to the record holder of the claim at the record holder's last known post office address.

(c) The following shall be filed in the court from which the letters of guardianship were issued:

(1) a copy of each notice required by Subsection (a)(1) with the return receipt; and

(2) the guardian's affidavit stating:

(A) that the notice was mailed as required by law; and

(B) the name of the person to whom the notice was mailed, if that name is not shown on the notice or receipt. (Tex. Prob. Code, Secs. 784(a), (b), (c), (d).)

Sec. 784. (a) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the letters to each and every person having a claim for money against the estate of a ward if the claim is secured by a deed of trust, mortgage, or vendor's, mechanic's or other contractor's lien on real estate belonging to the estate.

(b) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the letters to each person having an outstanding claim for money against the estate of a ward if the guardian has actual knowledge of the claim.

(c) The notice stating the original grant of letter shall be given by mailing the notice by certified mail or registered letter, with return receipt requested, addressed to the record holder of the indebtedness or claim at the last known post office address of the record holder.

(d) A copy of each notice required by Subsection (a) of this section, with the return receipt and an affidavit of the representative, stating that the notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

(1) Section 784(a), Texas Probate Code, requires notice to "each and every" creditor having certain secured interests. The revised law omits "and every" as redundant.

(2) Section 784(b), Texas Probate Code,
requires that notice be given to a person with an "outstanding claim" for money against an estate if the guardian has actual knowledge of the claim. The revised law omits the word "outstanding" as unnecessary because the meaning of the word "outstanding" is included in the meaning of the word "claim," and a person who has a claim for money against the estate necessarily has an "outstanding" claim.

(3) Section 784(c), Texas Probate Code, requires addressing notice to the "record holder of the indebtedness or claim." The revised law omits "indebtedness" as unnecessary and for consistency of terminology within this section. In this context, "indebtedness" is included within the meaning of "claim."

(4) Section 784(d), Texas Probate Code, requires that a copy of each notice required by Section 784(a), Texas Probate Code, together with an affidavit of the "representative," be filed in the court that issued the letters of guardianship. Section 784(a) requires the "guardian of an estate" to give the notice to which Section 784(d) refers, and it is clear from the context of Section 784 that the "representative" making the required affidavit is the guardian who gave the notice. For consistency of terminology, "guardian" is substituted for "representative" in the revised law.

Revised Law
Sec. 1153.004. PERMISSIVE NOTICE TO UNSECURED CREDITOR REGARDING PERIOD FOR PRESENTMENT OF CLAIM. The guardian of the estate may expressly state in a notice given to an unsecured creditor under Section 1153.003(a)(2) that the creditor must present a claim not later than the 120th day after the date the creditor receives the notice or the claim is barred, if the claim is
not barred by the general statutes of limitation. A statement under this section must include:

1. the address to which the claim may be presented;

and

2. an instruction that the claim be filed with the clerk of the court that issued the letters of guardianship. (Tex. Prob. Code, Sec. 784(e).)

Source Law

(e) In the notice required by Subsection (b) of this section, the guardian of the estate may expressly state in the notice that the unsecured creditor must present a claim not later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. The notice under this subsection must include:

1. the address to which claims may be presented; and

2. an instruction that the claim be filed with the clerk of the court issuing the letters of guardianship.

Revised Law

Sec. 1153.005. ONE NOTICE SUFFICIENT; LIABILITY FOR FAILURE TO GIVE REQUIRED NOTICE. (a) A guardian of an estate is not required to give a notice required by Section 1153.003 if another person also appointed as guardian or a former guardian has given that notice.

(b) If the guardian fails to give a notice required by other sections of this title or to cause the notice to be given, the guardian and the sureties on the guardian's bond are liable for any damage a person suffers because of the neglect, unless it appears that the person otherwise had notice. (Tex. Prob. Code, Sec. 785.)

Source Law

Sec. 785. (a) If the notice required by Section 784 of this code has been given by a former representative, or by one when several representatives are acting, the notice given by the former representative or co-representative is sufficient and need not be repeated by any successor or co-representative.

(b) If the guardian fails to give the notice required in other sections of this chapter or to cause the notices to be given, the guardian and the sureties on the bond of the guardian shall be liable for any damage that any person suffers because of the neglect, unless it appears that the person had notice otherwise.
Revisor's Note

(1) Section 785(a), Texas Probate Code, refers to notice required by Section 784, Texas Probate Code. Section 784 is revised in this chapter in part in Section 1153.003 and in part in Section 1153.004. The relevant provision requiring guardians to give notice is revised in Section 1153.003. Therefore, the revised law refers to notice required by Section 1153.003.

(2) Section 785(a), Texas Probate Code, refers to a situation in which the notice required by Section 784, Texas Probate Code, has been given by a "former representative" or "co-representative." Section 784 requires only the guardian of the estate to give notice. The revised law substitutes references to the guardian of the estate for the references to representatives for consistency of terminology.

CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

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CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

SUBCHAPTER A. APPRAISERS

Revised Law

Sec. 1154.001. APPOINTMENT OF APPRAISERS. (a) After
letters of guardianship of the estate are granted, the court, for
good cause shown, on the court's own motion or the motion of any
interested person, shall appoint at least one but not more than
three disinterested persons who are residents of the county in
which the letters were granted to appraise the ward's property.

(b) If the court makes an appointment under Subsection (a)
and part of the estate is located in a county other than the county
in which the letters were granted, the court, if the court considers
it necessary, may appoint at least one but not more than three
disinterested persons who are residents of the county in which the
relevant part of the estate is located to appraise the estate
property located in that county. (Tex. Prob. Code, Sec. 727.)

Source Law

Sec. 727. After letters of guardianship of the
estate have been granted and on its own motion or on
the motion of any interested person, the court for good
cause shown shall appoint at least one but not more
than three disinterested persons who are citizens of the county in which letters were granted to appraise the property of the ward. If the court appoints an appraiser under this section and part of the estate is located in a county other than the county in which letters were granted, the court may appoint at least one but not more than three disinterested persons who are citizens of the county in which the part of the estate is located to appraise the property of the estate located in the county if the court considers it necessary to appoint an appraiser.

Revisor's Note
Section 727, Texas Probate Code, refers to "citizens" of certain counties. The revised law substitutes "residents" for "citizens" because, in context, the terms are synonymous and "residents" is more commonly used.

Revised Law
Sec. 1154.002. APPRAISERS' FEES. An appraiser appointed by the court is entitled to receive a reasonable fee, payable out of the estate, for the performance of the appraiser's duties as an appraiser. (Tex. Prob. Code, Sec. 732.)

Source Law
Sec. 732. An appraiser appointed by the court is entitled to receive a reasonable fee for the performance of the appraiser's duties as an appraiser that are to be paid out of the estate.

Revised Law
Sec. 1154.003. FAILURE OR REFUSAL TO ACT BY APPRAISERS. If an appraiser appointed under Section 1154.001 fails or refuses to act, the court shall remove the appraiser and appoint one or more appraisers. (Tex. Prob. Code, Sec. 728.)

Source Law
Sec. 728. If an appraiser appointed under Section 727 of this code fails or refuses to act, the court shall remove the appraiser and appoint one or more appraisers.

[Sections 1154.004-1154.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST

OF CLAIMS

Revised Law
Sec. 1154.051. INVENTORY AND APPRAISEMENT. (a) Not later than the 30th day after the date the guardian of the estate

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qualifies, unless a longer period is granted by the court, the
 guardian shall file with the court clerk a single written
 instrument that contains a verified, full, and detailed inventory
 of all the ward's property that has come into the guardian's
 possession or of which the guardian has knowledge. The inventory
 must:

(1) include:

(A) all the ward's real property located in this
 state; and

(B) all the ward's personal property regardless
 of where the property is located; and

(2) specify:

(A) which portion of the property is separate
 property and which is community property; and

(B) if the property is owned in common with other
 persons, the ward's interest in that property and the names and
 relationship, if known, of the co-owners.

(b) The guardian shall:

(1) set out in the inventory the guardian's
 appraisement of the fair market value of each item in the inventory
 on the date of the grant of letters of guardianship; or

(2) if the court has appointed an appraiser for the
 estate:

(A) determine the fair market value of each item
 in the inventory with the assistance of the appraiser; and

(B) set out in the inventory the appraisement
 made by the appraiser.

(c) The court for good cause shown may require the guardian
 to file the inventory and appraisement not later than the 30th day
 after the date of qualification of the guardian.

(d) The inventory, when approved by the court and filed with
 the court clerk, is for all purposes the inventory and appraisement
 of the estate referred to in this title. (Tex. Prob. Code, Sec. 729.)
Sec. 729. (a) Not later than the 30th day after the date the guardian of the estate qualifies as guardian, unless a longer time is granted by the court, the guardian of the estate shall file with the clerk of the court a verified, full, and detailed inventory, in one written instrument, of all the property of the ward that has come into the guardian's possession or knowledge. The inventory filed by the guardian under this section must include:

1. all real property of the ward that is located in this state; and
2. all personal property of the ward wherever located.

(b) The guardian shall set out in the inventory the guardian's appraisement of the fair market value of each item of the property on the date of the grant of letters of guardianship. If the court appoints an appraiser of the estate, the guardian shall determine the fair market value of each item of the inventory with the assistance of the appraiser and shall set out in the inventory the appraisement made by the appraiser.

(c) An inventory made under this section must specify what portion of the property is separate property and what portion is community property. If any property is owned in common with other persons, the interest owned by the ward shall be shown in the inventory, together with the names and relationship, if known, of co-owners.

(d) The inventory, when approved by the court and duly filed with the clerk of court, is for purposes of this chapter the inventory and appraisement of the estate referred to in this chapter.

(e) The court for good cause shown may require the filing of the inventory and appraisement at a time not later than the 30th day after the date of qualification of the guardian.

Revisor's Note

(1) Section 729, Texas Probate Code, refers to an inventory that has been "duly filed." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the inventory be filed is sufficient to convey that the inventory must have met the requirements for filing.

(2) Section 729(b), Texas Probate Code, refers to the fair market value of "each item of the property" included in an inventory and of "each item of the inventory." For accuracy and consistency of terminology in the section, the revised law substitutes "each item in the inventory" for the
reference to "each item of the property."

Revised Law
Sec. 1154.052. LIST OF CLAIMS. The guardian of the estate shall make and attach to the inventory and appraisement required by Section 1154.051 a complete list of claims due or owing to the ward. The list of claims must state:

1. the name and, if known, address of each person indebted to the ward; and
2. regarding each claim:
   (A) the nature of the debt, whether it is a note, bill, bond, or other written obligation, or whether it is an account or verbal contract;
   (B) the date the debt was incurred;
   (C) the date the debt was or is due;
   (D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and
   (E) if any portion of the claim is held in common with others, the interest of the estate in the claim and the names and relationships of the other part owners. (Tex. Prob. Code, Sec. 730.)

Source Law
[Sec. 729. . . . the guardian of the estate shall file . . . inventory . . . .]
Sec. 730. The guardian shall make and attach to an inventory under Section 729 of this code a full and complete list of all claims due or owing to the ward that must state:
1. the name of each person indebted to the ward and the address of the person if known;
2. the nature of the debt, whether it is a note, bill, bond, or other written obligation or whether it is an account or verbal contract;
3. the date of the indebtedness and the date when the debt is or was due;
4. the amount of each claim, the rate of interest on each claim, and time for which the claim bears interest; and
5. what portion of the claim is held in common with others, including the names and the relationships of other part owners and the interest of the estate in the claim.

Revisor's Note
(1) Section 730, Texas Probate Code, refers to a "full and complete" list of claims. The revised law
omits "full" as unnecessary because, in this context, the meaning of that term is included within the meaning of "complete."

(2) Section 730, Texas Probate Code, requires a guardian of the estate to attach a list of claims due or owing to the ward to "an inventory under Section 729 of this code," meaning the Texas Probate Code. Section 729, Texas Probate Code, revised in this chapter as Section 1154.051, requires the inventory to set out the appraisement of property included in the inventory. For accuracy and consistency of terminology throughout this chapter, the revised law substitutes references to "inventory and appraisement" for references to "inventory."

Revised Law
Sec. 1154.053. AFFIDAVIT OF GUARDIAN. The guardian of the estate shall attach to the inventory, appraisement, and list of claims the guardian's affidavit, subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the inventory, appraisement, and list of claims are a true and complete statement of the property and claims of the estate of which the guardian has knowledge. (Tex. Prob. Code, Sec. 731.)

Source Law
Sec. 731. The guardian of the estate shall attach to the inventory and list of claims the guardian's affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths that the inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to the guardian's knowledge. (Tex. Prob. Code, Sec. 731.)

Revised Law
Sec. 1154.054. APPROVAL OR DISAPPROVAL BY THE COURT. (a) On the filing of the inventory, appraisement, and list of claims with the court clerk, the judge shall examine and approve or disapprove the inventory, appraisement, and list of claims. (b) If the judge approves the inventory, appraisement, and list of claims, the judge shall enter an order to that effect.
(c) If the judge does not approve the inventory, appraisement, or list of claims, the judge:

(1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and

(2) may, if considered necessary, appoint new appraisers. (Tex. Prob. Code, Sec. 733.)

Sec. 733. (a) On return of the inventory, appraisement, and list of claims, the judge shall examine and approve or disapprove the inventory, appraisement, or list of claims as follows:

(1) if the judge approves the inventory, appraisement, and list of claims, the judge shall issue an order to that effect; and

(2) if the judge does not approve the inventory, appraisement, or list of claims, the judge shall enter an order to that effect.

(b) The court order shall require the return of another inventory, appraisement, and list of claims, or whichever of them is disapproved, within a time specified in the order but not later than 20 days after the date of the order. The judge may appoint new appraisers if the judge deems it necessary.

Revisor's Note

Section 733, Texas Probate Code, refers to the "return" of the inventory, appraisement, and list of claims. The revised law substitutes "filing" for "return" because Section 729, Texas Probate Code, revised in this chapter as Section 1154.051, requires the guardian of the estate to file the inventory and appraisement with the court clerk and Section 730, Texas Probate Code, revised as Section 1154.052 of this chapter, requires a list of claims to be attached to the inventory and appraisement. Similar changes are made throughout this chapter.

Revised Law

Sec. 1154.055. FAILURE OF JOINT GUARDIANS TO FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more than one guardian of the estate qualifies to serve, any one or more of the guardians, on the neglect of the other guardians, may make and file
an inventory, appraisement, and list of claims.

(b) A guardian who neglects to make or file an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another guardian makes and files an inventory, appraisement, and list of claims.

(c) The guardian who files the inventory, appraisement, and list of claims is entitled to the whole administration unless, not later than the 60th day after the date the guardian files the inventory, appraisement, and list of claims, each of the delinquent guardians files with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent guardians and revoking those guardians' letters if:

1. an excuse is not filed; or
2. the court does not consider the filed excuse sufficient. (Tex. Prob. Code, Sec. 738.)

Source Law

Sec. 738. If there is more than one qualified guardian of the estate, one or more of the guardians, on the neglect of the other guardians, may make and return an inventory and appraisement and list of claims. The guardian so neglecting may not thereafter interfere with the estate or have any power over the estate. The guardian that returns an inventory, appraisement, and list of claims has the whole administration, unless, not later than the 60th day after the date of return, each of the delinquent guardians assigns to the court in writing and under oath a reasonable excuse that the court may deem satisfactory. If no excuse is filed or if the excuse filed by a delinquent guardian is insufficient, the court shall enter an order removing the delinquent guardian and revoking the guardian's letters.

[Sections 1154.056-1154.100 reserved for expansion]

SUBCHAPTER C. CHANGES TO INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Revised Law

Sec. 1154.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS.

If after the filing of the inventory, appraisement, and list of claims the guardian of the estate acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisement, and list of claims, the guardian shall promptly file
with the court clerk a verified, full, and detailed supplemental
inventory, appraisement, and list of claims. (Tex. Prob. Code,
Sec. 734.)

Source Law

Sec. 734. The guardian of the estate shall promptly file with the clerk of court a verified, full,
and detailed supplemental inventory and appraisement
if property or claims that are not included in the
inventory come to the guardian's possession or
knowledge after the guardian files the inventory and
appraisement required under Section 729 of this code.

Revisor's Note

Section 734, Texas Probate Code, refers to the
"inventory and appraisement." Section 730, Texas
Probate Code, revised as Section 1154.052 of this
chapter, requires a list of claims to be attached to
the inventory and appraisement. For accuracy and
consistency of terminology throughout this chapter,
the revised law substitutes "inventory, appraisement,
and list of claims" for "inventory and appraisement."

Revised Law

Sec. 1154.102. ADDITIONAL INVENTORY AND APPRAISEMENT OR
LIST OF CLAIMS. (a) On the written complaint of any interested
person that property or claims of the estate have not been included
in the filed inventory, appraisement, and list of claims, the
guardian of the estate shall be cited to appear before the court in
which the cause is pending and show cause why the guardian should
not be required to make and file an additional inventory and
appraisement or list of claims, or both.

(b) After hearing the complaint, if the court is satisfied
of the truth of the complaint, the court shall enter an order
requiring the guardian to make and file an additional inventory and
appraisement or list of claims, or both. The additional inventory
and appraisement or list of claims:

(1) must be made and filed in the same manner as the
original inventory and appraisement or list of claims within the
period prescribed by the court, not to exceed 20 days after the date
of the order; and

(2) may include only property or claims not previously included in the inventory and appraisement or list of claims. (Tex. Prob. Code, Sec. 735.)

Source Law

Sec. 735. (a) On the written complaint of an interested person that property or claims of the estate have not been included in the inventory and list of claims filed by the guardian, the guardian of an estate shall be cited to appear before the court in which the cause is pending and show cause why the guardian should not be required to make and return an additional inventory or list of claims, or both.

(b) After hearing a complaint filed under this section and being satisfied of the truth of the complaint, the court shall enter an order requiring the additional inventory or list of claims, or both, to be made and returned in like manner as the original inventory, not later than 20 days after the date of the order, as may be set by the court. The additional inventory or list of claims must include only property or claims that were not inventoried or listed by the guardian.

Revised Law

Sec. 1154.103. CORRECTION OF INVENTORY, APPRAISEMENT, OR LIST OF CLAIMS FOR ERRONEOUS OR UNJUST ITEM. (a) A person interested in an estate who considers an inventory, appraisement, or list of claims filed by the guardian of the estate to be erroneous or unjust in any particular form may:

(1) file a written complaint setting forth the alleged erroneous or unjust item; and

(2) have the guardian cited to appear before the court and show cause why the item should not be corrected.

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and

(2) appointing an appraiser to make a new appraisement correcting the erroneous or unjust item and requiring the filing of the new appraisement not later than the 20th day after the date of the order.
(c) The court, on the court's own motion or a motion of the
guardian of the estate, may also have a new appraisement made for
the purposes described by this section. (Tex. Prob. Code, Sec.
736.)

Source Law

Sec. 736. A person interested in an estate who
deems an inventory, appraisement, or list of claims
returned by the guardian erroneous or unjust in any
particular form may file a written complaint that sets
forth and points out the alleged erroneous or unjust
items and cause the guardian to be cited to appear
before the court and show cause why the errors should
not be corrected. On the hearing of a complaint filed
under this section, if the court is satisfied from the
evidence that the inventory, appraisement, or list of
claims is erroneous or unjust in any particular form as
alleged in the complaint, the court shall enter an
order that specifies the erroneous or unjust items and
the corrections to be made and that appoints an
appraiser to make a new appraisement correcting the
erroneous or unjust items and requires the return of
the new appraisement not later than the 20th day after
the date of the order. The court may also, on its own
motion or on motion of the guardian of the estate, have
a new appraisal made for the purposes described by this
section.

Revisor's Note

Section 736, Texas Probate Code, states that a
person interested in an estate may file a complaint
that "sets forth and points out" an erroneous or unjust
item in an inventory, appraisement, or list of claims.
The revised law omits the reference to "points out"
because, in context, the meaning of that phrase is
included within the meaning of "sets forth."

Revised Law

Sec. 1154.104. REAPPRAISEMENT. (a) A reappraisement made,
filed, and approved by the court replaces the original
appraisal. Not more than one reappraisement may be made.

(b) Notwithstanding Subsection (a), a person interested in
an estate may object to a reappraisement regardless of whether the
court has approved the reappraisement. If the court finds that the
reappraisement is erroneous or unjust, the court shall appraise the
property on the basis of the evidence before the court. (Tex. Prob.
Code, Sec. 737.)
When a reappraisement is made, returned, and approved by the court, the reappraisement stands in place of the original appraisement. Not more than one reappraisement shall be made, but any person interested in the estate may object to the reappraisement before or after the reappraisement is approved. If the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

[Sections 1154.105-1154.150 reserved for expansion]

SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS EVIDENCE

Each inventory, appraisement, and list of claims that has been made, filed, and approved in accordance with law; the record of the inventory, appraisement, and list of claims; or a copy of an original or the record that has been certified under the seal of the county court affixed by the clerk:

(1) may be given in evidence in any court of this state in any suit by or against the guardian of the estate; and

(2) is not conclusive for or against the guardian of the estate if it is shown that:

(A) any property or claim of the estate is not shown in the inventory, appraisement, or list of claims; or

(B) the value of the property or claim of the estate exceeded the value shown in the appraisement or list of claims. (Tex. Prob. Code, Sec. 739.)

All inventories, appraisements, and lists of claims that have been taken, returned, and approved in accordance with the law, or the record of an inventory, appraisement, or list of claims, or copies of either the originals or the record, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this state in any suit by or against the guardian of the estate, but may not be conclusive for or against the guardian of the estate if it is shown that any property or claims of the estate are not shown in the inventory, appraisement, or list of claims or that the value of the property or claims of the estate actually was in excess of the value shown in the appraisement and list of claims.
Revisor's Note

Section 739, Texas Probate Code, refers to certain copies that have been "duly certified." The revised law omits "duly" in this context as unnecessary because the requirement that the copies be certified is sufficient to convey that the copies must have met the requirements for certification.

CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

SUBCHAPTER A. COMPENSATION OF GUARDIANS IN GENERAL

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CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

SUBCHAPTER A. COMPENSATION OF GUARDIANS IN GENERAL

Revised Law

Sec. 1155.001. DEFINITIONS. In this subchapter:

(1) "Gross income" does not include United States Department of Veterans Affairs or social security benefits received by a ward.

(2) "Money paid out" does not include any money loaned, invested, or paid over on the settlement of a guardianship or a tax-motivated gift made by a ward. (Tex. Prob. Code, Sec. 665(h).)

Source Law

(h) In this section:

(1) "Gross income" does not include Department of Veterans Affairs or Social Security benefits received by a ward.

(2) "Money paid out" does not include any money loaned, invested, or paid over on the settlement of the guardianship or a tax-motivated gift made by the ward.

Revised Law

Sec. 1155.002. COMPENSATION FOR CERTAIN GUARDIANS OF THE PERSON. (a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of
the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the ward's gross income.

(b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose. (Tex. Prob. Code, Secs. 665(a), (g).)

Source Law

Sec. 665. (a) The court may authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not exceeding five percent of the ward's gross income.

(g) If the estate of a ward is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as guardian of the ward's person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

Revisor's Note

Section 665(a), Texas Probate Code, refers to "a guardian or a temporary guardian." Throughout this subchapter, the revised law omits the references to "a temporary guardian" as unnecessary because Section 601(11), Texas Probate Code, revised as Section 1002.012 of this code, defines "guardian" to include a "temporary guardian."

Revised Law

Sec. 1155.003. COMPENSATION FOR GUARDIAN OF THE ESTATE.

(a) The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.

(b) A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered
reasonable under this section if the court finds that the guardian
has taken care of and managed the estate in compliance with the
standards of this title. (Tex. Prob. Code, Sec. 665(b.).)

Source Law
(b) The guardian or temporary guardian of an
estate is entitled to reasonable compensation on
application to the court at the time the court approves
any annual accounting or final accounting filed by the
 guardian or temporary guardian under this chapter. A
fee of five percent of the gross income of the ward's
estate and five percent of all money paid out of the
estate, subject to the award of an additional amount
under Subsection (c) of this section following a
review under Subsection (c)(1) of this section, is
considered reasonable under this subsection if the
court finds that the guardian or temporary guardian
has taken care of and managed the estate in compliance
with the standards of this chapter.

Revised Law
Sec. 1155.004. CONSIDERATIONS IN AUTHORIZING COMPENSATION.
In determining whether to authorize compensation for a guardian
under this subchapter, the court shall consider:
(1) the ward's monthly income from all sources; and
(2) whether the ward receives medical assistance under
the state Medicaid program. (Tex. Prob. Code, Sec. 665(a-1).)

Source Law
(a-1) In determining whether to authorize
compensation for a guardian under this section, the
court shall consider the ward's monthly income from all
sources and whether the ward receives medical
assistance under the state Medicaid program.

Revised Law
Sec. 1155.005. MAXIMUM AGGREGATE COMPENSATION. Except as
provided by Section 1155.006(a) for a fee the court determines is
unreasonably low, the aggregate fee of the guardian of the person
and guardian of the estate may not exceed an amount equal to five
percent of the gross income of the ward's estate plus five percent
of all money paid out of the estate. (Tex. Prob. Code, Sec.
665(f).)

Source Law
(f) Except as provided by Subsection (c) of this
section for a fee that is determined by the court to be
unreasonably low, the aggregate fee of the guardian of
the person and guardian of the estate may not exceed an
amount equal to five percent of the gross income of the
ward's estate plus five percent of all money paid out
of the estate.

Revised Law
Sec. 1155.006. MODIFICATION OF UNREASONABLY LOW
COMPENSATION; AUTHORIZATION FOR PAYMENT OF ESTIMATED QUARTERLY
COMPENSATION. (a) On application of an interested person or on the
court's own motion, the court may:

(1) review and modify the amount of compensation
authorized under Section 1155.002(a) or 1155.003 if the court finds
that the amount is unreasonably low when considering the services
provided as guardian; and

(2) authorize compensation for the guardian in an
estimated amount the court finds reasonable, to be paid on a
quarterly basis before the guardian files an annual or final
accounting, if the court finds that delaying the payment of
compensation until the guardian files an accounting would create a
hardship for the guardian.

(b) A finding of unreasonably low compensation may not be
established under Subsection (a) solely because the amount of
compensation is less than the usual and customary charges of the
person or entity serving as guardian. (Tex. Prob. Code, Secs.
665(c), (d) (part).)

Source Law
(c) On application of an interested person or on
its own motion, the court may:

(1) review and modify the amount of
compensation authorized under Subsection (a) or (b) of
this section if the court finds that the amount is
unreasonably low when considering the services
rendered as guardian or temporary guardian; and

(2) authorize compensation for the
guardian or temporary guardian in an estimated amount
the court finds reasonable that is to be paid on a
quarterly basis before the guardian or temporary
guardian files an annual or final accounting if the
court finds that delaying the payment of compensation
until the guardian or temporary guardian files an
accounting would create a hardship for the guardian or
temporary guardian.

(d) A finding of unreasonably low compensation
may not be established under Subsection (c) of this
section solely because the amount of compensation is
less than the usual and customary charges of the person
or entity serving as guardian. . . .
Sec. 1155.007. REDUCTION OR ELIMINATION OF ESTIMATED QUARTERLY COMPENSATION. (a) A court that authorizes payment of estimated quarterly compensation under Section 1155.006(a) may later reduce or eliminate the guardian's compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian:

(1) received compensation in excess of the amount permitted under this subchapter;

(2) has not adequately performed the duties required of a guardian under this title; or

(3) has been removed for cause.

(b) If a court reduces or eliminates a guardian's compensation as provided by Subsection (a), the guardian and the surety on the guardian's bond are liable to the guardianship estate for any excess compensation received. (Tex. Prob. Code, Secs. 665(d) (part), (d-1).)

(d) A court that authorizes payment of estimated quarterly compensation under Subsection (c) of this section may later reduce or eliminate the guardian's or temporary guardian's compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian or temporary guardian:

(1) received compensation in excess of the amount permitted under this section;

(2) has not adequately performed the duties required of a guardian or temporary guardian under this chapter; or

(3) has been removed for cause.

(d-1) If a court reduces or eliminates a guardian's or temporary guardian's compensation as provided by Subsection (d) of this section, the guardian or temporary guardian and the surety on the guardian's or temporary guardian's bond are liable to the guardianship estate for any excess compensation received.

Revisor’s Note

Section 665(d-1), Texas Probate Code, refers to the reduction or elimination of a guardian's compensation as provided by Section 665(d), Texas Probate Code. The portion of Section 665(d) that addresses the reduction or elimination of a guardian's
compensation is revised in this section as Subsection (a). The revised law is drafted accordingly.

Revised Law

Sec. 1155.008. DENIAL OF COMPENSATION. On application of an interested person or on the court's own motion, the court may wholly or partly deny a fee authorized under this subchapter if:

(1) the court finds that the guardian has not adequately performed the duties required of a guardian under this title; or

(2) the guardian has been removed for cause. (Tex. Prob. Code, Sec. 665(e).)

Source Law

(e) The court, on application of an interested person or on its own motion, may deny a fee authorized under this section in whole, or in part, if:

(1) the court finds that the guardian or temporary guardian has not adequately performed the duties required of a guardian or temporary guardian under this chapter; or

(2) the guardian or temporary guardian has been removed for cause.

[Sections 1155.009-1155.050 reserved for expansion]

SUBCHAPTER B. COMPENSATION FOR PROFESSIONAL SERVICES

Revised Law

Sec. 1155.051. COMPENSATION FOR PROFESSIONAL SERVICES IN GENERAL. (a) The court shall order the payment of a fee set by the court as compensation to any attorneys, mental health professionals, and interpreters appointed under this title to be taxed as costs in the case.

(b) If after examining a proposed ward's assets the court determines the proposed ward is unable to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under this title, as applicable, the county is responsible for the cost of those services. (Tex. Prob. Code, Sec. 665A.)

Source Law

Sec. 665A. The court shall order the payment of a fee set by the court as compensation to the attorneys, mental health professionals, and interpreters appointed under this chapter, as applicable, to be
taxed as costs in the case. If after examining the
proposed ward's assets the court determines the
proposed ward is unable to pay for services provided by
an attorney, a mental health professional, or an
interpreter appointed under this chapter, as
applicable, the county is responsible for the cost of
those services.

Revised Law
Sec. 1155.052. ATTORNEY SERVING AS GUARDIAN AND PROVIDING
RELATED LEGAL SERVICES. (a) Notwithstanding any other provision
of this chapter or Section 665B, an attorney who serves as guardian
and who also provides legal services in connection with the
guardianship is not entitled to compensation for the guardianship
services or payment of attorney's fees for the legal services from
the ward's estate or other funds available for that purpose unless
the attorney files with the court a detailed description of the
services performed that identifies which of the services provided
were guardianship services and which were legal services.
(b) An attorney described by Subsection (a) is not entitled
to payment of attorney's fees for guardianship services that are
not legal services.
(c) The court shall set the compensation of an attorney
described by Subsection (a) for the performance of guardianship
services in accordance with Subchapter A. The court shall set
attorney's fees for an attorney described by Subsection (a) for
legal services provided in accordance with Sections 1155.051,
1155.101, and 665B. (Tex. Prob. Code, Sec. 665D.)

Source Law
Sec. 665D. (a) Notwithstanding any other
provision of this subpart, an attorney who serves as
guardian and who also provides legal services in
connection with the guardianship is not entitled to
compensation for the guardianship services or payment
of attorney's fees for the legal services from the
ward's estate or other funds available for that purpose
unless the attorney files with the court a detailed
description of the services performed that identifies
which of the services provided were guardianship
services and which were legal services.
(b) An attorney described by Subsection (a) of
this section is not entitled to payment of attorney's
fees for guardianship services that are not legal
services.
(c) The court shall set the compensation of an
attorney described by Subsection (a) of this section
for the performance of guardianship services in
accordance with Section 665 of this code. The court
shall set attorney's fees for an attorney described by
Subsection (a) of this section for legal services
provided in accordance with Sections 665A, 665B, and
666 of this code.

Revised Law
Sec. 1155.053. COMPENSATION FOR SERVICES TO RECOVER
PROPERTY. (a) Subject only to the approval of the court in which
the estate is being administered and except as provided by
Subsection (b), a guardian of an estate may convey or contract to
convey a contingent interest in any property sought to be
recovered, not to exceed one-third of the property for services of
attorneys.

(b) A guardian of an estate may convey or contract to convey
for services of attorneys a contingent interest that exceeds
one-third of the property sought to be recovered under this section
only on the approval of the court in which the estate is being
administered. The court must approve a contract entered into or
conveyance made under this section before an attorney performs any
legal services. A contract entered into or conveyance made in
violation of this section is void unless the court ratifies or
reforms the contract or documents relating to the conveyance to the
extent necessary to cause the contract or conveyance to meet the
requirements of this section.

(c) In approving a contract or conveyance under Subsection
(a) or (b) for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the
novelty and difficulty of the questions to be involved, and the
skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for
similar legal services;

(3) the value of property recovered or sought to be
recovered by the guardian under this section;

(4) the benefits to the estate that the attorney will
be responsible for securing; and

(5) the experience and ability of the attorney who
will be performing the services. (Tex. Prob. Code, Secs. 665C(a),
Sec. 665C. (a) Except as provided by Subsection (b) of this section, a guardian of an estate may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof for services of attorneys, subject only to the approval of the court in which the estate is being administered.

(b) A guardian of an estate may convey or contract to convey for services of attorneys a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(c) In approving a contract or conveyance under Subsection (a) or (b) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

Revisor's Note

(1) Section 665C(b), Texas Probate Code, refers to property sought to be recovered under "this section" and to conveyances and contracts to convey made under, or in violation of, "this section." The references to "this section" mean Section 665C, Texas Probate Code. The relevant portions of Section 665C concerning the recovery of property, conveyances, and contracts to convey are revised in this section. The revised law is drafted accordingly.

(2) Section 665C(c)(3), Texas Probate Code, refers to property recovered or sought to be recovered by "the personal representative" under Section 665C,
Texas Probate Code. Preceding provisions in Sections 665C(a) and (b), Texas Probate Code, refer to a guardian conveying or contracting to convey an interest in property sought to be recovered. In addition, Section 601(23), Texas Probate Code, revised as Section 1002.028 of this code, defines "personal representative" to include a guardian. The revised law substitutes a reference to a "guardian" for the reference to a "personal representative" for consistency of terminology throughout this section and because it is clear that the "personal representative" in Section 665C(c)(3) is the guardian previously referenced in Sections 665C(a) and (b).

[Sections 1155.054-1155.100 reserved for expansion]

SUBCHAPTER C. EXPENSES

Revised Law
Sec. 1155.101. REIMBURSEMENT OF EXPENSES IN GENERAL. A guardian is entitled to reimbursement from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other guardianship matter. (Tex. Prob. Code, Sec. 666.)

Source Law
Sec. 666. A guardian is entitled to be reimbursed from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other guardianship matter.

Revised Law
Sec. 1155.102. REIMBURSEMENT OF EXPENSES FOR COLLECTION OF CLAIM OR DEBT. On satisfactory proof to the court, a guardian of an estate is entitled to all necessary and reasonable expenses incurred by the guardian in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to
recover property to which the estate has title or a claim. (Tex. Prob. Code, Sec. 665C(d).)

Source Law

(d) On satisfactory proof to the court, a guardian of an estate is entitled to all necessary and reasonable expenses incurred by the guardian in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

Revised Law

Sec. 1155.103. EXPENSE CHARGES: REQUIREMENTS. All expense charges shall be:

(1) in writing, showing specifically each item of expense and the date of the expense;

(2) verified by affidavit of the guardian;

(3) filed with the clerk; and

(4) paid only if the payment is authorized by court order. (Tex. Prob. Code, Sec. 667.)

Source Law

Sec. 667. All expense charges shall be:

(1) in writing, showing specifically each item of expense and the date of the expense;

(2) verified by affidavit of the guardian;

(3) filed with the clerk; and

(4) paid only if the payment is authorized by court order.

[Sections 1155.104-1155.150 reserved for expansion]

SUBCHAPTER D. COSTS IN GENERAL

Revised Law

Sec. 1155.151. COST OF PROCEEDING IN GUARDIANSHIP MATTER.

(a) Except as provided by Subsection (b), the cost of the proceeding in a guardianship matter, including the cost of the guardian ad litem or court visitor, shall be paid out of the guardianship estate, or the cost of the proceeding shall be paid out of the county treasury if the estate is insufficient to pay the cost, and the court shall issue the judgment accordingly.

(b) An applicant for the appointment of a guardian under this title shall pay the cost of the proceeding if the court denies the application based on the recommendation of a court.
Sec. 669. (a) Except as provided by Subsection (b), in a guardianship matter, the cost of the proceeding, including the cost of the guardian ad litem or court visitor, shall be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding shall be paid out of the county treasury, and the judgment of the court shall be issued accordingly.

(b) If a court denies an application for the appointment of a guardian under this chapter based on the recommendation of a court investigator, the applicant shall pay the cost of the proceeding.

Sec. 1155.152. CERTAIN COSTS ADJUDGED AGAINST GUARDIAN. If costs are incurred because a guardian neglects to perform a required duty or is removed for cause, the guardian and the sureties on the guardian's bond are liable for:

(1) any costs of removal and other additional costs incurred that are not expenditures authorized under this title; and

(2) reasonable attorney's fees incurred in:

(A) removing the guardian; or

(B) obtaining compliance regarding any statutory duty the guardian has neglected. (Tex. Prob. Code, Sec. 668.)

Sec. 668. When costs are incurred because a guardian neglects to perform a required duty or if a guardian is removed for cause, the guardian and the sureties on the guardian's bond are liable for:

(1) costs of removal and other additional costs incurred that are not authorized expenditures under this chapter; and

(2) reasonable attorney's fees incurred in removing the guardian or in obtaining compliance regarding any statutory duty the guardian has neglected.

[Sections 1155.153-1155.200 reserved for expansion]

SUBCHAPTER E. COMPENSATION AND COSTS IN GUARDIANSHIPS FOR CERTAIN MEDICAL ASSISTANCE RECIPIENTS

Sec. 1155.201. DEFINITIONS. In this subchapter:

(1) "Applied income" means the portion of the earned and unearned income of a recipient of medical assistance, or if
applicable the recipient and the recipient's spouse, that is paid
under the medical assistance program to a nursing home in which the
recipient resides.

(2) "Medical assistance" has the meaning assigned by
670(a).)

Source Law
Sec. 670. (a) In this section:
(1) "Applied income" means the portion of
the earned and unearned income of a recipient of
medical assistance or, if applicable, the recipient
and the recipient's spouse, that is paid under the
medical assistance program to a nursing home in which
the recipient resides.
(2) "Medical assistance" has the meaning
assigned by Section 32.003, Human Resources Code.

Revised Law
Sec. 1155.202. COMPENSATION AND COSTS PAYABLE UNDER MEDICAL
ASSISTANCE PROGRAM. (a) Notwithstanding any other provision of
this title and to the extent permitted by federal law, a court that
appoints a guardian for a recipient of medical assistance who has
applied income may order the following to be paid under the medical
assistance program:

(1) compensation to the guardian in an amount not to
exceed $175 per month;

(2) costs directly related to establishing or
terminating the guardianship, not to exceed $1,000 except as
provided by Subsection (b); and

(3) other administrative costs related to the
guardianship, not to exceed $1,000 during any three-year period.

(b) Costs ordered to be paid under Subsection (a)(2) may
include compensation and expenses for an attorney ad litem or
guardian ad litem and reasonable attorney's fees for an attorney
representing the guardian. The costs ordered to be paid may exceed
$1,000 if the costs in excess of that amount are supported by
documentation acceptable to the court and the costs are approved by
the court. (Tex. Prob. Code, Secs. 670(b), (c).)
Source Law

(b) Notwithstanding any other provision of this chapter and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be paid under the medical assistance program:

1. compensation to the guardian in an amount not to exceed $175 per month;
2. costs directly related to establishing or terminating the guardianship, not to exceed $1,000 except as provided by Subsection (c) of this section; and
3. other administrative costs related to the guardianship, not to exceed $1,000 during any three-year period.

c) Costs ordered to be paid under Subsection (b)(2) of this section may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed $1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.

CHAPTER 1156. EDUCATION AND MAINTENANCE ALLOWANCES PAID FROM WARD'S ESTATE

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[Sections 1156.005-1156.050 reserved for expansion]

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CHAPTER 1156. EDUCATION AND MAINTENANCE ALLOWANCES PAID FROM WARD'S ESTATE

SUBCHAPTER A. ALLOWANCES FOR WARD

Revised Law

Sec. 1156.001. APPLICATION FOR ALLOWANCE. (a) Subject to Section 1156.051, if a monthly allowance for a ward was not ordered in the court's order appointing a guardian, the guardian of the estate of the ward shall file with the court an application
requesting a monthly allowance to be spent from the income and corpus of the ward's estate for:

(1) the education and maintenance of the ward; and

(2) the maintenance of the ward's property.

(b) The guardian must file the application not later than the 30th day after the date the guardian qualifies as guardian or the date specified by the court, whichever is later.

(c) The application must clearly separate amounts requested for the ward's education and maintenance from amounts requested for maintenance of the ward's property. (Tex. Prob. Code, Secs. 776(a), (a-1).)

Source Law

Sec. 776. (a) Subject to Section 777 of this code, if a monthly allowance for the ward was not ordered in the court's order appointing a guardian, the guardian of the estate shall file an application with the court requesting a monthly allowance to be expended from the income and corpus of the ward's estate for the education and maintenance of the ward and the maintenance of the ward's property.

(a-1) The guardian must file the application requesting the monthly allowance not later than the 30th day after the date on which the guardian qualifies as guardian or the date specified by the court, whichever is later. The application must clearly separate amounts requested for education and maintenance of the ward from amounts requested for maintenance of the ward's property.

Revised Law

Sec. 1156.002. COURT DETERMINATION OF ALLOWANCE AMOUNT. In determining the amount of the monthly allowance for the ward and the ward's property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the reasonably anticipated regular education and maintenance expenses of the ward and maintenance expenses of the ward's property. (Tex. Prob. Code, Sec. 776(a-2) (part).)

Source Law

(a-2) In determining the amount of the monthly allowance for the ward and the ward's property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the reasonably anticipated regular education and maintenance expenses of the ward and maintenance expenses of the ward's property....
Sec. 1156.003. COURT ORDER SETTING ALLOWANCE. (a) The court's order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward's property.

(b) If different persons have the guardianship of the person and of the estate of a ward, the court's order setting a monthly allowance must specify:

(1) the amount, if any, set by the court for the ward's education and maintenance that the guardian of the estate shall pay; and

(2) the amount, if any, that the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the ward's education and maintenance.

(c) If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled by court order to make the payment after the guardian is cited to appear.

(d) An order setting a monthly allowance does not affect the guardian's duty to account for expenditures of the allowance in the annual account required by Subchapter A, Chapter 1163. (Tex. Prob. Code, Secs. 776(a-2) (part), (a-3).)

Source Law

(a-2) . . . The court's order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward's property. An order setting a monthly allowance does not affect the guardian's duty to account for expenditures of the allowance in the annual account required by Section 741 of this code.

(a-3) When different persons have the guardianship of the person and estate of a ward, the court's order setting a monthly allowance must specify the amount, if any, set by the court for the education and maintenance of the ward that the guardian of the estate shall pay and the amount, if any, the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the education and maintenance of the ward. If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled to make the payment by court order after the guardian is duly cited to appear.
Revisor's Note

Section 776(a-3), Texas Probate Code, refers to a guardian who is "duly" cited to appear. The revised law omits "duly" as unnecessary because, in context, the requirement that the guardian be cited to appear is sufficient to convey that the citation must be made in the manner required by law.

Revised Law

Sec. 1156.004. EXPENDITURES EXCEEDING ALLOWANCE. If a guardian in good faith has spent money from the income and corpus of the estate of the ward for the ward's support and maintenance and the expenditures exceed the monthly allowance authorized by the court, the guardian shall file a motion with the court requesting approval of the expenditures. The court may approve the excess expenditures if:

(1) the expenditures were made when it was not convenient or possible for the guardian to first secure court approval;

(2) the proof is clear and convincing that the expenditures were reasonable and proper;

(3) the court would have granted authority in advance to make the expenditures; and

(4) the ward received the benefits of the expenditures. (Tex. Prob. Code, Sec. 776(b).)

Source Law

(b) When a guardian has in good faith expended funds from the income and corpus of the estate of the ward for support and maintenance of the ward and the expenditures exceed the monthly allowance authorized by the court, the guardian shall file a motion with the court requesting approval of the expenditures. The court may approve the excess expenditures if:

(1) the expenditures were made when it was not convenient or possible for the guardian to first secure court approval;

(2) the proof is clear and convincing that the expenditures were reasonable and proper;

(3) the court would have granted authority in advance to make the expenditures; and

(4) the ward received the benefits of the expenditures.

[Sections 1156.005-1156.050 reserved for expansion]
SUBCHAPTER B. ALLOWANCES FOR WARD'S FAMILY

Revised Law

Sec. 1156.051. CERTAIN ALLOWANCES PROHIBITED WHEN PARENT IS GUARDIAN OF MINOR WARD. (a) Except as provided by Subsection (b), a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward's estate for the ward's support, education, or maintenance.

(b) A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward's estate to support, educate, or maintain the ward if the guardian presents to the court clear and convincing evidence that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support. (Tex. Prob. Code, Sec. 777.)

Source Law

Sec. 777. (a) Except as provided by Subsection (b) of this section, a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward's estate for the ward's support, education, or maintenance.

(b) A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward's estate to support, educate, or maintain the ward if the guardian presents clear and convincing evidence to the court that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support.

Revised Law

Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE OR DEPENDENT.

(a) Subject to Section 1156.051 and on application to the court, the court may order the guardian of the estate of a ward to spend money from the ward's estate for the education and maintenance of the ward's spouse or dependent.

(b) In determining whether to order the expenditure of money from a ward's estate for the ward's spouse or dependent, as appropriate, under this section, the court shall consider:

(1) the circumstances of the ward, the ward's spouse, and the ward's dependents;

(2) the ability and duty of the ward's spouse to
support himself or herself and the ward's dependent;

(3) the size of the ward's estate;

(4) a beneficial interest the ward or the ward's spouse or dependent has in a trust; and

(5) an existing estate plan, including a trust or will, that provides a benefit to the ward's spouse or dependent.

(c) A person who makes an application to the court under this section shall mail notice of the application by certified mail to all interested persons. (Tex. Prob. Code, Sec. 776A.)

Source Law

Sec. 776A. (a) Subject to Section 777 of this code and on application to the court, the court may order the guardian of the estate of a ward to expend funds from the ward's estate for the education and maintenance of the ward's spouse or dependent.

(b) In determining whether to order the expenditure of funds from a ward's estate for the ward's spouse or dependent, as appropriate, in accordance with this section, the court shall consider:

(1) the circumstances of the ward, the ward's spouse, and the ward's dependents;

(2) the ability and duty of the ward's spouse to support himself or herself and the ward's dependent;

(3) the size of the ward's estate;

(4) a beneficial interest the ward or the ward's spouse or dependent has in a trust; and

(5) an existing estate plan, including a trust or will, that provides a benefit to the ward's spouse or dependent.

(c) A person who makes an application to the court under this section shall mail notice of the application by certified mail to all interested persons.

CHAPTER 1157. PRESENTMENT AND PAYMENT OF CLAIMS

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Revised Law

Sec. 1157.001. PRESENTMENT OF CLAIM TO GUARDIAN OF THE ESTATE. A claim may be presented to the guardian of the estate at any time if:
1 (1) the estate has not been closed; and
2 (2) suit on the claim has not been barred by the
general statutes of limitation. (Tex. Prob. Code, Sec. 786(a)
(part).)

Source Law

Sec. 786. (a) A claim may be presented to the
guardian of the estate at any time when the estate is
not closed and when suit on the claim has not been
barred by the general statutes of limitation. . . .

Revised Law

Sec. 1157.002. PRESENTMENT OF CLAIM TO CLERK. (a) A claim
may also be presented by depositing the claim with the clerk with
vouchers and the necessary exhibits and affidavit attached to the
claim. On receiving a claim deposited under this subsection, the
clerk shall advise the guardian of the estate or the guardian's
attorney of the deposit of the claim by a letter mailed to the
guardian's last known address.

(b) A claim deposited under Subsection (a) is presumed to be
rejected if the guardian fails to act on the claim on or before the
30th day after the date the claim is filed.

(c) Failure of the clerk to give the notice required under
Subsection (a) does not affect the validity of the presentment or
the presumption of rejection of the claim because the guardian does
not act on the claim within the 30-day period prescribed by
Subsection (b). (Tex. Prob. Code, Sec. 795.)

Source Law

Sec. 795. A claim may also be presented by
depositing the claim, with vouchers and necessary
exhibits and affidavit attached to the claim, with the
clerk. The clerk, on receiving the claim, shall advise
the guardian of the estate or the guardian's attorney
by letter mailed to the last known address of the
guardian of the deposit of the claim. If the guardian
fails to act on the claim within 30 days after it is
filed, the claim is presumed to be rejected. Failure
of the clerk to give notice as required under this
section does not affect the validity of the
presentment or the presumption of rejection of the
claim because not acted on within the 30-day period.

Revised Law

Sec. 1157.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM. If
the instrument evidencing or supporting a claim provides for
attorney's fees, the claimant may include as a part of the claim the
portion of the attorney's fees the claimant has paid or contracted
to pay to an attorney to prepare, present, and collect the claim.
(Tex. Prob. Code, Sec. 794.)

Source Law

Sec. 794. If the instrument that evidences or
supports a claim provides for attorney's fees, the
claimant may include as a part of the claim the portion
of the fee that the claimant has paid or contracted to
pay to an attorney to prepare, present, and collect the
claim.

Revised Law

Sec. 1157.004. AFFIDAVIT AUTHENTICATING CLAIM FOR MONEY IN
GENERAL. (a) Except as provided by Sections 1157.005 and 1157.102,
a claim for money against an estate must be supported by an
affidavit that states:

(1) that the claim is just;

(2) that all legal offsets, payments, and credits
known to the affiant have been allowed; and

(3) if the claim is not founded on a written instrument
or account, the facts on which the claim is founded.

(b) A photostatic copy of an exhibit or voucher necessary to
prove a claim under this section may be offered with and attached to
the claim instead of attaching the original. (Tex. Prob. Code, Sec.
788 (part).)

Source Law

Sec. 788. Except as provided by Section 792 of
this code, with respect to the payment of an
unauthenticated claim by a guardian, [a guardian of
the estate may not allow and the court may not approve
a claim for money against the estate,] unless the claim
is supported by an affidavit that the claim is just and
that all legal offsets, payments, and credits known to
the affiant have been allowed. If the claim is not
founded on a written instrument or account, the
affidavit must also state the facts on which the claim
is founded. A photostatic copy of an exhibit or
voucher necessary to prove a claim under this section
may be offered with and attached to the claim instead
of the original.

Revisor's Note

(1) Section 788, Texas Probate Code, provides
that except as provided by Section 792, Texas Probate
Code, "with respect to the payment of an unauthenticated claim by a guardian," a claim for money against the estate may not be allowed or approved unless the claim is supported by the affidavit prescribed by Section 788. The revised law omits the quoted language as unnecessary because the language is descriptive of the circumstances described by Section 792, Texas Probate Code, and the cross-reference to Section 792, preserved in the revised law as a cross-reference to Section 1157.102 of this chapter, is sufficient to convey the intent of the quoted language.

(2) Section 788, Texas Probate Code, requires that a claim for money against an estate be supported by an affidavit, and prescribes the requirements for the affidavit. Section 791, Texas Probate Code, revised in this chapter as Section 1157.005, prescribes different requirements for an affidavit supporting a claim of a corporation or by certain other representatives. For the convenience of the reader, the revised law adds a cross-reference to the exception provided by Section 1157.005.

Revised Law

Sec. 1157.005. AFFIDAVIT AUTHENTICATING CLAIM OF CORPORATION OR BY CERTAIN OTHER REPRESENTATIVES. (a) The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation.

(b) In an affidavit made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state that the affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed. (Tex. Prob. Code, Sec. 791.)
Sec. 791. The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state in the affidavit that the person making the affidavit has made diligent inquiry and examination and that the person believes that the claim is just and that all legal offsets, payments, and credits made known to the person making the affidavit have been allowed.

Sec. 1157.006. LOST OR DESTROYED EVIDENCE CONCERNING CLAIM. If evidence of a claim is lost or destroyed, the claimant or the claimant's representative may make an affidavit to the fact of the loss or destruction. The affidavit must state:

1. The amount, date, and nature of the claim;
2. The due date of the claim;
3. That the claim is just;
4. That all legal offsets, payments, and credits known to the affiant have been allowed; and
5. That the claimant is still the owner of the claim.

(Tex. Prob. Code, Sec. 790 (part).)

Sec. 790. If evidence of a claim is lost or destroyed, the claimant or a representative of the claimant may make affidavit to the fact of the loss or destruction, stating the amount, date, and nature of the claim and when due, that the claim is just, that all legal offsets, payments, and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim.

Sec. 1157.007. WAIVER OF CERTAIN DEFECTS OF FORM OR CLAIMS OF INSUFFICIENCY. A defect of form or a claim of insufficiency of a presented exhibit or voucher is considered waived by the guardian of the estate unless a written objection to the form, exhibit, or voucher is:

1. Made not later than the 30th day after the date the claim is presented; and
2. Filed with the county clerk. (Tex. Prob. Code,
Sec. 789. Any defect of form or claim of insufficiency of exhibits or vouchers presented is deemed waived by the guardian unless written objection to the form, exhibit, or voucher is made not later than the 30th day after the date of presentment of the claim and is filed with the county clerk.

Revisor's Note

Section 789, Texas Probate Code, provides that certain defects or claims of insufficiency related to the presentment of a claim are waived by "the guardian" unless the guardian objects to the defect or insufficiency within the prescribed period and files that objection with the county clerk. For consistency of terminology, the revised law substitutes "guardian of the estate" for "guardian" because, under Section 786(a), Texas Probate Code, the relevant part of which is revised in this chapter as Section 1157.001, the guardian to whom a claim may be presented is the guardian of the estate. Consequently, under Section 789, Texas Probate Code, the guardian who may object to a defect or a claim of insufficiency of a presented claim is the "guardian of the estate." Similar changes are made throughout this chapter in relation to the presentment of a claim to and the handling, allowance, disapproval, or rejection of a claim by a guardian.

Revised Law

Sec. 1157.008. EFFECT ON STATUTES OF LIMITATION OF FILING OF OR SUIT ON CLAIM. The general statutes of limitation are tolled by:

(1) filing a claim that is legally allowed and approved; or

(2) bringing a suit on a rejected and disapproved claim not later than the 90th day after the date the claim is rejected or disapproved. (Tex. Prob. Code, Sec. 787.)
Sec. 787. The general statutes of limitation are tolled:
(1) by filing a claim that is legally allowed and approved; or
(2) by bringing a suit on a rejected and disapproved claim not later than the 90th day after the date of rejection or disapproval.

[Sections 1157.009-1157.050 reserved for expansion]

SUBCHAPTER B. ACTION ON CLAIMS

Sec. 1157.051. ALLOWANCE OR REJECTION OF CLAIM. A guardian of the estate shall, not later than the 30th day after the date an authenticated claim against the guardianship estate is presented to the guardian or filed with the clerk as provided by this chapter, endorse on or attach to the claim a memorandum signed by the guardian stating:
(1) the date of presentation or filing of the claim; and
(2) whether the guardian allows or rejects the claim, or, if the guardian allows or rejects a part of the claim, the portion of the claim the guardian allows or rejects. (Tex. Prob. Code, Sec. 796.)

Sec. 796. When a duly authenticated claim against a guardianship estate is presented to the guardian or filed with the clerk as provided by this subpart, the guardian shall, not later than the 30th day after the date the claim is presented or filed, endorse or annex to the claim a memorandum signed by the guardian stating the time of presentation or filing of the claim and that the guardian allows or rejects the claim, or what portion of the claim the guardian allows or rejects.

Revisor's Note
(1) Section 796, Texas Probate Code, refers to a "duly authenticated" claim against a guardianship estate. The revised law omits "duly" as unnecessary in this context because the requirement that the claim be authenticated is sufficient to convey that the claim must have met the requirements for authentication.
(2) Section 796, Texas Probate Code, refers to
certain claims against a guardianship estate presented
to the guardian of the estate or filed with the clerk
"as provided by this subpart," meaning Subpart G, Part
4, Chapter XIII, Texas Probate Code. The portions of
that subpart that relate to the presentment or filing
of claims against a guardianship estate are revised in
this chapter. The revised law therefore substitutes
"this chapter" for "this subpart."

(3) Section 796, Texas Probate Code, requires a
guardian to "endorse or annex to" a claim a memorandum.
Throughout this subchapter, the revised law
substitutes "endorse on or attach to" for the quoted
language because the phrases are synonymous in context
and the revised law is more consistent with modern
usage.

(4) Section 796, Texas Probate Code, refers to a
memorandum stating the "time" of presentation or
filing of an authenticated claim. However, Section
796 previously refers to the "date" the claim is
presented or filed. The revised law substitutes
"date" for "time" for consistency of terminology and
because a record of the specific time of day of the
presentation or filing is inconsequential. The
purpose of maintaining a record of the date of
presentation or filing is to determine whether the
guardian takes action "not later than the 30th day
after the date the claim is presented or filed" as
required by Section 796. The time of day of the
presentation or filing is irrelevant in making that
determination.

Revised Law
Sec. 1157.052. FAILURE TO ENDORSE OR ATTACH MEMORANDUM OR
ALLOW OR REJECT CLAIM. The failure of a guardian of the estate to
endorse on or attach to a claim presented to the guardian the
memorandum required by Section 1157.051 or, not later than the 30th day after the date a claim is presented, to allow or reject the claim or portion of the claim constitutes a rejection of the claim. If the claim is later established by suit:

(1) the costs shall be taxed against the guardian, individually; or
(2) the guardian may be removed as in other cases of removal on the written complaint of any person interested in the claim after personal service of citation, hearing, and proof.

(Tex. Prob. Code, Sec. 797.)

Source Law

Sec. 797. The failure of a guardian of an estate to endorse on or annex to a claim presented to the guardian, or the failure of a guardian to allow or reject the claim or portion of the claim within 30 days after the claim was presented constitutes a rejection of the claim. If the claim is later established by suit, the costs shall be taxed against the guardian, individually, or the guardian may be removed as in other cases of removal on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof.

Revisor's Note

Section 797, Texas Probate Code, refers to "[t]he failure of a guardian . . . to endorse on or annex to a claim." It is clear from the context of Section 797 that the section is referring to the failure of a guardian of the estate to endorse on or annex to a claim the memorandum required by Section 796, Texas Probate Code, revised as Section 1157.051 of this chapter. For the convenience of the reader, the revised law adds a cross-reference to the memorandum required by Section 1157.051.

Revised Law

Sec. 1157.053. CLAIM ENTERED ON CLAIM DOCKET. After a claim against a ward's estate has been presented to and allowed by the guardian of the estate, wholly or partly, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket. (Tex. Prob. Code, Sec. 798.)
Sec. 798. After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall be filed with the county clerk of the proper county who shall enter it on the claim docket.

Sec. 1157.054. CONTEST OF CLAIM. (a) A person interested in a ward may, at any time before the court has acted on a claim, appear and object in writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):

(1) the parties are entitled to process for witnesses; and

(2) the court shall hear evidence and render judgment as in ordinary suits. (Tex. Prob. Code, Sec. 799(a).)

Sec. 799. (a) Any person interested in a ward, at any time before the court has acted on a claim, may appear and object in writing to the approval of the claim, or any part of the claim. The parties are entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

Sec. 1157.055. COURT’S ACTION ON CLAIM. The court shall:

(1) approve, wholly or partly, or reject a claim that has been allowed and entered on the claim docket for a period of 10 days; and

(2) concurrently classify the claim. (Tex. Prob. Code, Sec. 799(b).)

Sec. 1157.056. HEARING ON CERTAIN CLAIMS. (a) If a claim is properly authenticated and allowed, but the court is not satisfied that the claim is just, the court shall:

(1) examine the claimant and the guardian of the
estate under oath; and

(2) hear other evidence necessary to determine the issue.

(b) If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim. (Tex. Prob. Code, Sec. 799(c).)

Source Law

(c) Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the guardian under oath and hear other evidence necessary to determine the issue. If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim.

Revised Law

Sec. 1157.057. COURT ORDER REGARDING ACTION ON CLAIM. (a) The court acting on a claim shall endorse on or attach to the claim a written memorandum that:

(1) is dated and officially signed; and

(2) states:

(A) the exact action taken by the court on the claim, whether the claim is approved or disapproved, or is approved in part and rejected in part; and

(B) the classification of the claim.

(b) An order under Subsection (a) has the effect of a final judgment. (Tex. Prob. Code, Sec. 799(d).)

Source Law

(d) When the court has acted on a claim, the court shall endorse on or annex to the claim a written memorandum dated and signed officially that states the exact action taken by the court on the claim, whether the court approved or disapproved the claim or approved in part or rejected in part the claim, and that states the classification of the claim. An order under this subsection has the force and effect of a final judgment.

Revisor's Note

Section 799(d), Texas Probate Code, states that a court's order on a claim has the "force and effect" of a final judgment. The revised law omits the reference to "force" as unnecessary because in context the meaning
of the term is included within the meaning of "effect."

Revised Law
Sec. 1157.058. APPEAL OF COURT'S ACTION ON CLAIM. If a claimant or any person interested in a ward is dissatisfied with the court's action on a claim, the claimant or interested person may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed. (Tex. Prob. Code, Sec. 799(e).)

Source Law
Sec. 1157.059. ALLOWANCE AND APPROVAL PROHIBITED WITHOUT AFFIDAVIT. Except as provided by Section 1157.102, a guardian of the estate may not allow, and the court may not approve, a claim for money against the estate unless the claim is supported by an affidavit that meets the applicable requirements of Sections 1157.004 and 1157.005. (Tex. Prob. Code, Sec. 788 (part).)

Revised Law
Sec. 788. Except as provided by Section 792 of this code, . . . . a guardian of the estate may not allow and the court may not approve a claim for money against the estate, unless the claim is supported by an affidavit [that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts on which the claim is founded. A photostatic copy of an exhibit or voucher necessary to prove a claim under this section may be offered with and attached to the claim instead of the original.]

Revisor's Note
Section 788, Texas Probate Code, prohibits a guardian of the estate from allowing, and a court from approving, a claim for money unless the claim is supported by an affidavit that meets certain requirements. Those requirements are specified in the portion of Section 788 that is revised in this chapter as Section 1157.004, and this section of the revised
law refers to the requirements of that section for an affidavit. As explained in Revisor's Note (2) to Section 1157.004 of this chapter, Section 791, Texas Probate Code, revised in this chapter as Section 1157.005, prescribes requirements for affidavits supporting certain types of claims that differ from the requirements specified in Section 1157.004. For accuracy and the convenience of the reader, the revised law adds a reference to the requirements under Section 1157.005 for an affidavit because it is clear that the type of claim to which Section 1157.005 applies may not be allowed or approved without an affidavit that meets the requirements of that section.

Revised Law

Sec. 1157.060. UNSECURED CLAIMS BARRED UNDER CERTAIN CIRCUMSTANCES. A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 1153.004 is barred. (Tex. Prob. Code, Sec. 786(a) (part).)

Source Law

(a) ... A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 784(e) of this code is barred.

Revised Law

Sec. 1157.061. ALLOWING BARRED CLAIM PROHIBITED; COURT DISAPPROVAL. A guardian of the estate may not allow a claim against a ward if a suit on the claim is barred by an applicable general statute of limitation. A claim against a ward that is allowed by the guardian shall be disapproved if the court is satisfied that the limitation has run. (Tex. Prob. Code, Sec. 786(b).)

Source Law

(b) A claim against a ward on which a suit is barred by a general statute of limitation applicable to the claim may not be allowed by a guardian. If allowed by the guardian and the court is satisfied that limitation has run, the claim shall be disapproved.
Sec. 1157.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR DESTROYED EVIDENCE VOID. (a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:

(1) allowed or approved without the affidavit under Section 1157.006; or

(2) approved without satisfactory proof. (Tex. Prob. Code, Sec. 790 (part).)

Sec. 790. [If evidence of a claim is lost or destroyed, the claimant or a representative of the claimant may make affidavit to the fact of the loss or destruction] .... The claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If the claim is allowed or approved without the affidavit or if the claim is approved without satisfactory proof, the allowance or approval is void.

Sec. 1157.063. SUIT ON REJECTED CLAIM. (a) A claim or part of a claim that has been rejected by the guardian of the estate is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the guardianship is pending or in any other court of proper jurisdiction.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim is taken to be true without further proof unless denied under oath. (Tex. Prob. Code, Sec. 800 (part).)

Sec. 800. When a claim or a part of a claim has been rejected by the guardian, the claimant shall institute suit on the claim in the court of original probate jurisdiction in which the guardianship is pending or in any other court of proper jurisdiction not later than the 90th day after the date of the rejection of the claim or the claim is barred. When a rejected claim is sued on, the endorsement made on or
annexed to the claim is taken to be true without further proof, unless denied under oath. . . .

Revisor's Note

Section 800, Texas Probate Code, refers to an "endorsement made on or annexed" to a claim. The revised law substitutes "memorandum endorsed on or attached" for the quoted phrase for clarity and consistency of terminology because Section 796, Texas Probate Code, revised in this chapter as Section 1157.051, provides that the referenced endorsement is made in the form of a memorandum endorsed on or attached to the claim.

Revised Law

Sec. 1157.064. PRESENTMENT OF CLAIM PREREQUISITE FOR JUDGMENT. (a) Except as provided by Subsection (b), a judgment may not be rendered in favor of a claimant on a claim for money that has not been:

(1) legally presented to the guardian of the estate of the ward; and

(2) wholly or partly rejected by the guardian or the court.

(b) Subsection (a) does not apply to a claim against the estate of a ward for delinquent ad valorem taxes that is being administered in probate in a county other than the county in which the taxes were imposed. (Tex. Prob. Code, Sec. 801.)

Source Law

Sec. 801. (a) A judgment may not be rendered in favor of a claimant on any claim for money that has not been legally presented to the guardian of the estate of the ward and rejected by the guardian or by the court, in whole or in part.

(b) Subsection (a) does not apply to a claim for delinquent ad valorem taxes against the estate of a ward that is being administered in probate in a county other than the county in which the taxes were imposed.

Revised Law

Sec. 1157.065. JUDGMENT IN SUIT ON REJECTED CLAIM. No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:
(1) certified not later than the 30th day after the
date of rendition, if the judgment is from a court other than the
court of original probate jurisdiction;
(2) filed in the court in which the guardianship is
pending;
(3) entered on the claim docket;
(4) classified by the court; and
(5) handled as if originally allowed and approved in
due course of administration. (Tex. Prob. Code, Sec. 800 (part).)

Source Law
Sec. 800. ... When a rejected claim or part of
a claim has been established by suit, no execution
shall issue but the judgment shall be certified not
later than the 30th day after the date of rendition if
the judgment is from a court other than the court of
original probate jurisdiction, filed in the court in
which the cause is pending entered on the claim docket,
classified by the court, and handled as if originally
allowed and approved in due course of administration.

Revisor's Note
Section 800, Texas Probate Code, provides that a
judgment establishing a rejected claim or part of a
claim shall be filed in the court in which "the cause"
is pending. The revised law substitutes "the
guardianship" for "the cause" because it is clear from
the context of Section 800, Texas Probate Code,
including from a preceding reference in that section,
revised in Section 1157.063 of this chapter, to the
court in which "the guardianship" is pending, that
"the cause" being referred to is "the guardianship."

[Sections 1157.066-1157.100 reserved for expansion]

SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

Revised Law
Sec. 1157.101. PAYMENT OF APPROVED OR ESTABLISHED CLAIM.
Except as provided for payment of an unauthenticated claim at the
risk of a guardian, a claim or any part of a claim for money against
the estate of a ward may not be paid until the claim or part of the
claim has been approved by the court or established by the judgment
of a court of competent jurisdiction. (Tex. Prob. Code, Sec. 804.)

Source Law

Sec. 804. Except as provided for payment at the risk of a guardian of an unauthenticated claim, a claim for money against the estate of a ward or any part of a claim may not be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

Revised Law

Sec. 1157.102. PAYMENT OF UNAUTHENTICATED CLAIM. (a) Subject to Subsection (b), a guardian of the estate may pay an unauthenticated claim against the ward's estate if the guardian believes the claim to be just.

(b) A guardian who pays a claim under Subsection (a) and the sureties on the guardian's bond are liable for the amount of any payment of the claim if the court finds that the claim is not just.

(Tex. Prob. Code, Sec. 792.)

Source Law

Sec. 792. A guardian may pay an unauthenticated claim against the estate of the guardian's ward that the guardian believes to be just, but the guardian and the sureties on the bond of the guardian shall be liable for the amount of any payment of the claim if the court finds that the claim is not just.

Revised Law

Sec. 1157.103. PRIORITY OF PAYMENT OF CLAIMS. (a) Except as provided by Subsection (b), the guardian of the estate shall pay a claim against the ward's estate that has been allowed and approved or established by suit, as soon as practicable and in the following order:

(1) expenses for the care, maintenance, and education of the ward or the ward's dependents;

(2) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the ward's death as provided under this title, except that any claim against the ward's estate that has been allowed and approved or established by suit before the ward's death shall be paid before the funeral expenses and expenses of the last illness;

(3) expenses of administration; and
(4) other claims against the ward or the ward's estate.

(b) If the estate is insolvent, the guardian shall give first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward's estate in the order prescribed by Subsection (a). (Tex. Prob. Code, Secs. 805(a), (b).)

Source Law

Sec. 805. (a) The guardian shall pay a claim against the estate of the guardian's ward that has been allowed and approved or established by suit, as soon as practicable, in the following order, except as provided by Subsection (b) of this section:

(1) expenses for the care, maintenance, and education of the ward or the ward's dependents;
(2) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward as provided under this chapter, except that any claim against the estate of a ward that has been allowed and approved or established by suit before the death of the ward shall be paid before the funeral expenses and expenses of the last illness;
(3) expenses of administration; and
(4) other claims against the ward or the ward's estate.

(b) If the estate is insolvent, the guardian shall give first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward's estate in the order prescribed by Subsection (a) of this section.

Revised Law

Sec. 1157.104. PAYMENT OF PROCEEDS FROM SALE OF PROPERTY SECURING DEBT. (a) If a guardian of the estate has on hand the proceeds of a sale made to satisfy a mortgage or other lien and the proceeds or any part of the proceeds are not required for the payment of any debts against the estate that have a preference over the mortgage or other lien, the guardian shall pay the proceeds to a holder of the mortgage or other lien.

(b) If the guardian fails to pay the proceeds as required by this section, the holder of a mortgage or other lien, on proof of the mortgage or other lien, may obtain an order from the court directing the payment of proceeds to be made. (Tex. Prob. Code, Sec. 808.)

Source Law

Sec. 808. When a guardian has on hand the
proceeds of a sale that has been made for the
satisfaction of a mortgage or other lien and the
proceeds, or any part of the proceeds, are not required
for the payment of any debts against the estate that
have a preference over the mortgage or other lien, the
guardian shall pay the proceeds to a holder of the
mortgage or other lien. If the guardian fails to pay
the proceeds as required by this section, the holder,
on proof of the mortgage or other lien, may obtain an
order from the court directing the payment to be made.

Revised Law
Sec. 1157.105. CLAIMANT'S PETITION FOR ALLOWANCE AND
PAYMENT OF CLAIM. A claimant whose claim has not been paid may:
(1) petition the court for determination of the claim
at any time before the claim is barred by an applicable statute of
limitations; and
(2) procure on due proof an order for the claim's
allowance and payment from the estate. (Tex. Prob. Code, Sec.
805(c).)

Source Law
(c) A claimant whose claim has not been paid may
petition the court for determination of the claim at
any time before it is barred by the applicable statute of
limitations and on due proof procure an order for
its allowance and payment from the estate.

Revised Law
Sec. 1157.106. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY
CERTAIN CLAIMS. (a) If there are insufficient assets to pay all
claims of the same class, the claims in that class shall be paid pro
rata, as directed by the court, and in the order directed.
(b) A guardian of the estate may not be allowed to pay any
claims other than with the pro rata amount of the estate funds that
have come into the guardian's possession, regardless of whether the
estate is solvent or insolvent. (Tex. Prob. Code, Sec. 806.)

Source Law
Sec. 806. When there is a deficiency of assets
to pay all claims of the same class, the claims in the
same class shall be paid pro rata, as directed by the
court, and in the order directed. A guardian may not
be allowed to pay any claims, whether the estate is
solvent or insolvent, except with the pro rata amount
of the funds of the guardianship estate that have come
to hand.

Revisor's Note
Section 806, Texas Probate Code, refers to funds
of the guardianship estate "that have come to hand."
The revised law substitutes "that have come into the
guardian's possession" for the quoted language because
the phrases are synonymous in context, and the concept
of "possession" is more consistent with modern usage.

Revised Law

Sec. 1157.107. PAYMENT OF COURT COSTS RELATING TO CLAIM.
All costs incurred in the probate court with respect to a claim are
taxed as follows:
(1) if the claim is allowed and approved, the
  guardianship estate shall pay the costs;
(2) if the claim is allowed but disapproved, the
  claimant shall pay the costs;
(3) if the claim is rejected but established by suit,
  the guardianship estate shall pay the costs;
(4) if the claim is rejected but not established by
  suit, the claimant shall pay the costs; or
(5) in a suit to establish the claim after the claim is
  rejected in part, if the claimant fails to recover judgment for a
  greater amount than was allowed or approved for the claim, the
  claimant shall pay all costs. (Tex. Prob. Code, Sec. 802.)

Source Law

Sec. 802. All costs incurred in the probate
court with respect to claims are taxed as follows:
(1) if allowed and approved, the
  guardianship estate shall pay the costs;
(2) if allowed, but disapproved, the
  claimant shall pay the costs;
(3) if rejected, but established by suit,
  the guardianship estate shall pay the costs;
(4) if rejected, but not established by
  suit, the claimant shall pay the costs; or
(5) in suits to establish a claim after
  rejection in part, if the claimant fails to recover
  judgment for a greater amount than was allowed or
  approved, the claimant shall pay all costs.

Revised Law

Sec. 1157.108. LIABILITY FOR NONPAYMENT OF CLAIM. (a) A
person or claimant, except the state treasury, entitled to payment
from a guardianship estate of money the court orders to be paid is
authorized to have execution issued against the property of the
guardianship for the amount due, with interest and costs, if:
(1) a guardian of the estate fails to pay the money on
demand;
(2) guardianship estate funds are available to make
the payment; and
(3) the person or claimant makes an affidavit of the
demand for payment and the guardian's failure to pay.

(b) The court may cite the guardian and the sureties on the
guardian's bond to show cause why the guardian or sureties should
not be held liable for the debt, interest, costs, or damages:
(1) on return of the execution under Subsection (a)
not satisfied; or
(2) on the affidavit of demand and failure to pay under
Subsection (a).

(c) On the return of citation served under Subsection (b),
the court shall render judgment against the cited guardian and
sureties, in favor of the claim holder, if good cause why the
guardian and sureties should not be held liable is not shown. The
judgment must be for:
(1) the unpaid amount ordered to be paid or
established by suit, with interest and costs; and
(2) damages on the amount neglected to be paid at the
rate of five percent per month for each month, or fraction of a
month, that the payment was neglected to be paid after demand for
payment was made.

(d) Damages ordered under Subsection (c)(2) may be
collected in any court of competent jurisdiction. (Tex. Prob. Code,
Sec. 809.)

Source Law
Sec. 809. (a) If a guardian of an estate fails
to pay on demand any money ordered by the court to be
paid to any person, except to the state treasury, when
there are funds of the guardianship estate available,
the person or claimant entitled to the payment, on
affidavit of the demand and failure to pay, is
authorized to have execution issued against the
property of the guardianship for the amount due, with
interest and costs.
(b) On return of the execution not satisfied, or
merely on the affidavit of demand and failure to pay, 
the court may cite the guardian and the sureties on the 
bond of the guardian to show cause why the guardian or 
the sureties should not be held liable for the debt, 
interest, costs, or damages. On return of citation 
duly served, if good cause to the contrary is not 
shown, the court shall render judgment against the 
guardian and sureties that are cited under this 
subsection in favor of the holder of the claim for the 
unpaid amount ordered to be paid or established by 
suit, with interest and costs, and for damages on the 
amount neglected to be paid, at the rate of five 
percent per month for each month or fraction of a month 
that the payment was neglected to be paid after demand 
was made for payment. The damages may be collected in 
any court of competent jurisdiction.

Revisor's Note

Section 809(b), Texas Probate Code, refers to a 
"citation duly served." The revised law omits the 
reference to "duly" as unnecessary in this context 
because the requirement that the citation be served is 
sufficient to convey that the requirements for service 
must be met.

[Sections 1157.109-1157.150 reserved for expansion]

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS

Revised Law

Sec. 1157.151. OPTION TO TREAT CLAIM AS MATURED SECURED 
CLAIM OR PREFERRED DEBT AND LIEN. (a) If a secured claim against a 
ward is presented, the claimant shall specify in the claim, in 
addition to all other matters required to be specified in the claim, 
whether the claim shall be:

(1) allowed and approved as a matured secured claim to 
be paid in due course of administration, in which case the claim 
shall be paid in that manner if allowed and approved; or 

(2) allowed, approved, and fixed as a preferred debt 
and lien against the specific property securing the indebtedness 
and paid according to the terms of the contract that secured the 
lien, in which case the claim shall be so allowed and approved if it 
is a valid lien.

(b) Notwithstanding Subsection (a)(2), the guardian of the 
estate may pay a claim that the claimant specified as a claim to be 
allowed, approved, and fixed as a preferred debt and lien as
described by Subsection (a)(2) before maturity if that payment is
in the best interests of the estate.

(c) If a secured claim is not presented within the time
provided by law, the claim shall be treated as a claim to be paid in
accordance with Subsection (a)(2). (Tex. Prob. Code, Secs. 793(a),
(b).)

Source Law

Sec. 793. (a) When a secured claim against a
ward is presented, the claimant shall specify in the
claim, in addition to all other matters required to be
specified in claims:
(1) whether the claim shall be allowed and
approved as a matured secured claim to be paid in due
course of administration, in which event it shall be so
paid if allowed and approved; or
(2) whether the claim shall be allowed,
approved, and fixed as a preferred debt and lien
against the specific property securing the
indebtedness and paid according to the terms of the
contract that secured the lien, in which event it shall
be so allowed and approved if it is a valid lien;
provided, however, the guardian may pay the claim
prior to maturity if it is in the best interests of the
estate to do so.

(b) If a secured claim is not presented within
the time provided by law, it shall be treated as a
claim to be paid in accordance with Subsection (a)(2)
of this section.

Revised Law

Sec. 1157.152. PREFERRED DEBT AND LIEN. When a claim for a
debt has been allowed and approved under Section 1157.151(a)(2):
(1) a further claim for the debt may not be made
against other estate assets;
(2) the claim remains a preferred lien against the
property securing the claim; and
(3) the property remains security for the debt in any
distribution or sale of the property before final maturity and
payment of the debt. (Tex. Prob. Code, Sec. 793(c).)

Source Law

(c) When an indebtedness has been allowed and
approved under Subsection (a)(2) of this section, no
further claim shall be made against other assets of the
estate because of the indebtedness, but the claim
remains a preferred lien against the property securing
the claim, and the property remains security for the
debt in any distribution or sale of the property before
final maturity and payment of the debt.
Sec. 1157.153. PAYMENT OF MATURITIES ON PREFERRED DEBT AND LIEN. (a) If, not later than the 12th month after the date letters of guardianship are granted, the property securing a debt for which a claim is allowed, approved, and fixed under Section 1157.151(a)(2) is not sold or distributed, the guardian of the estate shall:

(1) promptly pay all maturities that have accrued on the debt according to the terms of the maturities; and

(2) perform all the terms of any contract securing the maturities.

(b) If the guardian defaults in payment or performance under Subsection (a):

(1) on the motion of the claim holder, the court shall require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities; or

(2) at the claim holder's option, a motion may be made in the same manner as a motion under Subdivision (1) to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt. (Tex. Prob. Code, Sec. 793(d).)

Sec. 1157.201. CLAIM BY GUARDIAN. (a) A claim that a
guardian of the person or estate held against the ward at the time of the guardian's appointment, or that accrues after the appointment, shall be verified by affidavit as required in other cases and presented to the clerk of the court in which the guardianship is pending. The clerk shall enter the claim on the claim docket and the claim shall take the same course as other claims.

(b) A claim by a guardian that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.

(c) An appeal from a judgment of the court acting on a claim under this section may be taken as in other cases. (Tex. Prob. Code, Sec. 803.)

Source Law

Sec. 803. (a) A claim that a guardian of the person or estate held against the ward at the time of the appointment of the guardian, or that has since accrued, shall be verified by affidavit as required in other cases and presented to the clerk of the court in which the guardianship is pending. The clerk shall enter the claim on the claim docket, after which it shall take the same course as other claims.

(b) When a claim by a guardian has been filed with the court within the required time, the claim shall be entered on the claim docket and acted on by the court in the same manner as in other cases. When the claim has been acted on by the court, an appeal from the judgment of the court may be taken as in other cases.

Revised Law

Sec. 1157.202. PURCHASE OF CLAIM BY GUARDIAN PROHIBITED.

(a) A guardian may not purchase, for the guardian's own use or for any other purpose, a claim against the guardianship the guardian represents.

(b) On written complaint by a person interested in the guardianship estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing shall enter an order canceling the claim described by Subsection (a). No part of the canceled claim may be paid out of the guardianship.

(c) The court may remove a guardian for a violation of this section. (Tex. Prob. Code, Sec. 807.)
Sec. 807. A guardian may not purchase for the guardian's own use or for any purposes whatsoever a claim against the guardianship the guardian represents. On written complaint by a person interested in the guardianship estate and satisfactory proof of violation of this provision, the court after citation and hearing shall enter its order cancelling the claim and no part of the claim shall be paid out of the guardianship. The judge may remove the guardian for a violation of this section.

CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY

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CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1158.001. COURT ORDER AUTHORIZING SALE. (a) Except as provided by this chapter, any property of a ward may not be sold without a court order authorizing the sale. (b) Except as otherwise specifically provided by this title, the court may order property of a ward to be sold for cash or on credit, at public auction or privately, as the court considers most advantageous to the estate. (Tex. Prob. Code, Sec. 811.)

Source Law

Sec. 811. Except as provided by this subpart, the sale of any property of the ward may not be made without an order of court authorizing the sale. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specifically provided in this chapter.

Revisor's Note

Section 811, Texas Probate Code, provides that property of a ward may not be sold without a court order "[e]xcept as provided by this subpart," meaning Subpart H, Part 4, Chapter XIII, Texas Probate Code, and that the court may order the sale of the property by certain methods of payment and in certain manners "except when otherwise specifically provided in this chapter," meaning Chapter XIII, Texas Probate Code. The revised law substitutes "this chapter" for the reference to "this subpart" because Sections 811-837, Texas Probate Code, relating to the sale of a ward's property, are revised in this chapter.

[Sections 1158.002-1158.050 reserved for expansion]

SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

Revised Law

Sec. 1158.051. SALE OF CERTAIN PERSONAL PROPERTY REQUIRED. (a) After approval of the inventory, appraisement, and list of claims, the guardian of the estate of a ward promptly shall apply
for a court order to sell, at public auction or privately, for cash
or on credit for a term not to exceed six months, all estate
property that is liable to perish, waste, or deteriorate in value,
or that will be an expense or disadvantage to the estate if kept.

(b) The following may not be included in a sale under
Subsection (a):

(1) property exempt from forced sale;
(2) property that is the subject of a specific legacy;
and
(3) personal property necessary to carry on a farm,
ranch, factory, or other business that is thought best to operate.

(c) In determining whether to order the sale of an asset
under Subsection (a), the court shall consider:

(1) the guardian's duty to take care of and manage the
estate in the manner a person of ordinary prudence, discretion, and
intelligence would manage the person's own affairs; and
(2) whether the asset constitutes an asset that a
trustee is authorized to invest under Subchapter F, Chapter 113,
Property Code, or Chapter 117, Property Code. (Tex. Prob. Code,
Sec. 812.)

Source Law

Sec. 812. (a) The guardian of an estate, after
approval of inventory and appraisement, shall promptly
apply for an order of the court to sell at public
auction or privately, for cash or on credit not
exceeding six months, all of the estate that is liable
to perish, waste, or deteriorate in value or that will
be an expense or disadvantage to the estate if kept.
Property exempt from forced sale, a specific legacy,
or personal property necessary to carry on a farm,
ranch, factory, or any other business that it is
thought best to operate, may not be included in a sale
under this section.
(b) In determining whether to order the sale of
an asset under Subsection (a) of this section, the
court shall consider:

(1) the guardian's duty to take care of and
manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the
management of the person's own affairs; and
(2) whether the asset constitutes an asset
that a trustee is authorized to invest under Chapter
117 or Subchapter F, Chapter 113, Property Code.

Revisor's Note

Section 812(a), Texas Probate Code, refers to the
approval of the "inventory and appraisement" of an
estate. The inventory and appraisement is filed with a
list of claims for the estate, as provided by Section
730, Texas Probate Code, revised as Section 1154.052
of this code, and approved with that list, as provided
by Section 733, Texas Probate Code, revised as Section
1154.054 of this code. The revised law substitutes
"inventory, appraisement, and list of claims" for
"inventory and appraisement" for the reasons stated in
the revisor's note to Section 1154.101 of this code.

[Sections 1158.052-1158.100 reserved for expansion]

SUBCHAPTER C. SALE OF PERSONAL PROPERTY

Revised Law
Sec. 1158.101. ORDER FOR SALE. (a) Except as provided by
Subsection (b), on the application of the guardian of the estate of
a ward or any interested person, the court may order the sale of any
estate personal property not required to be sold by Section
1158.051, including livestock or growing or harvested crops, if the
court finds that the sale of the property is in the best interests
of the ward or the ward's estate to pay, from the proceeds of the
sale:

(1) expenses of the care, maintenance, and education
of the ward or the ward's dependents;

(2) expenses of administration;

(3) allowances;

(4) claims against the ward or the ward's estate; and

(5) if the guardianship is kept open after the death of
the ward, the ward's funeral expenses and expenses of the ward's
last illness.

(b) The court may not order under this section the sale of
exempt property. (Tex. Prob. Code, Sec. 813 (part).)

Source Law
Sec. 813. On application by the guardian of the
estate or by any interested person, the court may order
the sale of any personal property of the estate not
required to be sold by Section 812 of this code,
including growing or harvested crops or livestock but not including exempt property, if the court finds that the sale of the property would be in the best interests of the ward or the ward's estate in order to pay expenses of the care, maintenance, and education of the ward or the ward's dependents, expenses of administration, allowances, or claims against the ward or the ward's estate, and funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward, from the proceeds of the sale of the property. ...

Revised Law
Sec. 1158.102. REQUIREMENTS FOR APPLICATION AND ORDER. To the extent possible, an application and order for the sale of estate personal property under Section 1158.101 must conform to the requirements under Subchapter F for an application and order for the sale of real estate. (Tex. Prob. Code, Sec. 813 (part).)

Source Law
Sec. 813. ... Insofar as possible, applications and orders for the sale of personal property must conform to the requirements set forth under this chapter for applications and orders for the sale of real estate.

Revisor's Note
Section 813, Texas Probate Code, provides that applications and orders for the sale of personal property must conform to the requirements "set forth under this chapter," meaning Chapter XIII, Texas Probate Code, revised as this title, for applications and orders for the sale of real estate. The revised law substitutes a reference to Subchapter F of this chapter for "under this chapter" because the relevant requirements for the sale of real estate are revised as that subchapter.

Revised Law
Sec. 1158.103. SALE AT PUBLIC AUCTION. Unless the court directs otherwise, before estate personal property is sold at public auction, notice must be:

(1) issued by the guardian of the estate; and

(2) posted in the manner notice is posted for original proceedings in probate. (Tex. Prob. Code, Sec. 815.)
Sec. A815. All sales of personal property at public auction shall be made after notice has been issued by the guardian of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

Sec. A1158.104. SALE ON CREDIT. (a) Estate personal property may not be sold on credit at public auction for a term of more than six months from the date of sale.

(b) Estate personal property purchased on credit at public auction may not be delivered to the purchaser until the purchaser gives a note for the amount due, with good and solvent personal security. The requirement that security be provided may be waived if the property will not be delivered until the note, with interest, has been paid. (Tex. Prob. Code, Sec. 816.)

Sec. A816. No more than six months' credit may be allowed when personal property is sold at public auction, based on the date of the sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of the property can be made to the purchaser, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

Sec. 1158.105. REPORT; EVIDENCE OF TITLE. (a) A sale of estate personal property shall be reported to the court. The laws regulating the confirmation or disapproval of a sale of real estate apply to the sale of personal property, except that a conveyance is not required.

(b) The court's order confirming the sale of estate personal property:

(1) vests the right and title of the ward's estate in the purchaser who has complied with the terms of the sale; and

(2) is prima facie evidence that all requirements of the law in making the sale have been met.

(c) The guardian of the estate, on request, may issue a bill of sale without warranty to the purchaser of estate personal property as evidence of title. The expense of the bill of sale if
requested must be paid by the purchaser. (Tex. Prob. Code, Sec. 818.)

Source Law

Sec. 818. All sales of personal property shall be reported to the court. The laws regulating the confirmation or disapproval of sales of real estate apply to sales of personal property, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the ward in the purchaser who has complied with the terms of the sale and shall be prima facie evidence that all requirements of the law in making the sale have been met. The guardian of an estate may, on request, issue a bill of sale without warranty to the purchaser as evidence of title. The expense of the bill of sale if requested is to be borne by the purchaser.

Revisor's Note

Section 818, Texas Probate Code, refers to a court "decree" confirming a sale of a ward's personal property. The revised law substitutes "order" for "decree" for consistency of terminology throughout this chapter and because, in context, the terms are synonymous.

[Sections 1158.106-1158.150 reserved for expansion]

SUBCHAPTER D. SALE OF LIVESTOCK

Revised Law

Sec. 1158.151. AUTHORITY FOR SALE. (a) A guardian of the estate who has possession of livestock and who considers selling the livestock to be necessary or to the estate's advantage may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell the livestock through:

(1) a bonded livestock commission merchant; or

(2) a bonded livestock auction commission merchant.

(b) The court may authorize the sale of livestock in the manner described by Subsection (a) on a written and sworn application by the guardian or any person interested in the estate. (Tex. Prob. Code, Secs. 814(a), (b) (part).)

Source Law

Sec. 814. (a) When the guardian of an estate
has in the guardian's possession any livestock that the
guardian deems necessary or to the advantage of the
estate to sell, the guardian may, in addition to any
other method provided by law for the sale of personal
property, obtain authority from the court in which the
estate is pending to sell the livestock through a
bonded livestock commission merchant or a bonded
livestock auction commission merchant.

(b) On written and sworn application by the
guardian or by any person interested in the estate
. . . the court may authorize the sale. . . .

Revised Law
Sec. 1158.152. CONTENTS OF APPLICATION; HEARING. (a) An
application under Section 1158.151 must:

(1) describe the livestock sought to be sold; and
(2) state why granting the application is necessary or
to the estate's advantage.

(b) The court:
(1) shall consider the application; and
(2) may hear evidence for or against the application,
with or without notice, as the facts warrant. (Tex. Prob. Code,
Sec. 814(b) (part).)

Source Law
(b) [On written and sworn application] . . .
that describes the livestock sought to be sold and that
sets out the reasons why it is deemed necessary or to
the advantage of the estate that the application be
granted, [the court may authorize the sale]. The court
shall consider the application and may hear evidence
for or against the application, with or without
notice, as the facts warrant.

Revised Law
Sec. 1158.153. GRANT OF APPLICATION. If the court grants an
application for the sale of livestock, the court shall:

(1) enter an order to that effect; and
(2) authorize delivery of the livestock to a
commission merchant described by Section 1158.151(a) for sale in
the regular course of business. (Tex. Prob. Code, Sec. 814(c)
(part).)

Source Law
(c) If the application is granted, the court
shall enter its order to that effect and shall
authorize delivery of the livestock to any bonded
livestock commission merchant or bonded livestock
auction commission merchant for sale in the regular
course of business. . . .
Revised Law

Sec. 1158.154. REPORT; PASSAGE OF TITLE. The guardian of the estate shall promptly report to the court a sale of livestock, supported by a verified copy of the commission merchant's account of the sale. A court order of confirmation is not required to pass title to the purchaser of the livestock. (Tex. Prob. Code, Sec. 814(c) (part).)

Source Law

(c) A report of the sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the guardian to the court, but no order of confirmation by the court is required to pass title to the purchaser of the livestock.

Revised Law

Sec. 1158.155. COMMISSION MERCHANT CHARGES. The commission merchant shall be paid the commission merchant's usual and customary charges, not to exceed five percent of the sale price, for the sale of the livestock. (Tex. Prob. Code, Sec. 814(c) (part).)

Source Law

(c) The commission merchant shall be paid the merchant's usual and customary charges, not to exceed five percent of the sale price, for the sale of the livestock.

[Sections 1158.156-1158.200 reserved for expansion]

SUBCHAPTER E. SALE OF MORTGAGED PROPERTY

Revised Law

Sec. 1158.201. APPLICATION FOR SALE OF MORTGAGED PROPERTY. On the filing of a written application, a creditor holding a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is pending an order requiring that the property securing the lien, or as much of the property as is necessary to satisfy the creditor's claim, be sold. (Tex. Prob. Code, Sec. 817 (part).)

Source Law

Sec. 817. On the filing of a written application, a creditor who holds a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is...
pending an order that the property, or so much of the
property as necessary to satisfy the creditor's claim,
shall be sold. . . .

Revised Law
Sec. 1158.202. CITATION. On the filing of an application
under Section 1158.201, the clerk shall issue a citation requiring
the guardian of the estate to appear and show cause why the
application should not be granted. (Tex. Prob. Code, Sec. 817
(part).)

Source Law
Sec. 817. . . . On the filing of the
application, the clerk shall issue citation requiring
the guardian of the estate to appear and show cause why
an application filed under this section should not be
granted. . . .

Revised Law
Sec. 1158.203. ORDER. The court may order the lien securing
the claim of a creditor who files an application under Section
1158.201 to be discharged out of general estate assets or
refinanced if the discharge or refinance of the lien appears to the
court to be advisable. Otherwise, the court shall grant the
application and order that the property securing the lien be sold at
public or private sale, as the court considers best, as in an
ordinary sale of real estate. (Tex. Prob. Code, Sec. 817 (part).)

Source Law
Sec. 817. . . . If it appears to the court that
it would be advisable to discharge the lien out of the
general assets of the estate or that it be refinanced,
the court may so order. Otherwise, the court shall
grant the application and order that the property be
sold at public or private sale, as the court considers
best, as in ordinary cases of sales of real estate.

[Sections 1158.204-1158.250 reserved for expansion]

SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR SALE

Revised Law
Sec. 1158.251. APPLICATION FOR ORDER OF SALE. An
application may be made to the court for an order to sell real
property of a ward's estate if the sale appears necessary or
advisable to:
(1) pay:
(A) expenses of administration, allowances, and
claims against the ward or the ward's estate; and

(B) if the guardianship is kept open after the death of the ward, the ward's funeral expenses and expenses of the ward's last illness;

(2) make up the deficiency if the income of a ward's estate, the personal property of the estate, and the proceeds of previous sales are insufficient to pay for the education and maintenance of the ward or to pay debts against the estate;

(3) dispose of property of the ward's estate that consists wholly or partly of an undivided interest in real estate if considered in the best interests of the estate to sell the interest;

(4) dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return on the value of the real estate, if:

(A) the improvement of the real estate with a view to making the property productive is not considered advantageous or advisable; and

(B) the sale of the real estate and the investment of the money derived from that sale appears to be in the estate's best interests; or

(5) conserve the ward's estate by selling mineral interest or royalties on minerals in place owned by the ward. (Tex. Prob. Code, Sec. 820.)

Sec. 820. An application may be made to the court for an order to sell real property of the estate when it appears necessary or advisable in order to:

(1) pay expenses of administration, allowances, and claims against the ward or the ward's estate, and to pay funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward;

(2) make up the deficiency when the income of a ward's estate, the personal property of the ward's estate, and the proceeds of previous sales, are insufficient to pay for the education and maintenance of the ward or to pay debts against the estate;

(3) dispose of property of the ward's estate that consists in whole or in part of an undivided interest in real estate when it is deemed in the best interests of the estate to sell the interest;

(4) dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return on the value
of the real estate, when the improvement of the real
estate with a view to making it productive is not
deemed advantageous or advisable and it appears that
the sale of the real estate and the investment of the
money derived from the sale of the real estate would be
in the best interests of the estate; or
(5) conserve the estate of a ward by
selling mineral interest or royalties on minerals in
place owned by a ward.

**Revised Law**

Sec. 1158.252. CONTENTS OF APPLICATION. An application for
the sale of real estate must:

(1) be in writing;
(2) describe:
   (A) the real estate sought to be sold; or
   (B) the interest in or part of the real estate
sought to be sold; and
(3) be accompanied by an exhibit, verified by an
affidavit, showing fully and in detail:
   (A) the estate's condition;
   (B) the charges and claims that have been
   approved or established by suit or that have been rejected and may
   be established later;
   (C) the amount of each claim described by
   Paragraph (B);
   (D) the estate property remaining on hand that is
   liable for the payment of the claims described by Paragraph (B); and
   (E) any other facts showing the necessity for or
   advisability of the sale. (Tex. Prob. Code, Sec. 821.)

**Source Law**

Sec. 821. An application for the sale of real
estate shall be in writing, must describe the real
estate or an interest in or part of the real estate
sought to be sold, and shall be accompanied by an
exhibit, verified by affidavit that shows fully and in
detail:

(1) the condition of the estate;
(2) the charges and claims that have been
approved or established by suit, or that have been
rejected and may be established later;
(3) the amount of each claim that has been
approved or established by suit, or that has been
rejected but may be established later;
(4) the property of the estate remaining
on hand liable for the payment of those claims; and
(5) any other facts that show the
necessity or advisability of the sale.
Revised Law

Sec. 1158.253. CITATION. On the filing of an application for the sale of real estate under Section 1158.251, accompanied by an exhibit described by Section 1158.252, the clerk shall issue a citation to all persons interested in the guardianship. The citation must:

(1) describe the real estate or the interest in or part of the real estate sought to be sold;

(2) inform the interested persons of the right under Section 1158.254 to file an opposition to the sale during the period prescribed by the court in the citation; and

(3) be served by posting. (Tex. Prob. Code, Sec. 823.)

Source Law

Sec. 823. On the filing of an application for the sale of real estate under Section 820 of this code and exhibit, the clerk shall issue a citation to all persons interested in the guardianship that describes the land or interest or part of the land or interest sought to be sold and that informs the persons of the right under Section 824 of this code to file an opposition to the sale during the period prescribed by the court as shown in the citation, if they so elect. Service of citation shall be by posting.

Revisor's Note

Section 823, Texas Probate Code, requires the clerk to issue a citation describing the "land or interest or part of the land or interest sought to be sold" on the filing of "an application for the sale of real estate under Section 820 of this code and exhibit." The revised law substitutes "real estate" for "land" in this context for consistency of terminology within this section. For the convenience of the reader, the revised law also adds a cross-reference to Section 1158.252 because it is clear from the context that the exhibit to which Section 823, Texas Probate Code, refers is the exhibit that Section 821, Texas Probate Code, revised in this chapter as Section 1158.252, requires to accompany an application for the sale of real estate.
Revised Law

Sec. 1158.254. OPPOSITION TO SALE. During the period prescribed in a citation issued under Section 1158.253, a person interested in the guardianship may file:

(1) a written opposition to the sale; or

(2) an application for the sale of other estate property. (Tex. Prob. Code, Sec. 824.)

Source Law

Sec. 824. When an application for an order of sale is made, a person interested in the guardianship may, during the period provided in the citation issued under Section 823 of this code, file the person's opposition to the sale, in writing, or may make application for the sale of other property of the estate.

Revised Law

Sec. 1158.255. HEARING ON APPLICATION AND ANY OPPOSITION. (a) The clerk of the court in which an application for an order of sale is filed shall immediately call to the judge's attention any opposition to the sale that is filed during the period prescribed in the citation issued under Section 1158.253. The court shall hold a hearing on the application if an opposition to the sale is filed during the period prescribed in the citation.

(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period prescribed in the citation. The court may determine that a hearing on the application is necessary even if no opposition is filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b), the court shall designate in writing a date and time for the hearing on the application and any opposition, together with the evidence pertaining to the application and any opposition. The clerk shall issue a notice of the date and time of the hearing to the applicant and to each person who files an opposition to the sale, if applicable.

(d) The judge, by entries on the docket, may continue a hearing held under this section from time to time until the judge is
satisfied concerning the application. (Tex. Prob. Code, Sec. 824A.)

Source Law

Sec. 824A. (a) The clerk of a court in which an application for an order of sale is filed shall immediately call to the attention of the judge any opposition to the sale that is filed during the period provided in the citation issued under Section 823 of this code. The court shall hold a hearing on an application if an opposition to the sale is filed during the period provided in the citation.

(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period provided in the citation. The court, in its discretion, may determine that a hearing is necessary on the application even if no opposition was filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b) of this section, the court shall designate in writing a date and time for hearing the application and any opposition, together with the evidence pertaining to the application and opposition. The clerk shall issue a notice to the applicant and to each person who files an opposition to the sale, if applicable, of the date and time of the hearing.

(d) The judge may, by entries on the docket, continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Revised Law

Sec. 1158.256. ORDER. (a) The court shall order the sale of the property of the estate described in an application under Section 1158.251 if the court is satisfied that the sale is necessary or advisable. Otherwise, the court may deny the application and, if the court considers it best, may order the sale of other estate property the sale of which would be more advantageous to the estate.

(b) An order for the sale of real estate under this section must specify:

(1) the property to be sold, including a description that identifies that property;

(2) whether the property is to be sold at public auction or private sale and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of, and the purpose of, the sale;
except in a case in which a guardian of the estate was not required to give a general bond, that the court, after examining the general bond given by the guardian, finds that:

(A) the bond is sufficient as required by law; or

(B) the bond is insufficient;

(5) if the court finds that the general bond is insufficient under Subdivision (4)(B), the amount of the necessary or increased bond, as applicable;

(6) that the sale is to be made and the report returned in accordance with law; and

(7) the terms of the sale. (Tex. Prob. Code, Sec. 825.)

Source Law

Sec. 825. If satisfied that the sale of the property of the guardianship described in the application made under Section 820 of this code is necessary or advisable, the court shall order the sale to be made. Otherwise, the court may deny the application and, if the court deems best, may order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate must specify:

(1) the property to be sold, giving a description that will identify the property;

(2) whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of the sale and its purpose;

(4) except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the bond to be insufficient and specifies the necessary or increased bond;

(5) that the sale shall be made and the report returned in accordance with law; and

(6) the terms of the sale.

Revisor’s Note

(1) Section 825, Texas Probate Code, refers to property of "the guardianship" described in an application for an order of sale under Section 820, Texas Probate Code, revised as Section 1158.251 of this chapter. Section 1158.251 refers to property of a ward's estate. For consistency of terminology, the revised law substitutes property of "the estate" for
the quoted language.

(2) Section 825, Texas Probate Code, refers to the general bond of the "representative of the estate." The revised law substitutes "guardian of the estate" for "representative of the estate" for clarity and consistency of terminology throughout this chapter because the section deals with a guardianship estate and it is clear from the context that the representative of the estate is the guardian of the estate.

Revised Law
Sec. 1158.257. SALE FOR PAYMENT OF DEBTS. Real property of a ward selected to be sold for the payment of expenses or claims must be that property the sale of which the court considers most advantageous to the guardianship. (Tex. Prob. Code, Sec. 819.)

Source Law
Sec. 819. Real property of the ward that is selected to be sold for the payment of expenses or claims shall be that property that the court deems most advantageous to the guardianship to be sold.

[Sections 1158.258-1158.300 reserved for expansion]

SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE

Revised Law
Sec. 1158.301. PERMISSIBLE TERMS. Real estate of an estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the estate's best interests. (Tex. Prob. Code, Sec. 827(a) (part).)

Source Law
Sec. 827. (a) The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the best interests of the estate. . . .
real estate of an estate sold partly on credit may not be less than
one-fifth of the purchase price. The purchaser shall execute a note
for the deferred payments, payable in monthly, quarterly,
semiannual, or annual installments, in amounts that appear to the
court to be in the guardianship's best interests. The note must
bear interest from the date at a rate of not less than four percent
per year, payable as provided in the note.

(b) A note executed by a purchaser under Subsection (a) must
be secured by a vendor's lien retained in the deed and in the note on
the property sold, and be additionally secured by a deed of trust on
the property sold, with the usual provisions for foreclosure and
sale on failure to make the payments provided in the deed and the
note.

(c) At the election of the holder of a note executed by a
purchaser under Subsection (a), default in the payment of principal
or interest or any part of the payment when due matures the entire
debt. (Tex. Prob. Code, Sec. 827(a) (part).)

Source Law

(a) . . . When real estate is sold partly on
credit, the cash payment may not be less than one-fifth
of the purchase price, and the purchaser shall execute
a note for the deferred payments payable in monthly,
quarterly, semiannual or annual installments, of the
amounts as appear to the court to be for the best
interests of the guardianship, to bear interest from
date at a rate of not less than four percent per annum,
payable as provided in the note. Default in the
payment of principal or interest, or any part of the
payment when due, at the election of the holder of the
note, matures the whole debt. The note shall be
secured by vendor's lien retained in the deed and in
the note on the property sold and shall be further
secured by deed of trust on the property sold, with the
usual provisions for foreclosure and sale on failure
to make the payments provided in the deed and the note.

[Sections 1158.303-1158.350 reserved for expansion]

SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

Revised Law

Sec. 1158.351. APPLICABILITY OF SUBCHAPTER. This
subchapter applies only to real estate owned by an estate as a
result of the foreclosure of a vendor's lien or mortgage belonging
to the estate:
(1) by a judicial sale;
(2) by a foreclosure suit;
(3) through a sale under a deed of trust; or
(4) by acceptance of a deed in cancellation of a lien
or mortgage owned by the estate. (Tex. Prob. Code, Sec. 827(b)
(part).)

Source Law

(b) When an estate owning real estate by virtue
of foreclosure of a vendor's lien or mortgage belonging
to the estate either by judicial sale or by a
foreclosure suit, by sale under deed of trust, or by
acceptance of a deed in cancellation of a lien or
mortgage owned by the estate, and . . . .

Revised Law

Sec. 1158.352. APPLICATION AND ORDER FOR RECONVEYANCE. On
proper application and proof, the court may dispense with the
requirements for a credit sale prescribed by Section 1158.302 and
order the reconveyance of foreclosed real estate to the former
mortgage debtor or former owner if it appears to the court that:

(1) an application to redeem the real estate has been
made by the former owner to a corporation or agency created by an
act of the United States Congress or of this state in connection
with legislation for the relief of owners of mortgaged or
encumbered homes, farms, ranches, or other real estate; and

(2) owning bonds of one of those federal or state
corporations or agencies instead of the real estate would be in the
estate's best interests. (Tex. Prob. Code, Sec. 827(b) (part).)

Source Law

(b) [When] . . . it appears to the court that an
application to redeem the property foreclosed on has
been made by the former owner of the real estate to any
corporation or agency created by any act of the
Congress of the United States or of this state in
connection with legislation for the relief of owners
of mortgaged or encumbered homes, farms, ranches, or
other real estate and that it would be in the best
interests of the estate to own bonds of one of the
above named federal or state corporations or agencies
instead of the real estate, then on proper application
and proof, the court may dispense with the provisions
of credit sales as provided by Subsection (a) of this
section, and may order reconveyance of the property to
the former mortgage debtor, or former owner, . . . .
Revisor's Note

(1) Section 827(b), Texas Probate Code, in part refers to the "property" foreclosed upon and to the reconveyance of the "property." Other portions of Section 827(b) revised both in this section and as Section 1158.351 refer to "real estate" owned by a guardianship estate as a result of a foreclosure. Because it is clear that the "property" referred to in Section 827(b) is the "real estate" referred to in that same section, the revised law substitutes "real estate" for "property" for consistency of terminology.

(2) Section 827(b), Texas Probate Code, authorizes the court to dispense with the requirements for a credit sale "provided by Subsection (a)" of Section 827 in certain circumstances. The relevant portion of Section 827(a) providing requirements for credit sales is revised in Section 1158.302 of this chapter. The revised law is drafted accordingly.

Revised Law

Sec. 1158.353. EXCHANGE FOR BONDS. (a) If a court orders the reconveyance of foreclosed real estate under Section 1158.352, vendor's lien notes shall be reserved for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency to which the application to redeem the real estate was submitted as described by Section 1158.352(1) is allowed to advance under the corporation's or agency's rules or regulations.

(b) On obtaining the order for reconveyance, it shall be proper for the guardian to endorse and assign the reserved vendor's lien notes over to any one of the corporations or agencies described by Section 1158.352(1) in exchange for bonds of that corporation or agency. (Tex. Prob. Code, Sec. 827(b) (part).)

Source Law

(b) ... [the court ... may order reconveyance of the property to the former mortgage
debtor, or former owner,] reserving vendor's lien
notes for the total amount of the indebtedness due or
for the total amount of bonds that the corporation or
agency above named is under its rules and regulations
allowed to advance. On obtaining the order, it shall
be proper for the guardian to endorse and assign the
notes so obtained over to any one of the corporations
or agencies above named in exchange for bonds of that
corporation or agency.

[Sections 1158.354-1158.400 reserved for expansion]

SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE

Revised Law

Sec. 1158.401. REQUIRED NOTICE. (a) Except as otherwise
provided by this title, the guardian of the estate shall advertise a
public sale of real estate of the estate by a notice published in
the county in which the estate is pending, as provided by this title
for publication of notices or citations. The notice must include a
reference to:

(1) the order of sale;
(2) the time, place, and required terms of sale; and
(3) a brief description of the real estate to be sold.

(b) The reference described by Subsection (a)(1) is not
required to contain field notes, but if the real estate to be sold
is rural property, the reference must include:

(1) the name of the original survey of the real estate;
(2) the number of acres the real estate consists of;
(3) the location of the real estate in the county; and
(4) the name by which the real estate is generally
known. (Tex. Prob. Code, Sec. 828(a).)

Source Law

Sec. 828. (a) Except as otherwise provided by
this chapter, all public sales of real estate shall be
advertised by the guardian of the estate by a notice
published in the county in which the estate is pending,
as provided by this chapter for publication of notices
or citations. A reference in the notice shall be made
to the order of sale, the time, place, and the required
terms of sale, and a brief description of the property
to be sold. A reference made under this section does
not have to contain field notes, but if the real estate
consists of rural property, the name of the original
survey, the number of acres, its locality in the
county, and the name by which the land is generally
known must be contained in the reference.
Revisor's Note

Section 828(a), Texas Probate Code, provides that a notice of the public sale of "real estate" must include a description of the "property" to be sold and, if the property is rural, any name by which the "land" is generally known. The revised law substitutes "real estate" for "property" and "land" in this context for consistency of terminology. Similar changes are made throughout this subchapter, the provisions of which are all derived from Section 828, Texas Probate Code.

Revised Law
Sec. 1158.402. METHOD OF SALE. A public sale of real estate of an estate shall be made at public auction to the highest bidder.
(Tex. Prob. Code, Sec. 828(b).)

Source Law
(b) All public sales of real estate shall be made at public auction to the highest bidder.

Revised Law
Sec. 1158.403. TIME AND PLACE OF SALE. (a) Except as provided by Subsection (c), a public sale of real estate of an estate shall be made at:
(1) the courthouse door in the county in which the guardianship proceedings are pending; or
(2) another place in that county at which sales of real estate are specifically authorized to be made.
(b) The sale must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed.
(c) If the court considers it advisable, the court may order the sale to be made in the county in which the real estate is located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.
(Tex. Prob. Code, Sec. 828(c).)

Source Law
(c) All public sales of real estate shall be
made in the county in which the guardianship proceedings are pending, at the courthouse door of the county, or at another place in the county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice has been completed, between the hours of 10 a.m. and 4 p.m. If deemed advisable by the court, the court may order the sale to be made in the county in which the land is located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.

Revised Law
Sec. 1158.404. CONTINUANCE OF SALE. (a) A public sale of real estate of an estate that is not completed on the day advertised may be continued from day to day by an oral public announcement of the continuance made at the conclusion of the sale each day.

(b) A continued sale must occur within the hours prescribed by Section 1158.403(b).

(c) The continuance of a sale under this section shall be shown in the report of the sale made to the court. (Tex. Prob. Code, Sec. 828(d).)

Source Law
(d) If a sale is not completed on the day advertised, the sale may be continued from day to day by making an oral public announcement of the continuance at the conclusion of the sale each day. The continued sale is to be made within the same hours as prescribed by Subsection (c) of this section. If sales are so continued, the fact shall be shown in the report of sale made to the court.

Revised Law
Sec. 1158.405. FAILURE OF BIDDER TO COMPLY. (a) If a person who bids on real estate of the guardianship estate offered for sale at public auction fails to comply with the terms of the sale, the real estate shall be readvertised and sold without any further order.

(b) The person defaulting on a bid as described by Subsection (a) is liable for payment to the guardian of the estate, for the estate's benefit, of:

(1) 10 percent of the amount of the bid; and

(2) the amount of any deficiency in price on the second sale.

(c) The guardian shall recover the amounts under Subsection
(b) by suit in any court in the county in which the sale was made
that has jurisdiction over the amount claimed. (Tex. Prob. Code,
Sec. 828(e).)

Source Law

(e) When a person who bids on property of a
guardianship estate offered for sale at public auction
fails to comply with the terms of sale, the property
shall be readvertised and sold without any further
order. The person who defaults shall be liable to pay
to the guardian of the estate, for the benefit of the
estate, 10 percent of the amount of the person's bid
and any deficiency in price on the second sale. The
guardian shall recover the amounts by suit in any court
in the county in which the sale was made that has
jurisdiction over the amount claimed.

[Sections 1158.406-1158.450 reserved for expansion]

SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

Revised Law

Sec. 1158.451. MANNER OF SALE. A private sale of real
estate of the estate shall be made in the manner the court directs
in the order of sale. Unless the court directs otherwise,
additional advertising, notice, or citation concerning the sale is
not required. (Tex. Prob. Code, Sec. 829.)

Source Law

Sec. 829. All private sales of real estate shall
be made in the manner the court directs in its order of
sale, and no further advertising, notice, or citation
concerning the sale shall be required unless the court
shall direct otherwise.

[Sections 1158.452-1158.500 reserved for expansion]

SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

Revised Law

Sec. 1158.501. AUTHORIZATION. The guardian may sell and
convey easements and rights-of-way on, under, and over the land of a
guardianship estate that is being administered under court order,
regardless of whether the sale proceeds are required to pay charges
or claims against the estate, or for other lawful purposes. (Tex.
Prob. Code, Sec. 830 (part).)

Source Law

Sec. 830. The guardian may sell and convey
easements and rights of way on, under, and over the
land of a guardianship estate that is being
administered under orders of a court, regardless of
whether the proceeds of the sale are required for
payment of charges or claims against the estate, or for
other lawful purposes.

Revised Law
Sec. 1158.502. PROCEDURE. The procedure for the sale of an
easement or right-of-way authorized under Section 1158.501 is the
same as the procedure provided by law for a sale of real property of
a ward at private sale. (Tex. Prob. Code, Sec. 830 (part).)

Source Law
Sec. 830. The procedure for the sale is
the same as provided by law for a sale of real property
of wards at private sale.

[Sections 1158.503-1158.550 reserved for expansion]

SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND TRANSFER OF
TITLE

Revised Law
Sec. 1158.551. REPORT. A sale of estate real property shall
be reported to the court ordering the sale not later than the 30th
day after the date the sale is made. The report must:
(1) be in writing, sworn to, and filed with the clerk;
(2) include:
(A) the date of the order of sale;
(B) a description of the property sold;
(C) the time and place of sale;
(D) the purchaser's name;
(E) the amount for which each parcel of property
or interest in the parcel of property was sold;
(F) the terms of the sale;
(G) whether the sale was made at public auction
or privately; and
(H) whether the purchaser is ready to comply with
the order of sale; and
(3) be noted on the guardianship docket. (Tex. Prob.
Code, Sec. 832.)

Source Law
Sec. 832. A sale of real property of an estate
shall be reported to the court that orders the sale not
later than the 30th day after the date the sale is
made. A report must be in writing, sworn to, filed with the clerk, and noted on the probate docket. A report made under this section must contain:

(1) the date of the order of sale;
(2) a description of the property sold;
(3) the time and place of sale;
(4) the name of the purchaser;
(5) the amount for which each parcel of property or interest in the parcel of property was sold;
(6) the terms of the sale, and whether the sale was private or made at a public auction; and
(7) whether the purchaser is ready to comply with the order of sale.

Revisor's Note

Section 832, Texas Probate Code, requires a report filed under that section to be "noted on the probate docket." The revised law substitutes "guardianship docket" for "probate docket" because, in context, it is clear that a report concerning the sale of certain real estate of a guardianship estate is noted on the guardianship docket, as opposed to the probate docket.

In 1955, in Chapter 55 (S.B. 97), Acts of the 54th Legislature, Regular Session, the legislature enacted the Texas Probate Code. Included in the original enactment of the Texas Probate Code was Section 13, which required a county clerk to enter certain information concerning each estate in the "Judge's Probate Docket." At the time of enactment, the provision applied to probate proceedings as well as guardianship proceedings. In 1993, the legislature enacted Chapter 957 (H.B. 2685), Acts of the 73rd Legislature, Regular Session, which separated the decedents' estates statutes and the guardianship statutes into distinct portions of the Texas Probate Code. As part of this separation of the statutes, the legislature enacted Section 623, Texas Probate Code, which applies only to guardianship proceedings, using language very similar to the language of Section 13. Section 623 requires a county clerk to enter certain
information concerning each guardianship proceeding in the "Judge's Guardianship Docket."

It is clear from the context of Section 623, Section 832, and the whole of Chapter XIII, Texas Probate Code, that the requirement that certain information concerning the sale of certain real estate of a guardianship estate be noted on a docket is intended to refer to the guardianship docket and that the reference to "probate docket" is a vestige of that section's origin in Section 13, Texas Probate Code.

Revised Law
Sec. 1158.552. ACTION OF COURT ON REPORT OF SALE. After the expiration of five days from the date a report of sale is filed under Section 1158.551, the court shall:

(1) inquire into the manner in which the sale was made;
(2) hear evidence in support of or against the report;
and
(3) determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given. (Tex. Prob. Code, Sec. 834 (part).)

Source Law
Sec. 834. After the expiration of five days from the date a report of sale is filed under Section 832 of this code, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against the report, and determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given. . . .

Revised Law
Sec. 1158.553. CONFIRMATION OF SALE WHEN BOND NOT REQUIRED. If the guardian of the estate of a ward is not required by Subtitle D to give a general bond, the court may confirm the sale of estate real property in the manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law. (Tex. Prob. Code, Sec. 833 (part).)

Source Law
Sec. 833. If the guardian of the estate is not required by this chapter to furnish a general bond, the
court may confirm the sale if the court finds the sale is satisfactory and in accordance with law.

Revisor's Note

(1) Section 833, Texas Probate Code, refers to a guardian of an estate who is not required by "this chapter," meaning Chapter XIII, Probate Code, to give a general bond. The revised law substitutes a reference to "Subtitle D" for "this chapter" because the provisions of the Probate Code requiring a guardian to give a bond are revised in Subtitle D of this title. Similar changes are made throughout this subchapter.

(2) Section 833, Texas Probate Code, authorizes the court to confirm "the sale" if the guardian of the estate is not required to give a general bond and the court makes certain findings. The revised law substitutes "the sale of estate real property" for "the sale" because it is clear from the context that the sale to which Section 833 refers is a sale of estate real property reported to the court under Section 832, Texas Probate Code, revised in this chapter as Section 1158.551.

Revised Law

Sec. 1158.554. SUFFICIENCY OF BOND. (a) If the guardian of an estate is required by Subtitle D to give a general bond, before the court confirms any sale of real estate, the court shall determine whether the bond is sufficient to protect the estate after the sale proceeds are received.

(b) If the court finds that the general bond is sufficient, the court may confirm the sale as provided by Section 1158.556(a).

(c) If the court finds that the general bond is insufficient, the court may not confirm the sale until the general bond is increased to the amount required by the court, or an additional bond is given, and approved by the court.

(d) An increase in the amount of the general bond, or the
additional bond, as applicable under Subsection (c), must be equal to the sum of:

(1) the amount for which the real estate is sold; and

(2) any additional amount the court finds necessary and sets for the estate's protection. (Tex. Prob. Code, Sec. 833 (part).)

Source Law

Sec. 833. [If the guardian of the estate is not required by this chapter to furnish a general bond,]

Otherwise, before a sale of real estate is confirmed, the court shall determine whether the general bond of the guardian is sufficient to protect the estate after the proceeds of the sale are received. If the court finds the bond is sufficient, the court may confirm the sale. If the general bond is found by the court to be insufficient, the court may not confirm the sale until the general bond is increased to the amount required by the court, or an additional bond is given and approved by the court. The increase in the amount of the bond, or the additional bond, shall be equal to the amount for which the real estate is sold in addition to any additional sum the court finds necessary and sets for the protection of the estate.

Revised Law

Sec. 1158.555. INCREASED OR ADDITIONAL BOND NOT REQUIRED. Notwithstanding Sections 1158.554(c) and (d), if the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of the secured claim in full payment, liquidation, and satisfaction of the claim, an increased general bond or additional bond may not be required except for the amount of any cash paid to the guardian of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full. (Tex. Prob. Code, Sec. 833 (part).)

Source Law

Sec. 833. . . . If the real estate sold is encumbered by a lien to secure a claim against the estate, is sold to the owner or holder of the secured claim, and is in full payment, liquidation, and satisfaction of the claim, an increased general bond or additional bond may not be required except for the amount of cash actually paid to the guardian of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Revised Law

Sec. 1158.556. CONFIRMATION OR DISAPPROVAL ORDER. (a) If
the court is satisfied that a sale reported under Section 1158.551 was for a fair price, was properly made, and was in conformity with law, and the court has approved any increased or additional bond that the court found necessary to protect the estate, the court shall enter an order:

(1) confirming the sale;
(2) showing conformity with the provisions of this chapter relating to the sale;
(3) detailing the terms of the sale; and
(4) authorizing the guardian of the estate to convey the property on the purchaser's compliance with the terms of the sale.

(b) If the court is not satisfied that the sale was for a fair price, was properly made, and conforms with the law, the court shall issue an order setting aside the sale and ordering a new sale to be made, if necessary.

(c) The court's action in confirming or disapproving a report of a sale has the effect of a final judgment. Any person interested in the guardianship estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings. (Tex. Prob. Code, Sec. 834 (part).)

Source Law

Sec. 834. [After . . . a report of sale is filed under Section 832 of this code,] . . . . If the court is satisfied that the sale was for a fair price, was properly made, and conforms with the law and the court has approved any increased or additional bond that may have been found necessary to protect the estate, the court shall enter a decree confirming the sale showing conformity with other provisions of this chapter relating to the sale and authorizing the conveyance of the property to be made by the guardian of the estate on compliance by the purchaser with the terms of the sale, detailing those terms. If the court is not satisfied that the sale was for a fair price, was properly made, and conforms with the law, the court shall issue an order that sets the sale aside and order a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale has the force and effect of a final judgment. Any person interested in the guardianship estate or in the sale has the right to have the decrees reviewed as in other final judgments in probate proceedings.
Revisor's Note

(1) Section 834, Texas Probate Code, requires the court's order confirming a sale of estate real property to show that the sale conforms with "other provisions of this chapter," meaning Chapter XIII, Texas Probate Code. The revised law substitutes a reference to "this chapter" for the quoted language because Subpart H, Part 4, Chapter XIII, Texas Probate Code, contains the requirements for the sale of estate real property, and those provisions are revised as this chapter.

(2) Section 834, Texas Probate Code, refers to the "force and effect" of the court's action in confirming or disapproving a sale of guardianship estate real property. The revised law omits the reference to "force" as unnecessary because, in context, the meaning of that term is included in the meaning of "effect."

Revised Law

Sec. 1158.557. DEED. Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order confirming the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of law. (Tex. Prob. Code, Sec. 835.)

Source Law

Sec. 835. When real estate is sold, the conveyance of real estate shall be by proper deed that refers to and identifies the decree of the court that confirmed the sale. The deed shall vest in the purchaser all right, title, and interest of the estate to the property and shall be prima facie evidence that the sale has met all applicable requirements of the law.

Revised Law

Sec. 1158.558. DELIVERY OF DEED. (a) After the court has confirmed a sale and one purchaser has complied with the terms of
the sale, the guardian of the estate shall execute and deliver to
the purchaser a proper deed conveying the property.

(b) If the sale is made partly on credit:

(1) the vendor's lien securing a purchase money note
must be expressly retained in the deed and may not be waived; and

(2) before actual delivery of the deed to the
purchaser, the purchaser shall execute and deliver to the guardian
of the estate a vendor's lien note, with or without personal
sureties as ordered by the court, and a deed of trust or mortgage on
the property as additional security for the payment of the note.

(c) On completion of the transaction, the guardian of the
estate shall promptly file and record the deed of trust or mortgage
in the appropriate records in the county in which the land is
located. (Tex. Prob. Code, Sec. 836.)

Source Law

Sec. 836. After a sale is confirmed by the court
and one purchaser has complied with the terms of sale,
the guardian of the estate shall execute and deliver to
the purchaser a proper deed conveying the property. If
the sale is made partly on credit, the vendor's lien
securing a purchase money note shall be expressly
retained in the deed and may not be waived. Before
actual delivery of the deed to the purchaser, the
purchaser shall execute and deliver to the guardian of
the estate a vendor's lien note, with or without
personal sureties as the court has ordered and a deed
of trust or mortgage on the property as further
security for the payment of the note. On completion of
the transaction, the guardian shall promptly file and
record in the appropriate records in the county where
the land is located the deed of trust or mortgage.

Revised Law

Sec. 1158.559. DAMAGES; REMOVAL. (a) If the guardian of
the estate neglects to comply with Section 1158.558, including to
file the deed of trust securing a lien in the proper county, the
guardian and the sureties on the guardian's bond shall, after
complaint and citation, be held liable for the use of the estate and
for all damages resulting from the guardian's neglect, and the
court may remove the guardian.

(b) Damages under this section may be recovered in a court
of competent jurisdiction. (Tex. Prob. Code, Sec. 837.)
Sec. 837. If the guardian of an estate neglects to comply with Section 836 of this code or fails to file the deed of trust securing the lien in the proper county, the guardian, after complaint and citation, may be removed. The guardian and the sureties on the bond of the guardian shall be held liable for the use of the estate and for all damages resulting from the neglect of the guardian. Damages under this section may be recovered in a court of competent jurisdiction.

[Sections 1158.560-1158.600 reserved for expansion]

SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

Sec. 1158.601. FAILURE TO APPLY FOR SALE. If the guardian of the estate of a ward neglects to apply for an order to sell sufficient property to pay charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may have the guardian cited to appear and make a full exhibit of the estate's condition and show cause why a sale of the property should not be ordered. (Tex. Prob. Code, Sec. 826 (part).)

Sec. 826. When the guardian of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may cause the guardian to be cited to appear and make a full exhibit of the condition of the estate, and show cause why a sale of the property should not be ordered.

Sec. 1158.602. COURT ORDER. On hearing an application under Section 1158.601, if the court is satisfied that a sale of estate property is necessary or advisable to satisfy the charges and claims described by Section 1158.601, the court shall enter an order of sale as provided by Section 1158.256. (Tex. Prob. Code, Sec. 826 (part).)

Sec. 826. On hearing an application made under this section, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy the claims, it shall enter an order of sale as provided by Section 825 of this code.
Revisor's Note

Section 826, Texas Probate Code, refers to a sale of estate property to satisfy "the claims" of the estate. The revised law substitutes "charges and claims described by Section 1158.601" for "the claims" for consistency with the terminology used in a preceding portion of Section 826, Texas Probate Code, which is revised in this chapter as Section 1158.601, and because, in context, it is clear that the reference to "the claims" is a reference to the "charges and claims" described in the preceding portion of Section 826.

[Sections 1158.603-1158.650 reserved for expansion]

SUBCHAPTER N. PURCHASE OF ESTATE PROPERTY BY GUARDIAN

Revised Law

Sec. 1158.651. GENERAL PROHIBITION ON PURCHASE. Except as otherwise provided by Section 1158.652 or 1158.653, the guardian of the estate of a ward may not purchase, directly or indirectly, any estate property sold by the guardian or any co-representative of the guardian. (Tex. Prob. Code, Sec. 831(a).)

Source Law

Sec. 831. (a) Except as provided by Subsection (b) or (c) of this section, the guardian of an estate may not purchase, directly or indirectly, any property of the estate sold by the guardian, or by any co-representative of a guardian.

Revised Law

Sec. 1158.652. EXCEPTION: EXECUTORY CONTRACT. The guardian of the estate of a ward may purchase estate property in compliance with the terms of a written executory contract signed by the ward before the ward became incapacitated, including:

(1) a contract for deed;

(2) an earnest money contract;

(3) a buy/sell agreement; and

(4) a stock purchase or redemption agreement. (Tex. Prob. Code, Sec. 831(b).)
(b) A guardian may purchase property from the estate in compliance with the terms of a written executory contract signed by the ward before the ward became incapacitated, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

Revised Law

Sec. 1158.653. EXCEPTION: BEST INTEREST OF ESTATE. (a) The guardian of the estate may purchase estate property on the court's determination that the sale is in the estate's best interest.

(b) In the case of an application filed by the guardian of the estate of a ward, the court shall appoint an attorney ad litem to represent the ward with respect to the sale.

(c) The court may require notice for a sale made under this section. (Tex. Prob. Code, Sec. 831(c).)

Source Law

(c) A guardian of an estate may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. In the case of an application filed by the guardian of the estate of a ward, the court shall appoint an attorney ad litem to represent the ward with respect to the sale. The court may require notice for a sale made under this subsection.

Revised Law

Sec. 1158.654. PURCHASE IN VIOLATION OF SUBCHAPTER. (a) If the guardian of the estate of a ward purchases estate property in violation of this subchapter, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending.

(b) On service of citation on the guardian on a complaint filed under Subsection (a) and after hearing and proof, the court shall:

(1) declare the sale void;

(2) set aside the sale; and

(3) order the reconveyance of the property to the estate.

(c) The court shall adjudge against the guardian all costs of the sale, protest, and suit, if found necessary. (Tex. Prob.
Code, Sec. 831(d.)

Source Law

(d) If a purchase is made in violation of this section, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending. On service of citation on the guardian and after hearing and proof, the court shall declare the sale void, set aside the sale, and order that the property be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the guardian.

[Sections 1158.655-1158.700 reserved for expansion]

SUBCHAPTER O. PARTITION OF WARD'S INTEREST IN REAL ESTATE

Revised Law

Sec. 1158.701. PARTITION BY AGREEMENT. (a) The guardian of the estate of a ward may agree to a partition of real estate in which the ward owns an interest in common with one or more other part owners if, in the opinion of the guardian, it is in the best interests of the ward's estate to partition the real estate.

(b) An agreement under Subsection (a) is subject to the approval of the court in which the guardianship proceeding is pending. (Tex. Prob. Code, Sec. 853(a).)

Source Law

Sec. 853. (a) If a ward owns an interest in real estate in common with another part owner or one or more part owners, and if, in the opinion of the guardian of the estate, it is in the best interests of the ward's estate to partition the real estate, the guardian may agree on a partition with the other part owners subject to the approval of the court in which the guardianship proceeding is pending.

Revised Law

Sec. 1158.702. APPLICATION FOR APPROVAL OF PARTITION AGREEMENT. (a) When a guardian has reached an agreement with the other part owners on how to partition real estate as described by Section 1158.701, the guardian shall file with the court in which the guardianship proceedings are pending an application to have the agreement approved by the court.

(b) The application must:

(1) describe the real estate to be divided;

(2) state why it is in the best interests of the ward's
estate to partition the real estate; and

(3) show that the proposed partition agreement is fair
and just to the ward’s estate. (Tex. Prob. Code, Sec. 853(b).)

Source Law

(b) When a guardian has reached an agreement
with the other part owners on how to partition the real
estate, the guardian shall file with the court an
application to have the agreement approved. The
application filed by the guardian under this
subsection shall describe the land that is to be
divided and shall state why it is in the best interests
of the ward’s estate to partition the real estate and
shall show that the proposed partition agreement is
fair and just to the ward’s estate.

[(c) When the application required by
Subsection (b) of this section is filed, the county
clerk shall immediately call the filing of the
application to the attention of the judge of the court
in which the guardianship proceeding is pending.]

Revisor’s Note

Section 853(b), Texas Probate Code, provides that
an application to partition "real estate" must include
a description of the "land" to be divided. The revised
law substitutes "real estate" for "land" in this
context for consistency of terminology. Similar
changes are made throughout this subchapter, the
provisions of which are all derived from Section 853,
Texas Probate Code.

Revised Law

Sec. 1158.703. HEARING. (a) The county clerk shall
immediately call to the attention of the judge of the court in which
the guardianship proceeding is pending the filing of an application
required by Section 1158.702. The judge shall designate a day to
hear the application.

(b) The application must remain on file at least 10 days
before any orders are entered.

(c) The judge may continue a hearing held under this section
from time to time until the judge is satisfied concerning the
application. (Tex. Prob. Code, Sec. 853(c).)
immediately call the filing of the application to the
attention of the judge of the court in which the
guardianship proceeding is pending. The judge shall
designate a day to hear the application. The
application must remain on file at least 10 days before
any orders are made, and the judge may continue the
hearing from time to time until the judge is satisfied
concerning the application.

Revised Law

Sec. 1158.704. ORDER. If the judge is satisfied that the
proposed partition of the real estate is in the best interests of
the ward's estate, the court shall enter an order approving the
partition and directing the guardian to execute the necessary
agreement for the purpose of implementing the order and partition.
(Tex. Prob. Code, Sec. 853(d).)

Source Law

(d) If the judge is satisfied that the proposed
partition of the real estate is in the best interests
of the ward's estate, the court shall enter an order
approving the partition and directing the guardian to
execute the necessary agreement for the purpose of
carrying the order and partition into effect.

Revised Law

Sec. 1158.705. PARTITION WITHOUT COURT APPROVAL;
RATIFICATION OF PARTITION AGREEMENT. (a) If a guardian, without
court approval as provided by this subchapter, executes or intends
to execute an agreement to partition any real estate in which the
ward has an interest, the guardian shall file with the court in
which the guardianship proceedings are pending an application for
the approval and ratification of the partition agreement.

(b) The application must:

(1) refer to the agreement in a manner in which the
court can fully understand the nature of the partition and the real
estate being divided; and

(2) state that, in the opinion of the guardian, the
agreement is fair and just to the ward's estate and is in the best
interests of the estate.

(c) On the filing of an application under Subsection (a),
the court shall hold a hearing on the application as provided by
Section 1158.703. The court shall enter an order ratifying and
approving the partition agreement if the court is of the opinion
that the partition is:

(1) fairly made; and
(2) in the best interests of the ward's estate.

(d) On ratification and approval, the partition is
effective and binding as if originally executed after a court order. (Tex. Prob. Code, Sec. 853(e).)

Source Law

(e) When a guardian has executed an agreement or
will execute an agreement to partition any land in
which the ward has an interest without court approval
as provided by this section, the guardian shall file
with the court in which the guardianship proceedings
are pending an application for the approval and
ratification of the partition agreement. The
application must refer to the agreement in such a
manner that the court can fully understand the nature
of the partition and the land being divided. The
application must state that, in the opinion of the
guardian, the agreement is fair and just to the ward's
estate and is in the best interests of the estate.
When the application is filed, a hearing shall be held
on the application as provided by Subsection (c) of
this section. If the court is of the opinion that the
partition is fairly made and that the partition is in
the best interests of the ward's estate, the court
shall enter an order ratifying and approving the
partition agreement. When the partition is ratified
and approved, the partition shall be effective and
binding as if originally executed after a court order.

Revised Law

Sec. 1158.706. PARTITION BY SUIT. (a) The guardian of the
estate of a ward may bring a suit in the court in which the
guardianship proceeding is pending for the partition of any real
estate that the ward owns in common with one or more other part
owners if the guardian is of the opinion that it is in the best
interests of the ward's estate that the real estate be partitioned.

(b) The court may enter an order partitioning the real
estate to the owner of the real estate, if after hearing the suit,
the court is satisfied that the partition of the real estate is
necessary. (Tex. Prob. Code, Sec. 853(f).)

Source Law

(f) If the guardian of the estate of a ward is of
the opinion that it is in the best interests of the
ward's estate that any real estate that the ward owns
in common with others should be partitioned, the
guardian may bring a suit in the court in which the
guardianship proceeding is pending against the other
part owner or part owners for the partition of the real
estate. The court, if after hearing the suit is satisfied that the necessity for the partition of the real estate exists, may enter an order partitioning the real estate to the owner of the real estate.

CHAPTER 1159. RENTING ESTATE PROPERTY

SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

Sec. 1159.001. RENTING ESTATE PROPERTY WITHOUT COURT ORDER. (a) The guardian of an estate, without a court order, may rent any of the estate property for one year or less, at public auction or privately, as is considered to be in the best interests of the estate. (b) On the sworn complaint of any person interested in the estate, the court shall require a guardian of the estate who, without a court order, rents estate property to account to the estate for the reasonable value of the rent of the property, to be ascertained by the court on satisfactory evidence. (Tex. Prob. Code, Secs. 839, 840.)

Source Law

Sec. 839. The guardian of an estate, without court order, may rent any real property of the estate or hire out any personal property of the estate for one year or less, either at public auction or privately, as may be deemed in the best interests of the estate.

Sec. 840. If property of the guardianship estate is hired or rented without court order, on the sworn complaint of any person interested in the
estate, the guardian of the estate shall be required to account to the estate for the reasonable value of the hire or rent of the property to be ascertained by the court on satisfactory evidence.

Revisor's Note

(1) Section 839, Texas Probate Code, authorizes a guardian of an estate to "rent ... real property ... or hire out ... personal property" of the estate. The revised law substitutes an authorization to "rent ... [estate] property" for the quoted language for the reasons that follow. First, the revised law omits the reference to hiring out property because hiring out property is synonymous with renting property, and referring to the renting of property is more consistent with modern usage. Similar changes are made throughout this chapter with respect to references to the renting and hiring out of estate property. In addition, the revised law omits the specific references to "real property" and "personal property" in this context and refers only to "property" because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to include both real and personal property and, absent an express limitation, an authorization to rent property is an authorization to rent both real and personal property.

(2) Section 840, Texas Probate Code, refers to property of the "guardianship estate." Section 839, Texas Probate Code, however, refers to property of the "estate." Section 601(9), Texas Probate Code, revised in this code as Section 1002.010, defines "estate" and "guardianship estate" as, in part, the property of a ward or deceased ward. The revised law substitutes references to "estate" property for the references to property of the "guardianship estate" for consistency of terminology and because the terms "estate" and
"guardianship estate" are synonymous. Similar changes are made throughout this chapter.

Revised Law
Sec. 1159.002. RENTING ESTATE PROPERTY WITH COURT ORDER.
(a) The guardian of an estate may file a written application with the court setting forth the property the guardian seeks to rent. If the proposed rental period is one year or more, the guardian of the estate shall file a written application with the court setting forth the property the guardian seeks to rent.

(b) If the court finds that granting an application filed under Subsection (a) is in the interests of the estate, the court shall grant the application and issue an order that:
(1) describes the property to be rented; and
(2) states whether the property will be rented at public auction or privately, whether for cash or on credit, and if on credit, the extent of the credit and the period for which the property may be rented.

(c) If, under Subsection (b), the court orders property to be rented at public auction, the court shall prescribe whether notice of the auction shall be published or posted. (Tex. Prob. Code, Sec. 841.)

Source Law
Sec. 841. A guardian of an estate may file a written application with the court setting forth the property sought to be hired or rented. If the proposed rental period is one year or more, the guardian of the estate shall file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be in the interests of the estate, the court shall grant the application and issue an order that describes the property to be hired or rented and states whether the hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of the credit and the period for which the property may be rented. If the property is to be hired or rented at public auction, the court shall prescribe whether notice shall be published or posted.

Revised Law
Sec. 1159.003. ESTATE PROPERTY RENTED ON CREDIT. (a) Possession of estate property rented on credit may not be delivered
until the renter executes and delivers to the guardian of the estate
a note with good personal security for the amount of the rent. If
the property is delivered without the guardian receiving the
required security, the guardian and the sureties on the guardian's
bond are liable for the full amount of the rent.

(b) Subsection (a) does not apply to a rental that is paid in
installments in advance of the period to which the installments
relate. (Tex. Prob. Code, Sec. 843.)

Source Law
Sec. 843. When property is hired or rented on
credit, possession of the property may not be
delivered until the hirer or renter has executed and
delivered to the guardian of the estate a note with
good personal security for the amount of the hire or
rental. If the property that is hired or rented is
delivered without the receipt of the security required
under this section, the guardian and the sureties on
the bond of the guardian shall be liable for the full
amount of the hire or rental. This section does not
apply to a hire or rental that is paid in installments
in advance of the period of time to which they relate.

Revised Law
Sec. 1159.004. CONDITION OF RETURNED ESTATE PROPERTY. (a)
Estate property that is rented must be returned to the estate's
possession in as good a condition, except for reasonable wear and
tear, as when the property was rented.

(b) The guardian of the estate shall:

(1) ensure that rented estate property is returned in
the condition required by Subsection (a);
(2) report to the court any damage to, or loss or
destruction of, estate property rented under this chapter; and
(3) ask the court for the authority to take any
necessary action.

(c) A guardian who fails to act as required by this section
and the sureties on the guardian's bond are liable to the estate for
any loss or damage suffered as a result of the guardian's failure.
(Tex. Prob. Code, Sec. 844.)

Source Law
Sec. 844. All property that is hired or rented,
with or without a court order, shall be returned to the
possession of the guardianship in as good a condition,
reasonable wear and tear excepted, as when the property was hired or rented. It shall be the duty and responsibility of the guardian of the estate to see that the property is returned as provided by this section, to report to the court any loss, damage, or destruction of property that is hired or rented under this chapter, and to ask for authority to take action as is necessary. If the guardian fails to act as required by this section, the guardian and the sureties on the bond of the guardian shall be liable to the guardianship for any loss or damage suffered through the fault of the guardian to act as required under this section.

Revisor's Note

(1) Section 844, Texas Probate Code, requires that "[a]ll property" rented "with or without a court order" be returned in a certain condition. The revised law omits "with or without a court order" as unnecessary because the requirement applies to "all" estate property rented, which includes property rented with a court order and property rented without a court order.

(2) Section 844, Texas Probate Code, requires that rented estate property be returned to the "guardianship" in a specified condition and further provides that a guardian of the estate who fails to act in a specified manner and the sureties on the guardian's bond are liable to the "guardianship" for loss or damage suffered. A guardianship of an estate is a court-created legal arrangement under which the guardian has certain rights and responsibilities with respect to the ward's property. "Estate," however, is the term used to describe the total property of the ward. The revised law substitutes references to the "estate" for the references to the "guardianship" in these contexts for accuracy. Rented property is not returned to the legal arrangement of the guardianship, but rather is returned for inclusion in the totality of the ward's property. Likewise, the liability of the guardian and sureties is not to the legal arrangement of the guardianship, but rather is a liability to make
whole the ward's property.

(3) Section 844, Texas Probate Code, refers to property that is rented under "this chapter," meaning Chapter XIII, Texas Probate Code. Although Chapter XIII is revised as Title 3 of this code, the revised law substitutes a reference to this chapter of the revised law because this chapter contains the revision of the provisions of Chapter XIII, Texas Probate Code, that relate to the renting of estate property.

Revised Law
Sec. 1159.005. COMPLAINT FOR FAILURE TO RENT. (a) A person interested in a guardianship may:

(1) file a written and sworn complaint in the court in which the estate is pending; and

(2) have the guardian of the estate cited to appear and show cause why the guardian did not rent any estate property.

(b) The court, on hearing the complaint, shall issue an order that is in the best interests of the estate. (Tex. Prob. Code, Sec. 842.)

Source Law
Sec. 842. A person interested in a guardianship may file a written and sworn complaint in a court in which the estate is pending and cause the guardian of the estate to be cited to appear and show cause why the guardian did not hire or rent any property of the estate. The court, on hearing the complaint, shall make an order that is in the best interests of the estate.

[Sections 1159.006-1159.050 reserved for expansion]

SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

Revised Law
Sec. 1159.051. REPORTS CONCERNING RENTALS. (a) A guardian of an estate who rents estate property with an appraised value of $3,000 or more, not later than the 30th day after the date of the rental, shall file with the court a sworn and written report stating:

(1) the property rented and the property's appraised value;
(a) When any property of the guardianship estate with an appraised value of $3,000 or more has been hired or rented, the guardian of the estate, not later than the 30th day after the date of the hire or rental, shall file with the court a sworn and written report that states:

1. the property involved and its appraised value;
2. the date of hiring or renting, and whether at public auction or privately;
3. the name of the person who hired or rented the property;
4. the amount of the hiring or rental;

and

5. whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken for the hiring or rental.

(b) When the value of the property involved is less than $3,000, the hiring or renting of the property may be reported in the next annual or final account that is to be filed as required by law.

Sec. 1159.052. COURT ACTION ON REPORT. (a) After the fifth day after the date the report of the rental is filed, the court shall:

1. examine the report; and
2. by order approve and confirm the rental if the court finds the rental just and reasonable.

(b) If the court disapproves the rental, the guardianship is not bound and the court may order another offering for rent of the property in the same manner and subject to the provisions of this chapter.
If the court approves the rental and it later appears that, by reason of the fault of the guardian of the estate, the property was not rented for the property's reasonable value, the court shall have the guardian and the sureties on the guardian's bond appear and show cause why the reasonable value of the rental of the property should not be adjudged against the guardian or sureties. (Tex. Prob. Code, Sec. 846.)

Source Law

Sec. 846. After five days from the time the report of the hiring or rental is filed, the court shall examine the report and shall approve and confirm the hiring or rental by court order if the court finds the hire or rental just and reasonable. If the court disapproves the hiring or rental, the guardianship may not be bound and the court may order another offering of the property for hire or rent in the same manner and subject to the same rules provided in this chapter for property for hire or rent. If the report has been approved by the court and it later appears that, due to the fault of the guardian of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the guardian of the estate and the sureties on the bond of the guardian to appear and show cause why the reasonable value of the hire or rental of the property should not be adjudged against the guardian or sureties.

Revisor's Note

(1) Section 846, Texas Probate Code, requires the court to examine a report of the rental of estate property and approve or disapprove the rental after five days from the "time" the report is filed. The revised law substitutes "date" for "time" because the specific time of day of the filing is inconsequential. Under general rules of statutory construction, for purposes of computing a period of days, the first day is excluded. Therefore, the time of day the report is filed is irrelevant in determining whether the examination and approval occurred after the period prescribed by Section 846, and the revised law is drafted accordingly.

(2) Section 846, Texas Probate Code, provides that if the court disapproves a rental of estate property, the court may order another offering of the
property subject to the "rules provided in this chapter for property for hire or rent." Chapter XIII, Texas Probate Code, is the chapter to which the quoted language refers. The revised law substitutes a reference to "this chapter" for the reference to Chapter XIII for the reason stated in Revisor's Note (3) to Section 1159.004 of this chapter. In addition, the revised law substitutes a reference to "provisions" for the reference to "rules" for accuracy and clarity. The portions of Chapter XIII that are revised as this chapter are not properly considered as "rules," but rather are statutes that apply without any associated rulemaking process.

(3) Section 846, Texas Probate Code, provides that the court may take certain actions if the "report [of the rental of estate property] has been approved by the court" and it subsequently appears that the property was not rented for the property's reasonable value. Preceding references in Section 846, however, require the court to examine the report and approve or disapprove the "rental" of the property. For consistency of terminology, the revised law substitutes a reference to the court approving the "rental" for the quoted phrase.

CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES

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Sec. 1160.001. DEFINITIONS. In this chapter:

(1) "Gas" includes all liquid hydrocarbons in the gaseous phase in the reservoir.

(2) "Land" includes minerals or an interest in minerals in place.

(3) "Mineral development" includes exploration for, whether by geophysical or other means, drilling for, mining for, development of, operations in connection with, production of, and saving of oil, other liquid hydrocarbons, gas, gaseous elements, sulphur, metals, and all other minerals, whether solid or otherwise.

(4) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, and an interest of any kind in the property, including a royalty interest, owned by an estate.

(Tex. Prob. Code, Sec. 847(a); New.)

Sec. 847. (a) In this subpart:

(1) "Land" or "interest in land" includes minerals or any interest in any of the minerals in place.

(2) "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(3) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, as well as an interest of any kind in the property, including royalty, owned by the estate.

Revisor's Note

(1) Section 847(a)(1), Texas Probate Code, defines "land" and "interest in land." The revised law omits the reference to "interest in land" because the term is not used elsewhere in Subpart J, Part 4.
Chapter XIII, Texas Probate Code, revised as this chapter.

(2) The definition of "gas" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

[Sections 1160.002-1160.050 reserved for expansion]

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Revised Law

Sec. 1160.051. AUTHORIZATION FOR LEASING OF MINERALS. (a) The court in which a guardianship proceeding is pending may authorize the guardian, acting solely under a court order, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease authorized by Subsection (a) must be made and entered into under and in conformity with this subchapter. (Tex. Prob. Code, Secs. 847(b), (c).)

Source Law

(b) A guardian acting solely under an order of a court, may be authorized by the court in which the guardianship proceeding is pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, that provide for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(c) All leases authorized by Subsection (b) of this section, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with Subsections (d)-(m) of this section.

Revisor's Note

(1) Section 847(b), Texas Probate Code, refers to gas "(including all liquid hydrocarbons in the gaseous phase)." The revised law omits the quoted language because Section 1160.001(1) of this chapter.
defines "gas" to include "all liquid hydrocarbons in the gaseous phase in the reservoir." Although Section 1160.001(1) refers to hydrocarbons "in the reservoir" and Section 847(b) does not include that reference, it is clear from the context that Section 847(b) is intended to apply to gas in the reservoir, and the revised law is drafted accordingly. Similar changes are made throughout this chapter.

(2) Section 847(c), Texas Probate Code, refers to "leases authorized by Subsection (b) of this section, with or without pooling provisions or unitization clauses." Section 847(b), Texas Probate Code, is revised as Subsection (a) of this section. The revised law omits the reference to "with or without pooling provisions or unitization clauses" because Subsection (a) of this section authorizes a lease with or without a unitization clause or pooling provision.

Revised Law
Sec. 1160.052. LEASE APPLICATION. (a) The guardian of the estate shall file with the court a written application for authority to lease estate property for mineral exploration and development, with or without a pooling provision or unitization clause.

(b) The lease application must:

(1) describe the property fully enough by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method that adequately identifies the property and the property's location in the county in which the property is located;

(2) specify the interest thought to be owned by the estate, if less than the whole, but request authority to include all of the interest owned by the estate if that is the intention; and

(3) set out the reasons the estate property described in the application should be leased.
(c) The lease application is not required to set out or suggest:

(1) the name of any proposed lessee; or

(2) the terms, provisions, or form of any desired lease. (Tex. Prob. Code, Sec. 847(d).)

Source Law

(d) The guardian of the estate shall file a written application with the court seeking authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The name of any proposed lessee or the terms, provisions, or form of any desired lease do not need to be set out or suggested in the application. The application shall:

(1) describe the property fully enough by reference to the amount of acreage, the survey name or number, abstract number, or other description that adequately identifies the property and its location in the county in which the property is located;

(2) specify the interest thought to be owned by the estate if less than the whole, but asking for authority to include all interest owned by the estate if that is the intention; and

(3) set out the reasons why the particular property of the estate should be leased.

Revised Law

Sec. 1160.053. SCHEDULING OF HEARING ON APPLICATION; CONTINUANCE. (a) Immediately after the filing of a lease application under Section 1160.052, the county clerk shall call the filing of the application to the court's attention. The judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following day, other than Sundays and holidays on which the county courthouse is officially closed, and from day to day until the lease application is finally acted on and disposed of by court order. Notice of an automatic continuance is not required. (Tex. Prob. Code, Sec. 847(e).)

Source Law

(e) When an application to lease is filed, under this section, the county clerk shall immediately call the filing of the application to the attention of the court. The judge shall promptly make and enter a brief
order designating the time and place for the hearing of
the application. If the hearing does not take place at
the time originally designated by the court or by
timely order of continuance duly entered, the hearing
shall be automatically continued without further
notice to the same hour or time the following day,
except Sundays and holidays on which the county
courthouse is officially closed to business, and from
day to day until the application is finally acted on
and disposed of by order of the court. No notice of the
automatic continuance shall be required.

Revisor's Note

Section 847(e), Texas Probate Code, refers to a
continuance order "duly" entered. The revised law
omits "duly" in this context because the word does not
add to the clear meaning of the law. The requirement
that the order be entered is sufficient to convey that
the order must have been entered in the manner required
by law.

Revised Law

Sec. 1160.054. NOTICE OF HEARING ON APPLICATION. (a) At
least 10 days before the date set for the hearing on a lease
application filed under Section 1160.052, excluding the date of
notice and the date set for the hearing, the guardian of the estate
shall give notice of the hearing by:

(1) publishing the notice in one issue of a newspaper
of general circulation in the county in which the proceeding is
pending; or

(2) if there is no newspaper in the county, posting the
notice or having the notice posted.

(b) If the notice is published, the date of notice is the
date printed on the newspaper.

(c) The notice must:

(1) be dated;

(2) be directed to all persons interested in the
estate;

(3) state the date on which the lease application was
filed;

(4) describe briefly the property sought to be leased;

(5) specify the fractional interest sought to be
leased if less than the entire interest in the tract identified; and

(6) state the time and place designated by the judge for the hearing. (Tex. Prob. Code, Sec. 847(f).)

Source Law

(f) The guardian shall give written notice directed to all persons interested in the estate of the time designated by the judge for the hearing on the application to lease. The notice must be dated, state the date on which the application was filed, describe briefly the property sought to be leased, specify the fractional interest sought to be leased if less than the entire interest in the tract identified, and state the time and place designated by the judge for the hearing. Exclusive of the date of notice and of the date set for hearing, the guardian shall give at least 10 days' notice by publishing in one issue of a newspaper of general circulation in the county in which the proceeding is pending or by posting if there is no newspaper in the county. Posting under this section may be done at the guardian's instance. The date of notice when published shall be the date the newspaper bears.

Reviser's Note

Section 847(f), Texas Probate Code, requires the guardian of the estate to give written notice of the time designated by the judge for the hearing on the application to lease. The revised law omits the reference to the "written" notice because the notice is required to be either published in a newspaper or posted, both of which require a writing. The revised law omits the reference to the time designated by the judge for the hearing because that information is specified in the contents of the notice.

Revised Law

Sec. 1160.055. REQUIREMENTS REGARDING ORDER AND NOTICE MANDATORY. A court order authorizing any act to be performed in accordance with a lease application filed under Section 1160.052 is void in the absence of:

(1) a written order originally designating a time and place for the hearing;

(2) a notice issued by the guardian of the estate in compliance with the order; and

(3) proof of publication or posting of the notice as
required under Section 1160.054. (Tex. Prob. Code, Sec. 847(g).)

Source Law

(g) A court order authorizing any acts to be performed pursuant to the application is null and void in the absence of:
   (1) a written order originally designating a time and place for hearing;
   (2) a notice issued by the guardian of the estate in compliance with the order; and
   (3) proof of publication or posting of the notice as required.

Revisor's Note

Section 847(g), Texas Probate Code, refers to an order that is "null and void." The revised law omits the reference to "null" because in context that term is included in the meaning of "void."

Revised Law

Sec. 1160.056. HEARING ON APPLICATION; ORDER. (a) At the time and place designated for the hearing under Section 1160.053(a), or at the time to which the hearing is continued as provided by Section 1160.053(b), the judge shall:
   (1) hear a lease application filed under Section 1160.052; and
   (2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.

   (b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the lease application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:
       (1) the application is in proper form;
       (2) notice has been given in the manner and for the time required by law;
       (3) proof of necessity or advisability of leasing is sufficient; and
       (4) the application should be granted.
(c) The order must contain:
   (1) the name of the lessee;
   (2) any actual cash consideration to be paid by the lessee;
   (3) a finding that the requirements of Subsection (b) have been satisfied; and
   (4) one of the following findings:
       (A) a finding that the guardian of the estate is exempt by law from giving a bond; or
       (B) if the guardian of the estate is required to give a bond, a finding as to whether the guardian's general bond on file is sufficient to protect the personal property on hand, including any cash bonus to be paid.

(d) If the court finds the general bond insufficient to meet the requirements of Subsection (c)(4)(B), the order must show the amount of increased or additional bond required to cover the deficiency.

(e) A complete exhibit copy, either written or printed, of each authorized lease must be set out in, attached to, incorporated by reference in, or made part of the order. The exhibit copy must show:
   (1) the name of the lessee;
   (2) the date of the lease;
   (3) an adequate description of the property being leased;
   (4) any delay rental to be paid to defer commencement of operations; and
   (5) all other authorized terms and provisions.

(f) If the date of a lease does not appear in the exhibit copy of the lease or in the order, the date of the order is considered for all purposes to be the date of the lease.

(g) If the name or address of a depository bank for receiving rental is not shown in the exhibit copy of a lease, the guardian of the estate may insert the name or address, or cause the
name or address to be inserted, in the lease at the time of the
lease's execution or at any other time agreeable to the lessee or
the lessee's successors or assigns. (Tex. Prob. Code, Secs.
847(h), (i).)

Source Law

(h) At the time and place designated for the
hearing, or at any time to which the hearing has been
continued as provided by this section, the judge shall
hear the application and require proof as to the
necessity of advisability of leasing for mineral
development the property described in the application
and in the notice. If the judge is satisfied that the
application is in due form, that notice has been duly
given in the manner and for the time required by law,
that the proof of necessity or advisability of leasing
is sufficient, and that the application should be
granted, the judge shall enter an order so finding and
authorizing the making of one or more leases, with or
without pooling provisions or unitization clauses
(with or without cash consideration if deemed by the
court to be in the best interest of the estate) that
affects and covers the property or portions of the
property described in the application. The order that
authorizes the leasing must also set out the following
mandatory contents:
(1) the name of the lessee;
(2) the actual cash consideration, if any,
to be paid by the lessee;
(3) a finding that the guardian is exempt
by law from giving bond if that is a fact, and if the
guardian is required to give a bond, then a finding as
to whether or not the guardian's general bond on file
is sufficient to protect the personal property on
hand, inclusive of any cash bonus to be paid; but if
the court finds the general bond is insufficient to
meet these requirements, the order shall show the
amount of increased or additional bond required to
cover the deficiency;
(4) a complete exhibit copy, either
written or printed, of each lease authorized to be
made, either set out in, attached to, incorporated by
reference in, or made a part of the order.
(i) An exhibit copy must show the name of the
lessee, the date of the lease, an adequate description
of the property being leased, the delay rental, if any,
to be paid to defer commencement of operations, and all
other terms and provisions authorized. If no date of
the lease appears in the exhibit copy or in the court's
order, then the date of the court's order is considered
for all purposes as the date of the authorized lease.
If the name and address of a depository bank for
receiving rental is not shown in the exhibit copy, the
name or address of the depository bank may be inserted
or caused to be inserted in the lease by the estate's
guardian at the time of its execution or at any other
time agreeable to the lessee, his successors, or
assigns.

Revisor's Note

Section 847(h), Texas Probate Code, refers to
notice that has been "duly" given in the manner and for
the time required by law. The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that notice be given in the manner and for the time required by law is sufficient to convey that the notice must have been given as required by law.

Revised Law
Sec. 1160.057. MAKING OF LEASE ON GRANTING OF APPLICATION.
(a) If on the hearing of a lease application filed under Section 1160.052 the court grants the application, the guardian of the estate may make the lease, as evidenced by the exhibit copies, in accordance with the order.
(b) The lease must be made not later than the 30th day after the date of the order unless an extension is granted by the court on a sworn application showing good cause.
(c) It is not necessary for the judge to make an order confirming the lease. (Tex. Prob. Code, Sec. 847(j) (part).)

Source Law
(j) On the hearing of an application for authority to lease, if the court grants the authority to lease, the guardian of the estate is fully authorized to make, not later than the 30th day after the date of the judge's order, unless an extension is granted by the court on a sworn application showing good cause, the lease as evidenced by the true exhibit copies in accordance with the order. . . . It is not necessary for the judge to make any order confirming the leases.

Revisor's Note
Section 847(j), Texas Probate Code, refers to "true exhibit copies" of a lease. The revised law omits "true" because the word does not add to the clear meaning of the law. For example, a document purporting to be a copy is not a copy if it is different from the original document.

Revised Law
Sec. 1160.058. BOND REQUIREMENTS. (a) Unless the guardian of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed,
and delivered, is not valid:

(1) unless the order authorizing the lease makes a finding with respect to the general bond; and

(2) if the general bond has been found insufficient, until:

(A) the bond has been increased or an additional bond given with the sureties required by law, as required by the order; and

(B) the increased or additional bond has been approved by the judge and filed with the clerk of the court in which the proceeding is pending.

(b) If two or more leases of different land are authorized by the same order, the general bond shall be increased or additional bonds given to cover all of the leases. (Tex. Prob. Code, Sec. 847(j) (part).)

### Source Law

(j) . . . Unless the guardian is not required to give a general bond, a lease for which a cash consideration is required, though ordered, executed, and delivered, is not valid unless the order authorizing the lease actually makes a finding with respect to the general bond. If the general bond has been found insufficient, the lease is not valid until the bond has been increased or an additional bond given with the sureties required by law as required by the court order, has been approved by the judge, and has been filed with the clerk of the court in which the proceeding is pending. If two or more leases on different lands are authorized by the same order, the general bond shall be increased or additional bonds given to cover all. . . .

### Revised Law

Sec. 1160.059. TERM OF LEASE BINDING. A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease's terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law. For the lease to be valid and binding under this subchapter, the authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease.
1 beyond the primary term by:
2   (1) paying production;
3   (2) bona fide drilling or reworking operations,  
4       whether in or on the same well or wells or an additional well or  
5       wells without a cessation of operations of more than 60 consecutive  
6       days before production has been restored or obtained; or  
7   (3) a shut-in gas well. (Tex. Prob. Code, Sec.  
8        847(k).)

Source Law  
9 (k) Every lease when executed and delivered in  
10    compliance with the rules set out in this section shall  
11    be valid and binding on the property or interest owned  
12    by the estate and covered by the lease for the full  
13    duration of the term as provided in the lease and is  
14    subject only to its terms and conditions even though  
15    the primary term extends beyond the date when the  
16    estate is closed in accordance with law. In order for  
17    a lease to be valid and binding on the property or  
18    interest owned by the estate under this section, the  
19    authorized primary term in the lease may not exceed  
20    five years, subject to terms and provisions of the  
21    lease extending it beyond the primary term by paying  
22    production, by bona fide drilling or reworking  
23    operations, whether in or on the same or additional  
24    well or wells with no cessation of operations of more  
25    than 60 consecutive days before production has been  
26    restored or obtained, or by the provisions of the lease  
27    relating to a shut-in gas well.

Revisor's Note  
29 Section 847(k), Texas Probate Code, refers to a  
30    lease executed and delivered in compliance with "the  
31    rules set out in this section" and to a lease being  
32    valid and binding under "this section." The revised  
33    law substitutes a reference to "this subchapter" for  
34    the quoted language because the substantive  
35    requirements of Section 847, Texas Probate Code, that  
36    relate to mineral leases are revised in this  
37    subchapter.

Revised Law  
40 Sec. 1160.060. AMENDMENT OF LEASE REGARDING EFFECT OF  
41 SHUT-IN GAS WELL. (a) An oil, gas, and mineral lease executed by a  
42 guardian of an estate under this chapter or former Chapter XIII,  
43 Texas Probate Code, may be amended by an instrument that provides
that a shut-in gas well on the land covered by the lease or on land
pooled with all or part of the land covered by the lease continues
the lease in effect after the lease's five-year primary term.

(b) The guardian of the estate, with court approval, shall
execute the instrument according to the terms and conditions
prescribed in the instrument. (Tex. Prob. Code, Sec. 847(m).)

Source Law

Section 847(m), Texas Probate Code, refers to an
oil, gas, and mineral lease executed by a guardian
under "this chapter," meaning Chapter XIII, Texas
Probate Code. Although Chapter XIII, Texas Probate
Code, is revised in Title 3 of this code, the revised
law retains the reference to "this chapter" rather
than substituting a reference to "this title" because
all of the provisions of Chapter XIII that relate to an
oil, gas, and mineral lease executed by a guardian are
revised in this chapter. In addition, the revised law
references "former Chapter XIII, Texas Probate Code,"
because an oil, gas, and mineral lease that was
executed under the former law and remains in effect may
also be amended under this provision.

Revisor's Note

(End of Subchapter)

Section 847(l), Texas Probate Code, which took
effect September 1, 1993, validates certain provisions
of mineral leases that were executed and delivered in
compliance with Chapter XIII, Texas Probate Code,
before that date. The revised law omits that provision
because it served its purpose on the day it took effect
and, thus, is executed law. Section 311.031(a)(2),
Government Code (Code Construction Act), applicable in
this context as a result of Section 311.002(3),
Government Code, provides that the repeal of a statute
does not affect any validation previously made under
the statute. The omitted law reads:

(1) As to any existing valid mineral
lease executed and delivered in compliance
with this chapter before September 1, 1993,
a provision of the lease continuing the
lease in force after its five-year primary
term by a shut-in gas well is validated,
unless the validity of the provision is an
issue in a lawsuit pending in this state on
September 1, 1993.

[Sections 1160.061-1160.100 reserved for expansion]

SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

Revised Law

Sec. 1160.101. AUTHORIZATION FOR LEASING OF MINERALS AT
PRIVATE SALE. (a) Notwithstanding the mandatory requirements for
setting a time and place for hearing a lease application under
Subchapter B and the issuance, service, and return of notice, the
court may authorize the making of oil, gas, and mineral leases at a
private sale without public notice or advertising if, in the
court's opinion, facts are set out in the application sufficient to
show that it would be more advantageous to the estate that a lease
be made privately and without compliance with those mandatory
requirements.

(b) Leases authorized under this subchapter may include
pooling provisions or unitization clauses as in other cases. (Tex.
Prob. Code, Sec. 848(a).)

Source Law

Sec. 848. (a) Notwithstanding the mandatory
requirements for setting a time and place for hearing
of an application to lease under Section 847 of this
code and the issuance, service, and return of notice, the
court may authorize the making of oil, gas, and
mineral leases at private sale without public notice
or advertising if, in the opinion of the court, sufficient facts are set out in the application to show
that it would be more advantageous to the estate that a
lease be made privately and without compliance with
the mandatory requirements under Section 847 of this
code. Leases authorized under this section may
include pooling provisions or unitization clauses as in other cases.

**Revised Law**

Sec. 1160.102. ACTION OF COURT IF PUBLIC ADVERTISING NOT REQUIRED. (a) At any time after the fifth day and before the 11th day after the filing date of an application to lease at a private sale and without an order setting the hearing time and place, the court shall:

(1) hear the application;

(2) inquire into the manner in which the proposed lease has been or will be made; and

(3) hear evidence for or against the application.

(b) If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases set out in Subchapter B as if advertising or notice were required.

(c) An order that confirms a lease made at a private sale does not need to be issued. A lease made at a private sale is not valid until any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

(Tex. Prob. Code, Sec. 848(b).)

**Source Law**

(b) At any time after the expiration of five days and before the expiration of the 10th day after the date of filing and without an order setting the time and place of hearing, the court shall hear the application to lease at a private sale. The court shall inquire into the manner in which the proposed lease has been or will be made and shall hear evidence for or against the application. If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with the law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. An order entered under this subsection must comply in all other respects with the requirements essential to the validity of mineral leases set out in this chapter as if advertising or notice were required. An order that
confirms a lease made at a private sale does not need to be issued. A lease made at a private sale is not valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Revisor's Note

Section 848(b), Texas Probate Code, refers to compliance with the requirements essential to the validity of mineral leases "set out in this chapter," meaning Chapter XIII, Texas Probate Code, as if advertising or notice were required. Although Chapter XIII, Texas Probate Code, is revised in Title 3 of this code, the revised law substitutes a reference to "Subchapter B" rather than substituting a reference to "this title" because all of the referenced requirements are revised in that subchapter.

[Sections 1160.103-1160.150 reserved for expansion]

SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

Revised Law

Sec. 1160.151. AUTHORIZATION FOR POOLING OR UNITIZATION.

(a) If an existing lease on property owned by an estate being administered does not adequately provide for pooling or unitization, the court in which the proceeding is pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals or any one or more of them owned by the estate to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interests of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may
provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are considered for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit continues in effect in its entirety as long as:
   (A) oil, gas, or other minerals subject to the agreement are produced in paying quantities from any part of the pooled or unitized area;
   (B) operations are conducted as provided in the lease on any part of the pooled or unitized area; or
   (C) there is a shut-in gas well on any part of the pooled or unitized area, if the presence of the shut-in gas well is a ground for continuation of the lease under the terms of the lease;

(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas returned; and

(6) gas obtained from other sources or another tract of land may be injected into a formation underlying any land or lease committed to the agreement, and that royalties are not required to be paid on the gas injected when the gas is produced from the unit. (Tex. Prob. Code, Secs. 849(a), (b).)

Source Law

Sec. 849. (a) When an existing lease on property owned by the estate does not adequately
provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals or any one or more of them owned by the estate being administered to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all those minerals, if the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is in the best interests of the estate to execute the agreement. Any agreement so authorized to be executed may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are deemed for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area if the presence of the shut-in gas well is a ground for continuation of the lease on the terms of the lease;

(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned; and

(6) gas obtained from other sources or another tract of land may be injected into a formation underlying any land or lease committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Pooling or unitization, when not adequately provided for by an existing lease on property owned by the estate, may be authorized by the court in which the proceeding is pending pursuant to and in conformity with Subsections (c)-(g) of this section.

Revised Law

Sec. 1160.152. POOLING OR UNITIZATION APPLICATION. (a) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending a written
application for authority to:

(1) enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to any existing lease covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly the lease to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.

(c) A copy of the proposed agreement must be attached to the pooling or unitization application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge's guardianship docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge's attention. (Tex. Prob. Code, Sec. 849(c).)

Source Law

(c) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending the guardian's written application for authority to enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to, any existing lease covering property owned by the estate, or to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application must also describe the property sufficiently as required in the original application to lease, describe briefly the lease to which the interest of the estate is subject, and set out the reasons the proposed agreement concerning the property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part of the application, but the agreement may not be recorded in the judge's guardianship docket. The clerk shall immediately, after the application is filed, call it to the attention of the judge.
Revisor's Note

Section 849(c), Texas Probate Code, refers to a "true copy" of a proposed agreement. The revised law omits "true" for the reason stated in the revisor's note to Section 1160.057.

Revised Law

Sec. 1160.153. NOTICE NOT REQUIRED. Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 1160.152 is not required. (Tex. Prob. Code, Sec. 849(d).)

Source Law

(d) Notice of the filing of the application by advertising, citation, or otherwise is not required.

Revised Law

Sec. 1160.154. HEARING ON APPLICATION. (a) The judge may hold a hearing on a pooling or unitization application filed under Section 1160.152 at any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge's satisfaction whether it is in the best interests of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary. (Tex. Prob. Code, Sec. 849(e).)

Source Law

(e) The judge may hold a hearing on the application at a time that is agreeable to the parties to the proposed agreement. The judge shall hear proof and be satisfied as to whether it is in the best interests of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

Revised Law

Sec. 1160.155. ACTION OF COURT AND CONTENTS OF ORDER. (a) The court shall enter an order setting out the court's findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according
to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the pool or unit;

(2) it is in the best interests of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 1160.151.

(b) If cash consideration is to be paid for the pooling or unitization agreement, the court shall make a finding as to the necessity of increased or additional bond as a finding is made in the making of leases on payment of the cash bonus for the lease. The agreement is not valid until any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the pooling or unitization agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court's order. (Tex. Prob. Code, Sec. 849(f).)

Source Law

(f) If the court finds that the pool or unit to which the agreement relates will be operated in a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject to the pool or unit, that it is in the best interests of the estate that the agreement be executed, and that the agreement conforms substantially with the permissible provisions of Subsection (a) of this section, the court shall enter an order setting out the findings made by the court and authorizing execution of the agreement, with or without payment of cash consideration according to the agreement. If cash consideration is to be paid for the agreement, the court shall make a finding as to the necessity of increased or additional bond as a finding is made in the making of leases on payment of the cash bonus for the lease. The agreement is not valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. If the date is not stipulated in the agreement, the date of the court's order shall be the effective date of the agreement.

[Sections 1160.156-1160.200 reserved for expansion]
SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED
WITHOUT COURT ORDER

Revised Law

Sec. 1160.201. AUTHORIZATION FOR EXECUTION OF CERTAIN
INSTRUMENTS. As to any mineral lease or pooling or unitization
agreement, executed on behalf of an estate before September 1,
1993, pursuant to provisions, or executed by a former owner of land,
minerals, or royalty affected by the lease or agreement, the
guardian of the estate being administered, without further court
order and without consideration, may execute:

(1) division orders;
(2) transfer orders;
(3) instruments of correction;
(4) instruments designating depository banks for the
receipt of delay rentals or shut-in gas well royalty to accrue or
become payable under the terms of the lease; or
(5) similar instruments relating to the lease or
agreement and the property covered by the lease or agreement. (Tex.
Prob. Code, Sec. 850.)

Source Law

Sec. 850. As to any valid mineral lease or
pooling or unitization agreement, executed on behalf
of the estate before September 1, 1993, pursuant to
provisions, or by a former owner of land, minerals, or
royalty affected by the lease, pooling, or unitization
agreement, the guardian of the estate that is being
administered, without further order of the court and
without consideration, may execute division orders,
transfer orders, instruments of correction,
instruments designating depository banks for the
receipt of delay rentals or shut-in gas well royalty
to accrue or become payable under the terms of the
lease, or similar instruments pertaining to the lease
or agreement and the property covered by the lease or
agreement.

Revisor's Note

Section 850, Texas Probate Code, refers to a
"valid mineral lease or pooling or unitization
agreement." The revised law omits "valid" as
unnecessary because the word does not add to the clear
meaning of the law. For example, a document purporting
to be a mineral lease or pooling or unitization agreement is no longer a mineral lease or pooling or unitization agreement if it is expired and is not a mineral lease or pooling or unitization agreement if it is a forgery.

[Sections 1160.202-1160.250 reserved for expansion]

SUBCHAPTER F. PROCEDURE IF GUARDIAN OF ESTATE NEGLECTS TO APPLY FOR AUTHORITY

Revised Law
Sec. 1160.251. APPLICATION TO SHOW CAUSE. If a guardian of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or authority to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the guardian cited to show cause why it is not in the best interests of the estate to make the lease or enter into an agreement. (Tex. Prob. Code, Sec. 851 (part).)

Source Law
Sec. 851. When the guardian of an estate neglects to apply for authority to subject property of the estate to a lease for mineral development, pooling, or unitization, or authority to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate, on written application filed with the county clerk, may cause the guardian to be cited to show cause why it is not in the best interests of the estate for the lease to be made or an agreement to be entered into. . . .

Revised Law
Sec. 1160.252. HEARING ON APPLICATION. (a) The county clerk shall immediately call the filing of an application under Section 1160.251 to the attention of the judge of the court in which the guardianship proceeding is pending.

(b) The judge shall set a time and place for a hearing on the application, and the guardian of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 1160.251 should not be ordered. (Tex. Prob. Code, Sec. 851 (part).)
Sec. 851. . . . The clerk shall immediately call the filing of the application under this section to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall set a time and place for a hearing on the application. The guardian of the estate shall be cited to appear and show cause why the execution of the lease or agreement should not be ordered. . . .

Revised Law
Sec. 1160.253. ORDER. On a hearing conducted under Section 1160.252 and if satisfied from the evidence that it would be in the best interests of the estate, the court shall enter an order requiring the guardian of the estate to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate. (Tex. Prob. Code, Sec. 851 (part).)

Sec. 851. . . . On hearing and if satisfied from the proof that it would be in the best interests of the estate, the court shall enter an order requiring the guardian to file the guardian's application to subject the property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. . . .

Revisor's Note
Section 851, Texas Probate Code, refers to a guardian's application to commit royalty or other minerals to "unitization." The revised law substitutes a reference to an application to commit royalty or other minerals to "pooling or unitization" for the reference to "unitization" for consistency with the other provisions of this chapter. See, for example, Sections 1160.251 and 1160.254 of this chapter, which refer to "pooling or unitization."

Revised Law
Sec. 1160.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF ORDER. After entry of an order under Section 1160.253, the procedures prescribed with respect to an original lease
application, or with respect to an original application for
authority to commit royalty or minerals to pooling or unitization,
shall be followed. (Tex. Prob. Code, Sec. 851 (part).)

Source Law

Sec. 851. . . . The procedures prescribed with
respect to original application to lease or with
respect to original application for authority to
commit royalty or minerals to pooling or unitization
shall be followed.

Revisor's Note
(End of Chapter)

Section 852, Texas Probate Code, validates
certain leases of oil, gas, or other minerals existing
on September 1, 1993, belonging to the estates of
minors or other incapacitated persons and agreements
relating to pooling or unitization of oil, gas, or
other minerals of those estates. The revised law omits
that provision for the reason stated in the revisor's
note at the end of Subchapter B. The omitted law
reads:

Sec. 852. All leases on the oil, gas,
or other minerals existing on September 1,
1993, belonging to the estates of minors or
other incapacitated persons and all
agreements with respect to the pooling or
unitization of oil, gas, or other minerals
or any interest in oil, gas, or other
minerals with like properties of others
that have been authorized by the court
having venue, executed, and delivered by a
guardian or other fiduciary of the estate of
a minor or incapacitated person in
substantial conformity to the rules set
forth in statutes on execution or delivery
providing for only seven days' notice in
some instances and for a brief order
designating a time and place for hearing,
are validated insofar as the period of
notice or absence of an order setting a time
and place for hearing is concerned, unless
the length of time of the notice or the
absence of the order is an issue in a lease
or pooling or unitization agreement that is
involved in a lawsuit pending on September
1, 1993.

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Chapter 1161. Investments and Loans of Estates of Wards

Subchapter A. General Provisions

Revised Law
Sec. 1161.001. Guardian's Duty to Keep Estate Invested.
(a) The guardian of the estate shall invest any funds and assets of a ward's estate available for investment except:

(1) if the court orders otherwise under this chapter;

or

(2) as provided by Subsection (b).

(b) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or any others the ward supports as provided by this title. (Tex. Prob. Code, Sec. 854(a).)

Source Law
Sec. 854. (a) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or others the ward supports, if any, as provided by this chapter. The guardian of the estate shall invest any other funds and assets available for investment unless the court orders otherwise under this subpart.

Revisor's Note
Section 854(a), Texas Probate Code, requires a guardian of the estate to invest "any other funds and assets available for investment." It is clear from the
context of Subpart L, Part 4, Chapter XIII, Texas Probate Code, revised as this chapter and of which Section 854 is a part, that the "funds and assets" belong to the ward's estate. The revised law is drafted accordingly.

Revised Law

Sec. 1161.002. STANDARD FOR MANAGEMENT AND INVESTMENT OF ESTATE. (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward's estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person's own affairs, considering the probable income from, probable increase in value of, and safety of the person's capital. The guardian shall also consider all other relevant factors, including:

(1) the anticipated costs of supporting the ward;

(2) the ward's age, education, current income, ability to earn additional income, net worth, and liabilities;

(3) the nature of the ward's estate; and

(4) any other resources reasonably available to the ward.

(b) In determining whether a guardian of the estate has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, consider the investment of all the estate assets over which the guardian has management or control, rather than considering the prudence of only a single investment made by the guardian. (Tex. Prob. Code, Secs. 855(a), (a-1).)

Source Law

Sec. 855. (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward's estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from as well as the
probable increase in value and the safety of their capital. The guardian shall also consider all other relevant factors, including:

(1) the anticipated costs of supporting the ward;
(2) the ward's age, education, current income, ability to earn additional income, net worth, and liabilities;
(3) the nature of the ward's estate; and
(4) any other resources reasonably available to the ward.

(a-1) In determining whether a guardian has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, take into consideration the investment of all the assets of the estate over which the guardian has management or control, rather than taking into consideration the prudence of only a single investment made by the guardian.

Revisor's Note

Section 855(a-1), Texas Probate Code, refers to "the standard of investment required by this section." The reference to "this section" means Section 855, Texas Probate Code. The relevant portion of Section 855 providing for the standard required of a guardian is contained in Section 855(a), Texas Probate Code, revised as Subsection (a) of this section. For this reason, the revised law retains the reference to "this section."

Revised Law

Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR INVESTMENT. A guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) with respect to investing the ward's estate if the guardian invests in the following:

(1) bonds or other obligations of the United States;
(2) tax-supported bonds of this state;
(3) except as limited by Sections 1161.004(b) and (c), tax-supported bonds of a county, district, political subdivision, or municipality in this state;
(4) if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation, shares or share accounts of:
(A) a state savings and loan association or savings bank that has its main office or a branch office in this state; or

(B) a federal savings and loan association or savings bank that has its main office or a branch office in this state;

(5) collateral bonds that:

(A) are issued by a company incorporated under the laws of this state that has a paid-in capital of $1 million or more;

(B) are a direct obligation of the company; and

(C) are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; or

(6) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state, if the payment of the time deposits is insured by the Federal Deposit Insurance Corporation. (Tex. Prob. Code, Sec. 855(b).)

Source Law

(b) A guardian of the estate is considered to have exercised the standard required by this section with respect to investing the ward's estate if the guardian invests in the following:

(1) bonds or other obligations of the United States;

(2) tax-supported bonds of this state;

(3) except as limited by Subsections (c) and (d) of this section, tax-supported bonds of a county, district, political subdivision, or incorporated city or town in this state;

(4) shares or share accounts of a state savings and loan association or savings bank with its main office or a branch office in this state if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;

(5) the shares or share accounts of a federal savings and loan association or savings bank with its main office or a branch office in this state if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;

(6) collateral bonds of companies incorporated under the laws of this state, having a paid-in capital of $1,000,000 or more, when the bonds are a direct obligation of the company that issues the bonds and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; or

(7) interest-bearing time deposits that may be withdrawn on or before one year after demand in
a bank that does business in this state where the payment of the time deposits is insured by the Federal Deposit Insurance Corporation.

Revisor's Note
(1) Section 855(b), Texas Probate Code, refers to "the standard required by this section." The reference to "this section" means Section 855, Texas Probate Code. The relevant portion of Section 855 providing for the standard required of a guardian is contained in Section 855(a), Texas Probate Code, revised as Section 1161.002(a). For this reason, the revised law refers to "Section 1161.002(a)" in this context.

(2) Section 855(b)(3), Texas Probate Code, refers to a "city" or "town." Throughout this subchapter, the revised law substitutes the term "municipality" for "city," "incorporated town," or "town" because "municipality" is the term used in the Local Government Code to refer to those entities.

Revised Law
Sec. 1161.004. RESTRICTIONS ON INVESTMENT IN CERTAIN BONDS. (a) In this section, "net funded debt" means the total funded debt less sinking funds on hand.

(b) A guardian of the estate may purchase the bonds of a county, district, or political subdivision other than a municipality only if the net funded debt of the county, district, or political subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or political subdivision.

(c) A guardian of the estate may purchase the bonds of a municipality only if the net funded debt of the municipality does not exceed 10 percent of the assessed value of taxable property in the municipality less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenue of which is not pledged to support other obligations of the municipality.
(d) Subsections (b) and (c) do not apply to bonds issued for road purposes in this state under Section 52, Article III, Texas Constitution, that are supported by a tax unlimited as to rate or amount. (Tex. Prob. Code, Secs. 855(c), (d), (e), (f).)

Source Law

[(b) A guardian of the estate is considered to have exercised the standard required by this section with respect to investing the ward's estate if the guardian invests in the following:] (c) The bonds of a county, district, or subdivision may be purchased only if the net funded debt of the county, district, or subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or subdivision.

(d) The bonds of a city or town may be purchased only if the net funded debt of the city or town does not exceed 10 percent of the assessed value of taxable property in the city or town less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenues of which are not pledged to support other obligations of the city or town.

(e) The limitations in Subsections (c) and (d) of this section do not apply to bonds issued for road purposes in this state under Section 52, Article III, of the Texas Constitution that are supported by a tax unlimited as to rate or amount.

(f) In this section, "net funded debt" means the total funded debt less sinking funds on hand.

Revisor's Note

Section 855(c), Texas Probate Code, provides limits for the "bonds of a county, district, or subdivision." Section 855(d), Texas Probate Code, revised as Section 1161.004(c), provides different limits for the purchase of "bonds of a city or town."

Section 1161.004(b) of the revised law specifies that the limits provided by Section 855(c), Texas Probate Code, apply to a "county, district, or political subdivision other than a municipality," because it is clear from the source law that limits on the purchase of municipal bonds are controlled by Section 1161.004(c) of the revised law and because it is clear from the context that the referenced "subdivision" is a political subdivision.
Sec. 1161.005. MODIFICATION OR ELIMINATION OF DUTY OR STANDARD. On a showing by clear and convincing evidence that the action is in the best interests of the ward and the ward's estate, the court may modify or eliminate:

(1) the duty of the guardian of the estate to keep the estate invested; or

(2) the standard required by Section 1161.002(a) with regard to investments of estate assets. (Tex. Prob. Code, Sec. 855(g).)

(g) The court may modify or eliminate the guardian's duty to keep the estate invested or the standard required by this section with regard to investments of estate assets on a showing by clear and convincing evidence that the modification or elimination is in the best interests of the ward and the ward's estate.

Revisor's Note

Section 855(g), Texas Probate Code, refers to "the standard required by this section with regard to investments of estate assets." The reference to "this section" means Section 855, Texas Probate Code. The relevant portion of Section 855 referring to the standard required for investment is contained in Section 855(a), Texas Probate Code, revised as Section 1161.002(a). For this reason, the revised law substitutes a reference to "Section 1161.002(a)" for the reference to "this section."

Sec. 1161.006. RETENTION OF CERTAIN ASSETS. (a) Without court approval a guardian of the estate may retain until the first anniversary of the date of receipt any property received into the guardianship estate at the estate's inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention.
(b) The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for and managing the person's own affairs.

(c) On application and a hearing, the court may issue an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) if the retention is an element of the guardian's investment plan as provided by Subchapter B. (Tex. Prob. Code, Sec. 855A.)

Source Law

Sec. 855A. (a) A guardian of the estate may retain without court approval until the first anniversary of the date of receipt any property received into the guardianship estate at its inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention. The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for and managing the person's own affairs.

(b) On application and a hearing, the court may render an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) of this section if the retention is an element of the guardian's investment plan as provided by this subpart.

Revisor's Note

Section 855A(b), Texas Probate Code, refers to "the guardian's investment plan as provided by this subpart." The reference to "this subpart" means Subpart L, Part 4, Chapter XIII, Texas Probate Code. The relevant portion of Subpart L providing for the guardian's investment plan is contained in Section 855B, Texas Probate Code, revised as Subchapter B of this chapter. For this reason, the revised law substitutes a reference to "Subchapter B" for the reference to "this subpart."

Revised Law

Sec. 1161.007. HEARING TO PROTECT ESTATE. (a) The court may, on the court's own motion or on written request of a person interested in the guardianship, cite the guardian of the estate to
appear and show cause why the estate is not invested or not properly invested.

(b) Except as provided by Subsection (d), at any time after giving notice to all parties, the court may conduct a hearing to protect the estate.

(c) On the hearing of the court's motion or a request made under this section, the court shall issue an order the court considers to be in the ward's best interests.

(d) The court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian is originally cited to appear under Subsection (a).

(e) The court may appoint a guardian ad litem for the limited purpose of representing the ward's best interests with respect to the investment of the ward's property at a hearing under this section. (Tex. Prob. Code, Secs. 854(b), (c).)

Source Law

(b) The court may, on its own motion or on written request of a person interested in the guardianship, cite the guardian to appear and show cause why the estate is not invested or not properly invested. At any time after giving notice to all parties, the court may conduct a hearing to protect the estate, except that the court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian was originally cited to appear under this subsection. On the hearing of the court's motion or a request made under this section, the court shall render an order the court considers to be in the best interests of the ward.

(c) The court may appoint a guardian ad litem for the limited purpose of representing the ward's best interests with respect to the investment of the ward's property at a hearing under this section.

Revisor's Note

(1) Section 854(b), Texas Probate Code, provides that "the court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian was originally cited to appear under this subsection." The reference to "this subsection" means Section 854(b), Texas Probate Code, which is revised as Sections 1161.007(a)-(d). The revised law substitutes a
reference to "Subsection (a)" for the reference to "this subsection" because the relevant portion of Section 854(b), Texas Probate Code, relating to the court's authority to cite a guardian to appear is revised as Subsection (a).

(2) Sections 854(b) and (c), Texas Probate Code, refer to a request for a hearing and a hearing "under this section." The reference to "this section" means Section 854, Texas Probate Code. The relevant portions of Section 854 providing for the authority to request a hearing and the institution of a hearing are contained in Section 854(b), Texas Probate Code, revised as this section. For this reason, the revised law refers to "this section" in this context.

Revised Law
Sec. 1161.008. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY.
(a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this chapter, the guardian and the guardian's surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this chapter.

(b) In addition to the liability under Subsection (a), the guardian and the guardian's surety are liable for attorney's fees, litigation expenses, and costs related to a proceeding brought to enforce this section. (Tex. Prob. Code, Sec. 863.)

Source Law
Sec. 863. (a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this subpart, the guardian and the guardian's surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on
the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this subpart.

(b) In addition to the liability under Subsection (a) of this section, the guardian and the guardian's surety are liable for attorney's fees, litigation expenses, and costs related to a proceeding brought to enforce this section.

[Sections 1161.009-1161.050 reserved for expansion]

SUBCHAPTER B. PROCEDURE FOR MAKING INVESTMENTS OR LOANS OR RETAINING ESTATE ASSETS

Revised Law

Sec. 1161.051. PROCEDURE IN GENERAL. (a) Not later than the 180th day after the date the guardian of the estate qualifies as guardian or another date specified by the court, the guardian shall:

(1) invest estate assets according to Section 1161.003; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i);

(iii) declare that one or more estate assets must be retained, despite being underproductive with respect to income or overall return; or

(iv) loan estate funds, invest in real estate or make other investments, or purchase a life, term, or endowment insurance policy or an annuity contract; or

(B) modifying or eliminating the guardian's duty to invest the estate.

(b) The court may approve an investment plan under Subsection (a)(2) without a hearing. (Tex. Prob. Code, Secs. 855B(a), (a-1).)
Sec. 855B. (a) Not later than the 180th day after the date on which the guardian of the estate qualified as guardian or another date specified by the court, the guardian shall:

(1) have estate assets invested according to Section 855(b) of this code; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i) of this paragraph;

(iii) declare that one or more estate assets must be retained, despite being underproductive with respect to income or overall return; or

(iv) loan estate funds, invest in real estate or make other investments, or purchase a life, term, or endowment insurance policy or an annuity contract; or

(B) modifying or eliminating the guardian's duty to invest the estate.

(a-1) The court may approve an investment plan under Subsection (a)(2) of this section without a hearing.

Revised Law

Sec. 1161.052. COURT ACTION. (a) If the court determines that the action requested in the application is in the best interests of the ward and the ward's estate, the court shall issue an order:

(1) granting the authority requested in the application; or

(2) modifying or eliminating the guardian's duty to keep the estate invested.

(b) An order under Subsection (a) must state in reasonably specific terms:

(1) the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including any authority to invest in and sell securities in accordance with the investment plan's objectives;

(2) when an investment must be reviewed and reconsidered by the guardian; and

(3) whether the guardian must report the guardian's review and recommendations to the court.
(c) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under this section. (Tex. Prob. Code, Secs. 855B(b), (e).)

Source Law

(b) If the court determines that the action requested in the application is in the best interests of the ward and the ward's estate, the court shall render an order granting the authority requested in the application or an order modifying or eliminating the guardian's duty to keep the estate invested. An order under this subsection must state in reasonably specific terms:

(1) the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including, if applicable, the authority to invest in and sell securities in accordance with the objectives of the investment plan;

(2) when an investment must be reviewed and reconsidered by the guardian; and

(3) whether the guardian must report the guardian's review and recommendations to the court.

(e) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under Subsection (b)(1) of this section.

Revisor's Note

Section 855B(e), Texas Probate Code, refers to "an investment plan authorized by the court under Subsection (b)(1)," meaning Section 855B(b)(1), Texas Probate Code. Section 855B(b), Texas Probate Code, revised in this section, generally provides for court authorization of investment plans in this context. Therefore, the revised law substitutes a reference to "this section" for the reference to "Subsection (b)(1)" because the broader reference is more helpful to the reader.

Revised Law

Sec. 1161.053. APPLICABILITY OF PROCEDURE TO CERTAIN ASSETS. The fact that an account or other asset is the subject of a specific or general gift under a ward's will, if any, or that a ward has funds, securities, or other property held with a right of survivorship does not prevent:

(1) the guardian of the estate from taking possession
and control of the asset or closing the account; or

(2) the court from authorizing an action or modifying
or eliminating a duty with respect to the possession, control, or
investment of the account or other asset. (Tex. Prob. Code, Sec.
855B(c).)

Source Law
(c) The fact that an account or other asset is
the subject of a specific or general gift under a
ward's will, if any, or that a ward has funds, securities, or other property held with a right of
survivorship does not prevent:
(1) a guardian of the estate from taking
possession and control of the asset or closing the
account; or
(2) the court from authorizing an action
or modifying or eliminating a duty with respect to the
possession, control, or investment of the account or
other asset.

Revised Law
Sec. 1161.054. INAPPLICABILITY OF PROCEDURE TO CERTAIN
ASSETS. (a) The procedure prescribed by this subchapter does not
apply if a different procedure is prescribed for an investment or
sale by a guardian.

(b) A guardian of the estate is not required to follow the
procedure prescribed by this subchapter with respect to an
investment or sale that is specifically authorized by other law.
(Tex. Prob. Code, Sec. 855B(d).)

Source Law
[(a) Not later than the 180th day after the date
on which the guardian of the estate [qualified as
guardian or another date specified by the court, the
guardian shall:]
(d) The procedure prescribed by this section
does not apply if a different procedure is prescribed
for an investment or sale by a guardian. A guardian is
not required to follow the procedure prescribed by
this section with respect to an investment or sale that
is specifically authorized by other law.

[Sections 1161.055-1161.100 reserved for expansion]
SUBCHAPTER C. INVESTMENTS IN CERTAIN INSURANCE OR ANNUITIES

Revised Law
Sec. 1161.101. DEFINITION. In this subchapter, "authorized
life insurance company" means a stock or mutual legal reserve life
insurance company that:
(1) is licensed by the Texas Department of Insurance
to transact the business of life insurance in this state; and
(2) maintains the legal reserve required by the laws
of this state. (Tex. Prob. Code, Sec. 857(a).)

Source Law

Sec. 857. (a) In this section, "life insurance
company" means a stock or mutual legal reserve life
insurance company that maintains the full legal
reserves required under the laws of this state and that
is licensed by the State Board of Insurance to transact
the business of life insurance in this state.

Revisor's Note

(1) Section 857(a), Texas Probate Code, defines "life insurance company." For clarity and
convenience, the revised law substitutes "authorized
life insurance company" for "life insurance company"
because it is clear from the substance of the
definition that the term applies only to certain life
insurance companies that are licensed and that maintain certain reserves.

(2) Section 857(a), Texas Probate Code, enacted
in 1993, refers to the "State Board of Insurance."
Chapter 685, Acts of the 73rd Legislature, Regular
Session, 1993, abolished the State Board of Insurance
and transferred its functions to the commissioner of
insurance and the Texas Department of Insurance.
Throughout this subchapter, references to the board
have been changed appropriately.

Revised Law

Sec. 1161.102. AUTHORITY TO INVEST IN CERTAIN INSURANCE OR
ANNUITIES. Subject to this subchapter, the guardian of the estate
may invest in life, term, or endowment insurance policies, in
annuity contracts, or in both, issued by an authorized life
insurance company or administered by the Department of Veterans
Affairs. (Tex. Prob. Code, Sec. 857(b).)

Source Law

(b) The guardian of the estate may invest in
life, term, or endowment insurance policies, or in annuity contracts, or both, issued by a life insurance company or administered by the Veterans Administration, subject to conditions and limitations in this section.

Revisor's Note

Section 857(b), Texas Probate Code, refers to the "Veterans Administration." The name of the Veterans Administration has been changed to the Department of Veterans Affairs. Throughout this subchapter, references to the administration have been changed accordingly.

Revised Law

Sec. 1161.103. INVESTMENT REQUIREMENTS. (a) An insurance policy in which the guardian of the estate invests must be issued on the life of:

(1) the ward;
(2) the ward's parent, spouse, child, sibling, or grandparent; or
(3) another person in whose life the ward may have an insurable interest.

(b) The ward must be the annuitant in the annuity contract in which the guardian of the estate invests.

(c) Only the ward, the ward's estate, or the ward's parent, spouse, child, sibling, or grandparent may be a beneficiary of the insurance policy or of the death benefit of the annuity contract.

(d) The insurance policy or annuity contract may not be amended or changed during the ward's life and disability, except on application to and order of the court. (Tex. Prob. Code, Secs. 857(d), (e), (g).)

Source Law

[(b) The guardian of the estate may invest in life, term, or endowment insurance policies, or in annuity contracts, or both, issued by a life insurance company or administered by the Veterans Administration, subject to conditions and limitations in this section.]
insurable interest.
(e) Only the ward, the ward's estate, or the
father, mother, spouse, child, brother, sister,
grandfather, or grandmother of the ward may be a
beneficiary of the insurance policy and of the death
benefit of the annuity contract, and the ward must be
the annuitant in the annuity contract.

(g) The policy or annuity contract may not be
amended or changed during the life and disability of
the ward except on application to and order of the
court.

Revised Law
Sec. 1161.104. PROCEDURE FOR INVESTING IN INSURANCE OR
ANNUITIES. (a) Before the guardian of the estate may invest in
life, term, or endowment insurance policies, in annuity contracts,
or in both, the guardian must first apply to the court for an order
that authorizes the investment.

(b) The application must include a report that shows:
(1) in detail the estate's financial condition on the
date the application is filed;
(2) the name and address of the authorized life
insurance company from which the insurance policy or annuity
contract is to be purchased and that:
(A) the company is licensed by the Texas
Department of Insurance to transact that business in this state on
the date the application is filed; or
(B) the policy or contract is administered by the
Department of Veterans Affairs;
(3) a statement of:
(A) the face amount and plan of the insurance
policy sought to be purchased; and
(B) the amount, frequency, and duration of the
annuity payments to be provided by the annuity contract sought to be
purchased;
(4) a statement of the amount, frequency, and duration
of the premiums required by the insurance policy or annuity
contract; and
(5) a statement of the cash value of the insurance
policy or annuity contract at the policy's or contract's
anniversary nearest the ward's 21st birthday, assuming that all
premiums to the anniversary are paid and that there is no
indebtedness against the policy or contract incurred in accordance
with its terms.

(c) If satisfied by the application and the evidence
presented at the hearing that it is in the ward's interests to grant
the application, the court shall enter an order granting the
application. (Tex. Prob. Code, Secs. 857(c), (i).)

Source Law

(c) The guardian shall first apply to the court
for an order that authorizes the guardian to make the
investment. The application filed under this
subsection must include a report that shows:
(1) in detail the financial condition of
the estate at the time the application is made;
(2) the name and address of the life
insurance company from which the policy or annuity
contract is to be purchased and that the company is
licensed by the State Board of Insurance to transact
that business in this state on the date the application
is filed, or that the policy or contract is
administered by the Veterans Administration;
(3) a statement of the face amount and plan
of the policy of insurance sought to be purchased and
of the amount, frequency, and duration of the annuity
payments to be provided by the annuity contract sought
to be purchased;
(4) a statement of the amount, frequency,
and duration of the premiums required by the policy or
annuity contract; and
(5) a statement of the cash value of the
policy or annuity contract at its anniversary nearest
the 21st birthday of the ward, assuming that all
premiums to the anniversary are paid and that there is
no indebtedness against the policy or contract
incurred in accordance with its terms.

(i) The court, if satisfied by the application
and the evidence adduced at the hearing that it is in
the interests of the ward to grant the application,
shall enter an order granting the application.

Revisor's Note

Section 857(c), Texas Probate Code, requires a
guardian of the estate to file a report that shows "in
detail the financial condition of the estate at the
time the application is made" before the guardian of
the estate may invest in certain insurance policies or
annuity contracts. Throughout this subchapter, the
revised law substitutes "date" for "time" because the
financial condition of the estate at the precise time
of day of the filing is inconsequential; rather, it is
the financial condition on the date the application is
filed that is of consequence.

Revised Law
Sec. 1161.105. CONTINUATION OF PREEXISTING POLICIES OR
ANNUITIES. (a) A life, term, or endowment insurance policy or an
annuity contract owned by the ward when a proceeding for the
appointment of a guardian of the estate is commenced may be
continued in full effect if it is shown that:

(1) the company issuing the policy or contract is an
authorized life insurance company; or

(2) the policy or contract is administered by the
Department of Veterans Affairs.

(b) All future premiums for an insurance policy or annuity
contract described by Subsection (a) may be paid out of surplus
funds of the ward's estate.

(c) The guardian of the estate must apply to the court for an
order to:

(1) continue the policy, the contract, or both
according to the existing terms of the policy or contract; or

(2) modify the policy or contract to fit any new
developments affecting the ward's welfare.

(d) Before the court grants an application filed under
Subsection (c), the guardian must file a report in the court that
shows in detail the financial condition of the ward's estate on the
date the application is filed. (Tex. Prob. Code, Sec. 857(h).)

Source Law

[(b) The guardian of the estate may invest in
life, term, or endowment insurance policies, or in
annuity contracts, or both, issued by a life insurance
company or administered by the Veterans
Administration, subject to conditions and limitations
in this section.]

(h) If a life, term, or endowment insurance
policy or a contract of annuity is owned by the ward
when a proceeding for the appointment of a guardian is
begun, and it is made to appear that the company
issuing the policy or contract of annuity is a life
insurance company as defined by this section or the
policy or contract is administered by the Veterans
Administration, the policy or contract may be continued in full force and effect. All future premiums may be paid out of surplus funds of the ward's estate. The guardian shall apply to the court for an order to continue the policy or contract, or both, according to the existing terms of the policy or contract or to modify the policy or contract to fit any new developments affecting the welfare of the ward. Before any application filed under this subsection is granted, the guardian shall file a report in the court that shows in detail the financial condition of the ward's estate at the time the application is filed.

Revisor's Note

Section 857(h), Texas Probate Code, provides that certain insurance policies and annuity contracts may be continued in "full force and effect" under specified circumstances. The revised law omits the reference to "force" as unnecessary because, in context, the meaning of that term is included in the meaning of "effect."

Revised Law

Sec. 1161.106. CONTROL AND OWNERSHIP OF POLICIES OR ANNUITIES. (a) Control of an insurance policy or an annuity contract and of the incidents of ownership in the policy or contract is vested in the guardian of the estate during the ward's life and disability.

(b) A right, benefit, or interest that accrues under an insurance policy or annuity contract subject to this subchapter becomes the ward's exclusive property when the ward's disability is terminated. (Tex. Prob. Code, Secs. 857(f), (j).)

Source Law

[(b) The guardian of the estate may invest in life, term, or endowment insurance policies, or in annuity contracts, or both, issued by a life insurance company or administered by the Veterans Administration, subject to conditions and limitations in this section.]

(f) The control of the policy or the annuity contract and of the incidents of ownership in the policy or annuity contract is vested in the guardian during the life and disability of the ward.

(j) A right, benefit, or interest that accrues under an insurance or annuity contract that comes under the provisions of this section shall become the exclusive property of the ward when the ward's disability is terminated.
Sec. 1161.151. AUTHORITY TO INVEST IN REAL ESTATE; PROCEDURE AND REQUIREMENTS. (a) The guardian of the estate may invest estate assets in real estate if:

(1) the guardian believes that the investment is in the ward's best interests;

(2) there are on hand sufficient additional assets to provide a return sufficient to provide for:

(A) the education, support, and maintenance of the ward and others the ward supports, if applicable; and

(B) the maintenance, insurance, and taxes on the real estate in which the guardian wishes to invest;

(3) the guardian files a written application with the court requesting a court order authorizing the guardian to make the desired investment and stating the reasons why, in the guardian's opinion, the investment would be for the ward's benefit; and

(4) the court issues an order authorizing the investment as provided by this subchapter.

(b) If the ward's money is invested in real estate, the title to the real estate shall be made to the ward. The guardian shall inventory, appraise, manage, and account for the real estate as the guardian does with other real estate of the ward. (Tex. Prob. Code, Secs. 860(a), (d).)
investment and stating the reasons why the guardian is of the opinion that the investment would be for the benefit of the ward; and
(4) the court renders an order authorizing the investment as provided by this section.

(d) When the money of the ward has been invested in real estate, the title to the real estate shall be made to the ward. The guardian shall inventory, appraise, manage, and account for the real estate as other real estate of the ward.

Revised Law
Sec. 1161.152. COURT AUTHORIZATION TO MAKE INVESTMENTS.
(a) If the guardian of the estate files an application under this subchapter, the judge shall investigate as necessary to obtain all the facts concerning the investment.

(b) Subject to Subsection (c), on the hearing of the application, the court shall issue an order that authorizes the guardian to make the investment if the court is satisfied that the investment benefits the ward. The order must specify the investment to be made and contain other directions the court considers advisable.

(c) The judge may not issue an opinion or order on the application until after the 10th day after the date the application is filed. (Tex. Prob. Code, Sec. 860(b).)

Source Law
(b) When an application is filed by the guardian under this section, the judge's attention shall be called to the application, and the judge shall make investigation as necessary to obtain all the facts concerning the investment. The judge may not render an opinion or make an order on the application until 10 days from the date of the filing of the application have expired. On the hearing of the application, if the court is satisfied that the investment benefits the ward, the court shall issue an order that authorizes the guardian to make the investment. The order shall specify the investment to be made and contain other directions the court thinks are advisable.

Revisor's Note
Section 860(b), Texas Probate Code, provides that "the judge's attention shall be called to the application" filed under Section 860, Texas Probate Code. "[T]he judge's attention shall be called to the application" is omitted as unnecessary because the
judge's duty to investigate "as necessary to obtain all
the facts concerning the investment" that is
subsequently stated in Section 860(b) requires the
judge's attention to be called to the application.

Revised Law
Sec. 1161.153. COURT APPROVAL OF CONTRACTS REQUIRED. (a)
If a contract is made for the investment of money in real estate
under a court order, the guardian of the estate shall report the
contract in writing to the court.

(b) The court shall inquire fully into the contract. If
satisfied that the investment will benefit the ward's estate and
that the title of the real estate is valid and unencumbered, the
court may approve the contract and authorize the guardian to pay
money in performance of the contract.

(c) The guardian may not pay any money on the contract until
the contract is approved by a court order to that effect. (Tex.
Prob. Code, Sec. 860(c).)

Source Law
[(a) The guardian of the estate may invest
estate assets in real estate if:
(4) the court renders an order authorizing
the investment as provided by this section.]

(c) When a contract is made for the investment
of money in real estate under court order, the guardian
shall report the contract in writing to the courts.
The court shall inquire fully into the contract. If
satisfied that the investment will benefit the estate
of the ward and that the title of the real estate is
valid and unencumbered, the court may approve the
contract and authorize the guardian to pay over the
money in performance of the contract. The guardian may
not pay any money on the contract until the contract is
approved by court order to that effect.

[Sections 1161.154-1161.200 reserved for expansion]
(h) This section does not apply to an investment in a debenture, bond, or other publicly traded debt security.

Sec. 1161.202. AUTHORITY TO MAKE LOANS. (a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable interest rate.

(b) The guardian of the estate is considered to have obtained a reasonable interest rate for a loan for purposes of Subsection (a) if the interest rate is at least equal to 120 percent of the applicable short-term, midterm, or long-term interest rate under Section 7520, Internal Revenue Code of 1986, for the month during which the loan was made. (Tex. Prob. Code, Secs. 858(a) (part), (b).)

Sec. 858. (a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable rate of interest. . . .

(b) A guardian of the estate is considered to have obtained a reasonable rate of interest for a loan for purposes of Subsection (a) of this section if the rate of interest is at least equal to 120 percent of the applicable short-term, midterm, or long-term interest rate under Section 7520, Internal Revenue Code of 1986, as amended, for the month during which the loan was made.

Sec. 1161.203. LOAN REQUIREMENTS. (a) Except as provided by Subsection (b), the guardian of the estate shall take as collateral the borrower's note for the money that is loaned, secured by:

(1) a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note; or
collateral notes secured by vendor's lien notes.

(b) The guardian may purchase vendor's lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

(c) Except as provided by Subsection (d), a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to a reputable attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) are regular and that the title to relevant bonds, notes, or real estate is clear.

(d) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion under Subsection (c).

(e) The borrower shall pay attorney's fees for any legal services required by Subsection (c). (Tex. Prob. Code, Secs. 858(a) (part), (d), (e), (f), 861.)

Sec. 858. (a) ... The guardian shall take the note of the borrower for the money that is loaned, secured by a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note, or by collateral notes secured by vendor's lien notes, as collateral, or the guardian may purchase vendor's lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

(d) Except as provided by Subsection (e) of this section, a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to an attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) of this subsection are regular and that the title to relevant bonds, notes, or real estate is clear.

(e) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan in lieu of an abstract and attorney's opinion under Subsection (d) of this section.

(f) The borrower shall pay attorney's fees for any legal services required by this section.
Sec. 861. When the guardian of the estate of a ward lends the money of the ward, the guardian may not pay over or transfer any money in consummation of the loan until the guardian has submitted to a reputable attorney for examination all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to the loan and the guardian has received a written opinion from the attorney that all papers pertaining to the loan are regular and that the title to the bonds, notes, or real estate is good. The attorney's fee shall be paid by the borrower. The guardian may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion.

Revised Law

Sec. 1161.204. GUARDIAN'S DUTY TO REPORT LOAN TO COURT. (a) Not later than the 30th day after the date the guardian of the estate loans money from the estate, the guardian shall file with the court a written report, accompanied and verified by an affidavit, stating fully the facts related to the loan.

(b) This section does not apply to a loan made in accordance with a court order. (Tex. Prob. Code, Secs. 858(g), 862.)

Source Law

[Sec. 858]

(g) Not later than the 30th day after the date the guardian of the estate loans money from the estate, the guardian shall file with the court a written report, accompanied by an affidavit, stating fully the facts related to the loan. This subsection does not apply to a loan made in accordance with a court order.

Sec. 862. Not later than the 30th day after the date money belonging to a ward's estate is lent, the guardian of the ward's estate shall report to the court in writing, verified by affidavit, stating fully the facts of the loan, unless the loan was made pursuant to a court order.

Revised Law

Sec. 1161.205. GUARDIAN'S LIABILITY. (a) Except as provided by Subsection (b), a guardian of the estate who loans estate money with the court's approval on security approved by the court is not personally liable if the borrower is unable to repay the money and the security fails.

(b) If the guardian committed fraud or was negligent in making or managing the loan, including in collecting the loan, the guardian and the guardian's surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence. (Tex. Prob. Code, Sec. 858(c).)
(c) Except as provided by this subsection, a guardian of the estate who loans estate money with the court's approval on security approved by the court is not personally liable if the borrower is unable to repay the money and the security fails. If the guardian committed fraud or was negligent in making or managing the loan, including in collecting on the loan, the guardian and the guardian's surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence.

Revisor's Note
(End of Subchapter)

Section 856, Texas Probate Code, was repealed by Chapter 549, Acts of the 78th Legislature, Regular Session, 2003, but also amended by Chapter 1103, Acts of the 78th Legislature, Regular Session, 2003. Chapter 1103 enacted Chapter 117, Property Code, the Uniform Prudent Investor Act, and amended Section 856(a), Texas Probate Code, only to make conforming amendments related to the enactment of Chapter 117. Section 36, Article III, Texas Constitution, provides that in such instances the law must be "re-enacted and published at length." Under Section 311.025, Government Code (Code Construction Act), applicable to the revised law, text that is reenacted because of the requirement of Section 36, Article III, Texas Constitution, is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment. Consequently, it is clear that the Chapter 1103 reenactment of Section 856(a) does not indicate the legislature's intent that the reenactment prevail over the repeal of that section by Chapter 549. As a
result, the revised law omits as repealed Section 856(a). The omitted law reads:

Sec. 856. (a) If a guardian of an estate deems it is in the best interests of the ward the guardian is appointed to represent to invest on behalf of the ward in the Texas tomorrow constitutional trust fund established by Subchapter F, Chapter 54, Education Code, or to invest in or sell any property or security in which a trustee is authorized to invest by either Chapter 117 or Subchapter F, Chapter 113, of the Texas Trust Code (Subtitle B, Title 9, Property Code), and the investment or sale is not expressly permitted by other sections of this chapter, the guardian may file a written application in the court in which the guardianship is pending that asks for an order authorizing the guardian to make the desired investment or sale and states the reason why the guardian is of the opinion that the investment or sale would be beneficial to the ward. A citation or notice is not necessary under this subsection unless ordered by the court.

CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

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CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

SUBCHAPTER A. TAX-MOTIVATED GIFTS

Revised Law

Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE PLAN. On application of the guardian of the estate or any interested party, after the posting of notice and hearing, and on a showing that the ward will probably remain incapacitated during the ward's lifetime, the court may enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. On the ward's behalf, the court may authorize the guardian to make gifts, outright or in trust, of the ward's personal property or real estate to or for the benefit of:

(1) an organization to which charitable contributions may be made under the Internal Revenue Code of 1986 and in which it is shown the ward would reasonably have an interest;

(2) the ward's spouse, descendant, or other person related to the ward by blood or marriage who is identifiable at the time of the order;

(3) a devisee under the ward's last validly executed will, trust, or other beneficial instrument, if the instrument exists; and

(4) a person serving as guardian of the ward, if the person is eligible under Subdivision (2) or (3). (Tex. Prob. Code, Sec. 865(a).)

Source Law

Sec. 865. (a) On application of the guardian of the estate or any interested party and after the posting of notice, the court, after hearing, may enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate on a showing that the ward will probably remain incapacitated during the ward's lifetime. On the ward's behalf, the court may
authorize the guardian to make gifts, outright or in
trust, of the ward's personal property or real estate
to or for the benefit of:
   (1) an organization to which charitable
collections may be made under the Internal Revenue
Code and in which it is shown the ward would reasonably
have an interest;
   (2) the ward's spouse, descendant, or
other person related to the ward by blood or marriage
who are identifiable at the time of the order;
   (3) a devisee under the ward's last validly
executed will, trust, or other beneficial instrument
if the instrument exists; and
   (4) a person serving as guardian of the
ward if the person is eligible under either
Subdivision (2) or (3) of this subsection.

Revisor's Note
Section 865(a)(1), Texas Probate Code, refers to
the "Internal Revenue Code." Section 2, Tax Reform Act
of 1986, Pub. L. No. 99-514, provides that the proper
citation for that code is "Internal Revenue Code of
1986." The revised law is drafted accordingly.

Revised Law
Sec. 1162.002. ESTATE PLAN: CONTENTS AND MODIFICATION. (a)
The person making an application to the court under Section
1162.001 shall:
   (1) outline the proposed estate plan; and
   (2) state all the benefits that are to be derived from
the estate plan.
(b) The application must indicate that the planned
disposition is consistent with the ward's intentions, if the ward's
intentions can be ascertained. If the ward's intentions cannot be
ascertained, the ward will be presumed to favor reduction in the
incidence of the various forms of taxation and the partial
distribution of the ward's estate as provided by Sections 1162.001
and 1162.004.
(c) A subsequent modification of an approved estate plan may
be made by similar application to the court. (Tex. Prob. Code,
Secs. 865(b), (d).)

Source Law
(b) The person making an application to the
court under this section shall outline the proposed
estate plan and set forth all the benefits that are to
be derived from the estate plan. The application must
indicate that the planned disposition is consistent with the ward's intentions if the ward's intentions can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the ward's estate as provided by this section.

(d) A subsequent modification of an approved plan may be made by similar application to the court.

Revisor's Note

(1) Section 865(b), Texas Probate Code, refers to an application made "under this section." The portion of Section 865, Texas Probate Code, under which an application for the establishment of an estate plan is made is revised in this chapter as Section 1162.001. Section 865(d), Texas Probate Code, provides for modification of an approved plan to be made by "similar application to the court," meaning an application described by Section 865(a), Texas Probate Code, revised in this chapter as Section 1162.001. The revised law therefore substitutes a reference to Section 1162.001 for the reference to "this section."

(2) Section 865(b), Texas Probate Code, refers to a "reduction in the incidence of the various forms of taxation and the partial distribution of the ward's estate as provided by this section." The portions of Section 865, Texas Probate Code, under which the incidence of certain forms of taxation may be reduced and a ward's estate may be partially distributed are Sections 865(a) and (f), Texas Probate Code. Those subsections are revised in this chapter as Sections 1162.001 and 1162.004. The revised law therefore substitutes a reference to Sections 1162.001 and 1162.004 for the reference to "this section."

(3) Section 865(d), Texas Probate Code, refers to "an approved plan." For consistency of terminology throughout this chapter and because it is clear from the context of Section 865, Texas Probate Code, that
the term "plan" refers to an estate plan, the revised law substitutes "an approved estate plan" for the quoted language.

**Revised Law**

Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF ESTATE PLAN. A person who makes an application to the court under Section 1162.001 shall mail notice of the application by certified mail to:

(1) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate;

(2) the ward's spouse;

(3) the ward's dependents; and

(4) any other person as directed by the court. (Tex. Prob. Code, Sec. 865(e).)

**Source Law**

(e) A person who makes an application to the court under this section shall mail notice of the application by certified mail to:

(1) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate;

(2) the ward's spouse;

(3) the ward's dependents; and

(4) any other person as directed by the court.

**Revisor's Note**

Section 865(e), Texas Probate Code, refers to an application to the court made "under this section."
The revised law substitutes a reference to Section 1162.001 for the reference to "this section" for the reason stated in Revisor's Note (1) to Section 1162.002.

**Revised Law**

Sec. 1162.004. AUTHORITY TO MAKE PERIODIC GIFTS. (a) In an order entered under Section 1162.001, the court may authorize the guardian to make, without subsequent application to or order of the court, gifts as provided by that section on an annual or other periodic basis if the court finds it to be in the best interest of the ward and the ward's estate.
(b) The court, on the court's own motion or on the motion of a person interested in the welfare of the ward, may modify or set aside an order entered under Subsection (a) if the court finds that the ward's financial condition has changed in such a manner that authorizing the guardian to make gifts of the estate on a continuing basis is no longer in the best interest of the ward and the ward's estate. (Tex. Prob. Code, Sec. 865(f).)

**Source Law**

(f) In an order entered under Subsection (a) of this section, the court may authorize the guardian to make gifts as provided by Subsection (a) of this section on an annual or other periodic basis without subsequent application to or order of the court if the court finds it to be in the best interest of the ward and the ward's estate. The court, on the court's own motion or on the motion of a person interested in the welfare of the ward, may modify or set aside an order entered under this subsection if the court finds that the ward's financial condition has changed in such a manner that authorizing the guardian to make gifts of the estate on a continuing basis is no longer in the best interest of the ward and the ward's estate.

**Revised Law**

Sec. 1162.005. APPLICATION FOR INSPECTION OF CERTAIN DOCUMENTS. (a) On the filing of an application under Section 1162.001 and for the purpose of establishing an estate plan under that section, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument.

(b) An application filed under this section must:

1. be sworn to by the guardian;
2. list each instrument requested for inspection; and
3. state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a). (Tex. Prob. Code, Secs. 865A(a), (b).)

**Source Law**

Sec. 865A. (a) On the filing of an application under Section 865 of this code, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of establishing an estate plan.
under Section 865 of this code.

(b) An application filed under this section must:
   (1) be sworn to by the guardian;
   (2) list all of the instruments requested for inspection; and
   (3) state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

Revisor's Note

(1) Section 865A(a), Texas Probate Code, refers to the filing of an application and to establishing an estate plan "under Section 865 of this code." The portion of Section 865, Texas Probate Code, under which an application is filed and the establishment of an estate plan is authorized is revised in this chapter as Section 1162.001. The revised law therefore substitutes references to Section 1162.001 for the references to Section 865, Texas Probate Code.

(2) Section 865A(a), Texas Probate Code, refers to a "true copy" of a will, codicil, trust, or other estate planning instrument. The revised law omits "true" as unnecessary because a document purporting to be a copy is not a copy if it is different from the original document. Similar changes are made throughout this chapter.

Revised Law

Sec. 1162.006. NOTICE OF APPLICATION FOR INSPECTION. (a) A person who files an application under Section 1162.005 shall send a copy of the application to:

(1) each person who has custody of an instrument listed in the application;

(2) the ward's spouse;

(3) the ward's dependents;

(4) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate; and

(5) any other person as directed by the court.

(b) Notice required by Subsection (a) must be delivered by:
(1) registered or certified mail to a person described by Subsection (a)(1); and
(2) certified mail to a person described by Subsection (a)(2), (3), (4), or (5). (Tex. Prob. Code, Secs. 865A(c), (d) (part).)

Source Law

(c) A person who files an application under this section shall send a copy of the application to:
(1) each person who has custody of an instrument listed in the application;
(2) the ward's spouse;
(3) the ward's dependents;
(4) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate; and
(5) any other person as directed by the court.
(d) Notice required by Subsection (c) of this section must be delivered by certified mail to a person described by Subsection (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. . . .

Revisor's Note

Section 865A(c), Texas Probate Code, refers to an application filed under "this section." The portion of Section 865A, Texas Probate Code, under which an application for the inspection of certain documents is made is revised in this chapter as Section 1162.005. The revised law therefore substitutes a reference to Section 1162.005 for the reference to "this section."

Revised Law

Sec. 1162.007. HEARING ON APPLICATION FOR INSPECTION; INSPECTION. (a) After the 10th day after the date on which the applicant complies with the notice requirement under Section 1162.006, the applicant may request that a hearing be held on the application. Notice of the date, time, and place of the hearing must be given by the applicant to each person described by Section 1162.006(a)(1) when the court sets a date for a hearing on the application.
(b) After the conclusion of a hearing on the application for inspection and on a finding that good cause exists for an in camera
inspection of a requested instrument, the court shall direct the
person that has custody of the requested will, codicil, trust, or
other estate planning instrument to deliver a copy of the
instrument to the court for in camera inspection only. After
conducting an in camera inspection of the instrument, the court, if
good cause exists, shall release all or part of the instrument to
the applicant only for the purpose described by Section
1162.005(a).

(c) An attorney does not violate the attorney-client
privilege solely by complying with a court order to release an
instrument subject to this section and Sections 1162.005 and
1162.006. Notwithstanding Section 22.004, Government Code, the
supreme court may not amend or adopt rules in conflict with this
subsection. (Tex. Prob. Code, Secs. 865A(d) (part), (e), (g).)

Source Law

(d) . . . After the 10th day after the date on
which the applicant complies with the notice
requirement, the applicant may request that a hearing
be held on the application. Notice of the date, time,
and place of the hearing must be given by the applicant
to each person described by Subsection (c)(1) of this
section when the court sets a date for a hearing on the
application.

(e) After the conclusion of a hearing on the
application and on a finding that there is good cause
for an in camera inspection of a requested instrument,
the court shall direct the person that has custody of
the requested will, codicil, trust, or other estate
planning instrument to deliver a true copy of the
instrument to the court for in camera inspection only.
After conducting an in camera review of the
instrument, the court, if good cause exists, shall
release all or part of the instrument to the applicant
only for the purpose described by Subsection (a) of
this section.

(g) An attorney does not violate the
attorney-client privilege solely by complying with a
court order to release an instrument subject to this
section. Notwithstanding Section 22.004, Government
Code, the supreme court may not amend or adopt rules in
conflict with this subsection.

Revisor's Note

(1) Section 865A(a), Texas Probate Code, which
is revised in Section 1162.005 of this code,
authorizes the guardian of a ward's estate to apply for
an "in camera inspection" of certain instruments.
Section 865A(e), Texas Probate Code, refers both to an "in camera inspection" of an instrument and to an "in camera review" of an instrument. The revised law substitutes the term "inspection" for the term "review" for consistency of terminology and because it is clear from the context of Section 865A, Texas Probate Code, that the "in camera review" is the same as the "in camera inspection."

(2) Section 865A(g), Texas Probate Code, refers to the attorney-client privilege in relation to an attorney's compliance with a court order to release, for in camera inspection, an instrument "subject to this section," meaning Section 865A. The relevant portions of Section 865A are revised in this chapter as this section and Sections 1162.005 and 1162.006. The revised law is drafted accordingly.

Revised Law

Sec. 1162.008. GUARDIAN AD LITEM. The court may appoint a guardian ad litem for the ward or an interested party at any stage of proceedings under this subchapter if it is considered advisable for the protection of the ward or the interested party. (Tex. Prob. Code, Secs. 865(c), 865A(f).)

Source Law

[Sec. 865]
(c) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings if it is deemed advisable for the protection of the ward or the interested party.

[Sec. 865A]
(f) The court may appoint a guardian ad litem for the ward or an interested party at any stage of the proceedings if it is considered advisable for the protection of the ward or the interested party.

[Sections 1162.009-1162.050 reserved for expansion]

SUBCHAPTER B. CHARITABLE AND NONPROFIT GIFTS

Revised Law

Sec. 1162.051. APPLICATION TO MAKE GIFT. The guardian of the estate may at any time file with the county clerk the guardian's
sworn, written application requesting from the court in which the guardianship is pending an order authorizing the guardian to contribute from the income of the ward's estate the specific amount of money stated in the application to one or more designated:

(1) corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or

(2) nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare. (Tex. Prob. Code, Sec. 866(a).)

Source Law

Sec. 866. (a) The guardian of the estate may at any time file the guardian's sworn application in writing with the county clerk requesting an order from the court in which the guardianship is pending authorizing the guardian to contribute from the income of the ward's estate a specific amount of money as stated in the application, to one or more:

(1) designated corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or

(2) designated nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare.

Revised Law

Sec. 1162.052. HEARING ON APPLICATION TO MAKE GIFT. (a) The county clerk shall immediately call the filing of an application under Section 1162.051 to the attention of the judge of the court.

(b) The judge shall designate, by written order filed with the clerk, a day to hear the application. The application must remain on file for at least 10 days before the hearing is held.

(c) The judge may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

(Tex. Prob. Code, Sec. 866(b).)
may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

Revised Law

Sec. 1162.053. ORDER AUTHORIZING GIFT. On the conclusion of a hearing under Section 1162.052, the court may enter an order authorizing the guardian to make a contribution from the income of the ward's estate to a particular donee designated in the application and order if the court is satisfied and finds from the evidence that:

(1) the amount of the proposed contribution stated in the application will probably not exceed 20 percent of the net income of the ward's estate for the current calendar year;

(2) the net income of the ward's estate for the current calendar year exceeds, or probably will exceed, $25,000;

(3) the full amount of the contribution, if made, will probably be deductible from the ward's gross income in determining the net income of the ward under applicable federal income tax laws and rules;

(4) the condition of the ward's estate justifies a contribution in the proposed amount; and

(5) the proposed contribution is reasonable in amount and is for a worthy cause. (Tex. Prob. Code, Sec. 866(c).)

Source Law

(c) On the conclusion of a hearing under this section, the court may enter an order authorizing the guardian to make a contribution from the income of the ward's estate to a particular donee designated in the application and order if the court is satisfied and finds from the evidence that:

(1) the amount of the proposed contribution stated in the application will probably not exceed 20 percent of the net income of the ward's estate for the current calendar year;

(2) the net income of the ward's estate for the current calendar year exceeds, or probably will exceed, $25,000;

(3) the full amount of the contribution, if made, will probably be deductible from the ward's gross income in determining the net income of the ward under applicable federal income tax laws and rules;

(4) the condition of the ward's estate justifies a contribution in the proposed amount; and

(5) the proposed contribution is reasonable in amount and is for a worthy cause.
Revisor's Note
Section 866(c), Texas Probate Code, refers to a hearing "under this section." The portion of Section 866, Texas Probate Code, under which a hearing is held is revised in this chapter as Section 1162.052. The revised law therefore substitutes a reference to Section 1162.052 for the reference to "this section."

CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS
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Sec. 1163.001. INITIAL ANNUAL ACCOUNT OF ESTATE. (a) Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period, the guardian shall file with the court an account consisting of a written exhibit made under oath that:

1. (1) lists all claims against the estate presented to the guardian during the period covered by the account; and
2. (2) specifies:
   (A) which claims have been:
      (i) allowed by the guardian;
      (ii) paid by the guardian; or
      (iii) rejected by the guardian and the date the claims were rejected; and
   (B) which claims have been the subject of a lawsuit and the status of that lawsuit.

(b) The account must:

1. (1) show all property that has come to the guardian's knowledge or into the guardian's possession that was not previously listed or inventoried as the ward's property;
2. (2) show any change in the ward's property that was not previously reported;
3. (3) provide a complete account of receipts and disbursements for the period covered by the account, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;
(4) provide a complete, accurate, and detailed description of:
   (A) the property being administered;
   (B) the condition of the property and the use being made of the property; and
   (C) if rented, the terms on which and the price for which the property was rented;
(5) show the cash balance on hand and the name and location of the depository where the balance is kept;
(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash; and
(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping.

(c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:
   (1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;
   (2) the date of issue and maturity;
   (3) the interest rate;
   (4) the serial number or other identifying numbers;
   (5) the manner in which the property is secured; and
   (6) other information necessary to fully identify the bond, note, or other security. (Tex. Prob. Code, Sec. 741(a).)
that has not been previously listed or inventoried as property of the ward;

(2) any changes in the property of the ward that have not been previously reported;

(3) a complete account of receipts and disbursements for the period covered by the account, and the source and nature of the receipts and disbursements, with receipts of principal and income shown separately;

(4) a complete, accurate, and detailed description of the property being administered, the condition of the property, and the use being made of the property and, if rented, the terms of the rental and the price for which the property is being rented;

(5) the cash balance on hand and the name and location of the depository where the cash balance is kept and any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository of the cash; and

(6) a detailed description of personal property of the estate, that, with respect to bonds, notes, and other securities, includes the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

Revisor's Note
Section 741(a), Texas Probate Code, refers to a written exhibit a guardian of the estate of the ward must "return" to the court. Throughout this chapter, the revised law substitutes "file" for "return" for consistency of terminology throughout this chapter.

Revised Law
Sec. 1163.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.

(a) A guardian of the estate shall file an annual account conforming to the essential requirements of Section 1163.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

(b) The annual account must be filed in a manner that allows the court or an interested person to ascertain the true condition of the estate, with respect to money, securities, and other property, by adding to the balances forwarded from the most recent previous account the amounts received during the period covered by the account and subtracting the disbursements made during that period.

(c) The description of property sufficiently described in an inventory or previous account may be made in the annual account.
by reference to the property. (Tex. Prob. Code, Sec. 741(b).)

**Source Law**

(b) A guardian of the estate shall file annual accounts conforming to the essential requirements of those in Subsection (a) of this section as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money or securities or other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference to the property.

**Revised Law**

Sec. 1163.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS ATTACHED TO ACCOUNT. (a) The guardian of the estate shall attach to each annual account:

(1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;

(2) an official letter from the bank or other depository where the money on hand of the estate or ward is deposited that shows the amounts in general or special deposits; and

(3) proof of the existence and possession of:

(A) securities owned by the estate or shown by the account; and

(B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the guardian after approval of the annual account. (Tex. Prob. Code, Sec. 741(c) (part).)

**Source Law**

(c) The following shall be annexed to all annual accounts of guardians of estates:

(1) proper vouchers for each item of credit claimed in the account, or, in the absence of a voucher, the item must be supported by evidence satisfactory to the court, and original vouchers may, on application, be returned to the guardian after approval of the guardian's account;

(2) an official letter from the bank or other depository in which the money on hand of the estate or ward is deposited that shows the amounts in
general or special deposits; and

(3) proof of the existence and possession
of securities owned by the estate, or shown by the
accounting, and other assets held by a depository
subject to court order, . . . .

Revisor's Note

Section 741(c)(1), Texas Probate Code, refers to
"proper vouchers" for each item of credit. The revised
law omits "proper" because an improper voucher would
not satisfy the requirements of law.

Revised Law

Sec. 1163.004. METHOD OF PROOF FOR SECURITIES AND OTHER
ASSETS. (a) The proof required by Section 1163.003(a)(3) must be
by:

(1) an official letter from the bank or other
depository where the securities or other assets are held for
safekeeping, and if the depository is the guardian, the official
letter must be signed by a representative of the depository other
than the depository verifying the annual account;

(2) a certificate of an authorized representative of a
corporation that is surety on the guardian's bonds;

(3) a certificate of the clerk or a deputy clerk of a
court of record in this state; or

(4) an affidavit of any other reputable person
designated by the court on request of the guardian or other
interested party.

(b) A certificate or affidavit described by Subsection (a)
must:

(1) state that the affiant has examined the assets
that the guardian exhibited to the affiant as assets of the estate
for which the annual account is made;

(2) describe the assets by reference to the account or
in another manner that sufficiently identifies the assets
exhibited; and

(3) state the time and the place the assets were
exhibited.

(c) Instead of attaching a certificate or an affidavit, the
guardian may exhibit the securities to the judge of the court, who
shall endorse on the annual account, or include in the judge's order
with respect to the account, a statement that the securities shown
to the judge as on hand were exhibited to the judge and that the
securities were the same as those shown in the account, or note any
variance. If the securities are exhibited at a location other than
where the securities are deposited for safekeeping, that exhibit is
at the guardian's own expense and risk.

(d) The judge of the court may require:

(1) additional evidence of the existence and custody
of the securities and other personal property as the judge
considers proper; and

(2) the guardian at any time to exhibit the securities
to the judge or another person designated by the judge at the place
where the securities are held for safekeeping. (Tex. Prob. Code,
Secs. 741(c) (part), (d).)

Source Law

(c) The following shall be annexed to all
annual accounts of guardians of estates:

(3) proof of the existence and possession
of securities owned by the estate, or shown by the
accounting, and other assets held by a depository
subject to court order,] the proof by one of the
following means:

(A) an official letter from the bank
or other depository that holds the securities or other
assets for safekeeping; provided, that if the
depository is the representative, the official letter
shall be signed by a representative of the depository
other than the depository that verifies the account;

(B) a certificate of an authorized
representative of the corporation that is the surety
on the representative's bonds;

(C) a certificate of the clerk or a
deputy clerk of a court of record in this state; or

(D) an affidavit of any other
reputable person designated by the court on request of
the guardian or other interested party.

(d) A certificate or affidavit under this
section shall be to the effect that the affiant has
examined the assets exhibited to the affiant by the
guardian as assets of the estate in which the
accounting is made, shall describe the assets by
reference to the account or otherwise sufficiently to
identify those assets exhibited, and shall state the
time when and the place where the assets were
exhibited. Instead of using a certificate or an
affidavit, the representative may exhibit the
securities to the judge of the court who shall endorse
on the account, or include in the judge's order with
respect to the account, a statement that the securities shown to the judge as on hand were in fact exhibited to the judge and that those securities exhibited to the judge were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The judge may require additional evidence as to the existence and custody of the securities and other personal property as in the judge’s discretion the judge considers proper, and the judge may require the representative to exhibit the securities to the judge, or any person designated by the judge, at any time at the place where the securities are held for safekeeping.

Revisor’s Note

(1) Section 741(c)(3)(A), Texas Probate Code, provides for a guardian of the estate to attach to an annual account as proof of the existence of securities or other assets an official letter from a depository and imposes additional requirements if "the representative" is the depository. Section 741(c)(3)(B) also authorizes as proof a certificate of an authorized representative of the corporate surety on "the representative's" bonds. Section 741(d), Texas Probate Code, provides an additional manner of proof in which "the representative" may exhibit securities to the judge and provides that "the representative" bears the risk and expense of exhibiting the securities at a place other than where deposited for safekeeping. Section 741(d) also provides that the judge may require "the representative" to exhibit the securities to the judge or another person. The revised law substitutes references to the guardian for the cited references to the representative because Section 601(23), Texas Probate Code, revised as Section 1002.028 of this code, defines "representative" to include a guardian, and it is clear from the context of Section 741 that the cited references to the representative refer to the guardian of the estate who is required to file an account under that section and who may be required to
give bond under the provisions revised in Chapter 1105
of this code.

(2) Section 741(d), Texas Probate Code, refers
to "using a certificate or an affidavit" as proof of
the existence and possession of certain securities and
other assets. Because it is clear in context that
"using" is referring to attaching the proof to the
annual account as previously referenced in Section
741(c) and revised in Section 1163.003(a) of this
chapter, the revised law substitutes "attaching a
certificate or an affidavit" for the reference to
"using a certificate or an affidavit" for consistency
of terminology.

Revised Law
Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT
REGARDING TAXES. (a) The guardian of the estate shall attach to an
account the guardian's affidavit stating:
(1) that the account contains a correct and complete
statement of the matters to which the account relates;
(2) that the guardian has paid the bond premium for the
next accounting period;
(3) that the guardian has filed all tax returns of the
ward due during the accounting period; and
(4) that the guardian has paid all taxes the ward owed
during the accounting period, the amount of the taxes, the date the
guardian paid the taxes, and the name of the governmental entity to
which the guardian paid the taxes.

(b) If on the filing of the account the guardian of the
estate has failed on the ward's behalf to file a tax return or pay
taxes due, the guardian shall attach to the account a description of
the taxes and the reasons for the guardian's failure to file the
return or pay the taxes. (Tex. Prob. Code, Secs. 741(e), (f).)

Source Law
(e) The guardian of the estate filing the
account shall attach to the account the guardian's
affidavit that:

(1) the account contains a correct and complete statement of the matters to which the account relates;

(2) the guardian has paid the bond premium for the next accounting period;

(3) the guardian has filed all tax returns of the ward due during the accounting period; and

(4) the guardian has paid all taxes the ward owed during the accounting period, showing:

(A) the amount of the taxes;

(B) the date the guardian paid the taxes; and

(C) the name of the governmental entity to which the guardian paid the taxes.

(f) If the guardian, on the ward's behalf, has not filed a tax return or paid taxes that are due on the filing of the account under this section, the guardian of the estate filing the account shall attach to the account a description of the taxes and the reasons for the guardian's failure to file the return or pay the taxes.

Revised Law

Sec. 1163.006. WAIVER OF ACCOUNT FILING. If the ward's estate produces negligible or fixed income, the court may waive the filing of annual accounts and may permit the guardian to:

(1) receive all estate income and apply the income to the support, maintenance, and education of the ward; and

(2) account to the court for the estate income and corpus when the estate must be closed. (Tex. Prob. Code, Sec. 741(g).)

Source Law

(g) If the estate produces negligible or fixed income, the court has the power to waive the filing of annual accounts, and the court may permit the guardian to receive all income and apply it to the support, maintenance, and education of the ward and account to the court for income and corpus of the estate when the estate must be closed.

[Sections 1163.007-1163.050 reserved for expansion]

SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

Revised Law

Sec. 1163.051. FILING AND CONSIDERATION OF ANNUAL ACCOUNT.

(a) The guardian of the estate shall file an annual account with the county clerk. The county clerk shall note the filing on the judge's docket.

(b) An annual account must remain on file for 10 days after the date the account is filed before being considered by the judge.
After the expiration of that period, the judge shall consider the account and may continue the hearing on the account until fully advised on all account items.

(c) The court may not approve the annual account unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proven as required by law. (Tex. Prob. Code, Secs. 742(a), (b), (c), (d), (e).)

Source Law

Sec. 742. (a) The rules in this section govern the handling of annual accounts.
(b) Annual accounts shall be filed with the county clerk, and the filing of the accounts shall be noted on the judge's docket.
(c) Before being considered by the judge, the account must remain on file for 10 days.
(d) After the expiration of 10 days after the filing of an annual account, the judge shall consider the annual account, and may continue the hearing on the account until the judge is fully advised as to all items of the account.
(e) An accounting may not be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proved as required by law.

Revisor's Note

Section 742(b), Texas Probate Code, requires an annual account to be filed with the county clerk. While the source law does not specify who is required to file the annual account, Sections 741(a) and (b), Texas Probate Code, revised in this chapter as Sections 1163.001 and 1163.002, clarify that the guardian of the estate has the duty to file the annual account. The revised law is drafted accordingly.

Revised Law

Sec. 1163.052. CORRECTION AND APPROVAL OF ANNUAL ACCOUNT.
(a) If an annual account is found to be incorrect, the account shall be corrected.
(b) The court by order shall approve an annual account that is corrected to the satisfaction of the court and shall act with respect to unpaid claims in accordance with Sections 1163.053 and 1163.054. (Tex. Prob. Code, Sec. 742(f) (part).)
Source Law

[Sec. 742. (a) The rules in this section govern the handling of annual accounts.]

(f) If an account is found to be incorrect, it shall be corrected. When corrected to the satisfaction of the court, the account shall be approved by a court order, and the court shall act with respect to unpaid claims, as follows:

Revised Law

Sec. 1163.053. ORDER FOR PAYMENT OF CLAIMS IN FULL. After approval of an annual account as provided by Section 1163.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the guardian has sufficient funds to pay every claim against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment. (Tex. Prob. Code, Sec. 742(f) (part).)

Source Law

[Sec. 742. (a) The rules in this section govern the handling of annual accounts.]

(f) If an account is found to be incorrect, it shall be corrected. When corrected to the satisfaction of the court, the account shall be approved by a court order, and the court shall act with respect to unpaid claims, as follows:

Revised Law

Sec. 1163.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS. After approval of an annual account as provided by Section 1163.052, if it appears to the court from the account or other evidence that the funds on hand are not sufficient to pay all claims against the estate or if the estate is insolvent and the guardian has any funds on hand, the court shall order the funds to be applied:

(1) first to the payment of any unpaid claims having a preference in the order of their priority; and

(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering
also:

(A) claims that were presented not later than the
first anniversary of the date letters of guardianship were granted;
and

(B) claims that are in litigation or on which a
lawsuit may be filed. (Tex. Prob. Code, Sec. 742(f) (part).)

Source Law

[Sec. 742. (a) The rules in this section govern
the handling of annual accounts.

(f) If an account is found to be incorrect, it
shall be corrected. When corrected to the
satisfaction of the court, the account shall be
approved by a court order, and the court shall act with
respect to unpaid claims, as follows:

(2) if it appears from the account, or from
other evidence, that the funds on hand are not
sufficient for the payment of all the claims, or if the
estate is insolvent and the guardian has any funds on
hand, the court shall order the funds to be applied to
the payment of all claims having a preference in the
order of their priority if any claim is still unpaid,
and then to the payment pro rata of the other claims
allowed and approved or established by final judgment,
taking into consideration also the claims that were
presented not later than 12 months after the date of
the granting of letters of guardianship and those
claims that are in suit or on which suit may yet be
instituted.

[Sections 1163.055-1163.100 reserved for expansion]

SUBCHAPTER C. ANNUAL REPORT BY GUARDIAN OF THE PERSON

Revised Law

Sec. 1163.101. ANNUAL REPORT REQUIRED. (a) Once each year
for the duration of the guardianship, a guardian of the person shall
file with the court a report that contains the information required
by this section.

(b) The guardian of the person shall file a sworn, written
report that shows each receipt and disbursement for:

(1) the support and maintenance of the ward;
(2) when necessary, the education of the ward; and
(3) when authorized by court order, the support and
maintenance of the ward's dependents.

(c) The guardian of the person shall file a sworn affidavit
that contains:
(1) the guardian's current name, address, and telephone number;
(2) the ward's date of birth and current name, address, telephone number, and age;
(3) a description of the type of home in which the ward
resides, which shall be described as:
(A) the ward's own home;
(B) a nursing home;
(C) a guardian's home;
(D) a foster home;
(E) a boarding home;
(F) a relative's home, in which case the
description must specify the relative's relationship to the ward;
(G) a hospital or medical facility; or
(H) another type of residence;
(4) statements indicating:
(A) the length of time the ward has resided in the
present home;
(B) the reason for a change in the ward's
residence, if a change in the ward's residence has occurred in the
past year;
(C) the date the guardian most recently saw the
ward;
(D) how frequently the guardian has seen the ward
in the past year;
(E) whether the guardian has possession or
control of the ward's estate;
(F) whether the ward's mental health has
improved, deteriorated, or remained unchanged during the past year,
including a description of the change if a change has occurred;
(G) whether the ward's physical health has
improved, deteriorated, or remained unchanged during the past year,
including a description of the change if a change has occurred;
(H) whether the ward has regular medical care;
1 and
2 (I) the ward's treatment or evaluation by any of
3 the following persons during the past year, including the person's
4 name and a description of the treatment:
5  (i) a physician;
6  (ii) a psychiatrist, psychologist, or other
7 mental health care provider;
8  (iii) a dentist;
9  (iv) a social or other caseworker; or
10  (v) any other individual who provided
11 treatment;
12  (5) a description of the ward's activities during the
13 past year, including recreational, educational, social, and
14 occupational activities, or a statement that no activities were
15 available or that the ward was unable or refused to participate in
16 activities;
17  (6) the guardian's evaluation of:
18    (A) the ward's living arrangements as excellent,
19    average, or below average, including an explanation if the
20    conditions are below average;
21    (B) whether the ward is content or unhappy with
22    the ward's living arrangements; and
23    (C) unmet needs of the ward;
24  (7) a statement indicating whether the guardian's
25 power should be increased, decreased, or unaltered, including an
26 explanation if a change is recommended;
27  (8) a statement indicating that the guardian has paid
28 the bond premium for the next reporting period; and
29  (9) any additional information the guardian desires to
30 share with the court regarding the ward, including:
31    (A) whether the guardian has filed for emergency
32 detention of the ward under Subchapter A, Chapter 573, Health and
33 Safety Code; and
34    (B) if applicable, the number of times the
guardian has filed for emergency detention and the dates of the
applications for emergency detention. (Tex. Prob. Code, Secs.
743(a), (b), (g) (part).)

Source Law

Sec. 743. (a) The guardian of the person of a
ward shall return to the court a sworn, written report
showing each item of receipts and disbursements for
the support and maintenance of the ward, the education
of the ward when necessary, and support and
maintenance of the ward's dependents, when authorized
by order of court.

(b) The guardian of the person, whether or not
there is a separate guardian of the estate, shall
submit to the court an annual report by sworn affidavit
that contains the following information:

(1) the guardian's current name, address,
and phone number;
(2) the ward's current:
   (A) name, address, and phone number;
   and
   (B) age and date of birth;
(3) the type of home in which the ward
resides, described as the ward's own; a nursing,
guardian's, foster, or boarding home; a relative's
home, and the ward's relationship to the relative; a
hospital or medical facility; or other type of
residence;
(4) the length of time the ward has resided
in the present home and, if there has been a change in
the ward's residence in the past year, the reason for
the change;
(5) the date the guardian most recently
saw the ward, and how frequently the guardian has seen
the ward in the past year;
(6) a statement indicating whether or not
the guardian has possession or control of the ward's
estate;
(7) the following statements concerning
the ward's health during the past year:
   (A) whether the ward's mental health
   has improved, deteriorated, or remained unchanged, and
   a description if there has been a change; and
   (B) whether the ward's physical
   health has improved, deteriorated, or remained
   unchanged, and a description if there has been a
   change;
(8) a statement concerning whether or not
the ward has regular medical care, and the ward's
treatment or evaluation by any of the following
persons during the last year, including the name of
that person, and the treatment involved:
   (A) a physician;
   (B) a psychiatrist, psychologist, or
   other mental health care provider;
   (C) a dentist;
   (D) a social or other caseworker; or
   (E) another individual who provided
treatment;
(9) a description of the ward's activities
during the past year, including recreational,
educational, social, and occupational activities, or
if no activities are available or if the ward is unable
or has refused to participate in them, a statement to
that effect;
(10) the guardian's evaluation of the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(11) the guardian's evaluation of whether the ward is content or unhappy with the ward's living arrangements;

(12) the guardian's evaluation of unmet needs of the ward;

(13) a statement of whether or not the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(14) a statement that the guardian has paid the bond premium for the next reporting period; and

(15) any additional information the guardian desires to share with the court regarding the ward, including whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code, and if applicable, the number of times the guardian has filed and the dates of the applications.

(g) Once each year for the duration of the guardianship, a guardian of the person shall file the report that contains the information required by Subsections (a) and (b) of this section.

Revisor's Note

Section 743(b), Texas Probate Code, provides that the guardian of the person, "whether or not there is a separate guardian of the estate," shall submit an annual report containing certain specified information. The revised law omits the quoted language as unnecessary. When enacted in 1993, Section 743(a), Texas Probate Code, required the guardian of the person, "when there is a separate guardian of the estate," to return to the court a sworn account showing each item of receipts and disbursements for certain of the ward's expenses, while Section 743(b) required the guardian of the person, "whether or not there is a separate guardian of the estate," to submit an annual report containing certain specified information. In 1995, Section 743(a) was amended to remove the language limiting the applicability of the subsection to situations when there is a separate guardian of the estate, with the result being that the reports required under Sections 743(a) and (b) are required of
all guardians of the person. Therefore, the language
specifying that Section 743(b) applies whether or not
there is a separate guardian of the estate is no longer
necessary to distinguish the applicability of Section
743(b) from the applicability of Section 743(a).
Furthermore, the revision of Section 743(b) applies to
all guardians of the person by its own terms,
regardless of whether there is a separate guardian of
the estate.

Revised Law
Sec. 1163.102. REPORTING PERIOD. (a) Except as provided
under Subsection (b), an annual report required by Section 1163.101
must cover a 12-month reporting period that begins on the date or
the anniversary of the date the guardian of the person qualifies to
serve.

(b) The court may change a reporting period for purposes of
this subchapter but may not extend a reporting period so that it
covers more than 12 months.

(c) Each report is due not later than the 60th day after the
date the reporting period ends. (Tex. Prob. Code, Secs. 743(g)
(part), (h), (i).)

Source Law
(g) [Once each year for the duration of the
guardianship, a guardian of the person shall file the
report that contains the information required by
Subsections (a) and (b) of this section.] Except as
provided by Subsection (h) of this section, the report
must cover a 12-month reporting period that begins on
the date the guardian qualifies to serve.

(h) The court may change a reporting period for
purposes of this section but may not extend a reporting
period so that it covers more than 12 months.

(i) Each report is due not later than the 60th
day after the date on which the reporting period ends.

Revisor's Note
Section 743(g), Texas Probate Code, provides that
an annual report of a guardian of the person must cover
a 12-month reporting period that begins on the date the
guardian qualifies to serve. The revised law
specifies that the report must cover a period that
begins on the date the guardian qualifies to serve or
on the anniversary of that date because the report is
required each year, but only the initial reporting
period will begin on the actual date the guardian
qualifies to serve.

Revised Law
Sec. 1163.103. REPORT IN CASE OF DECEASED WARD. If the ward
is deceased, the guardian of the person shall provide the court with
the date and place of death, if known, instead of the information
about the ward otherwise required to be provided in the annual
report. (Tex. Prob. Code, Sec. 743(c).)

Source Law
(c) If the ward is deceased, the guardian shall
provide the court with the date and place of death, if
known, in lieu of the information about the ward
otherwise required to be provided in the annual
report.

Revised Law
Sec. 1163.104. APPROVAL OF REPORT. (a) If the judge is
satisfied that the facts stated in the report are true, the court
shall approve the report.
(b) Unless the judge is satisfied that the facts stated in
the report are true, the judge shall issue orders necessary for the
ward's best interests.
(c) The court on the court's own motion may waive the costs
and fees related to the filing of a report approved under Subsection
(a). (Tex. Prob. Code, Secs. 743(d), (e), (f).)

Source Law
(d) Unless the judge is satisfied that the facts
stated are true, he shall issue orders as are necessary
for the best interests of the ward.
(e) If the judge is satisfied that the facts
stated in the report are true, the court shall approve
the report.
(f) The court on the court's own motion may waive
the costs and fees related to the filing of a report
approved under Subsection (e) of this section.

Revised Law
Sec. 1163.105. ATTORNEY NOT REQUIRED. A guardian of the
person may complete and file the report required under this
subchapter without the assistance of an attorney. (Tex. Prob. Code, Sec. 743(j).)

Source Law

(j) A guardian of the person may complete and file the report required under this section without the assistance of an attorney.

[Sections 1163.106-1163.150 reserved for expansion]

SUBCHAPTER D. PENALTIES

Revised Law

Sec. 1163.151. PENALTY FOR FAILURE TO FILE REQUIRED ACCOUNT, EXHIBIT, OR REPORT. (a) If a guardian does not file an account, an exhibit, a report of the guardian of the person, or another report required by this title, any person interested in the estate, on written complaint filed with the court clerk, or the court on the court's own motion, may have the guardian cited to appear and show cause why the guardian should not file the account, exhibit, or report.

(b) On hearing, the court may:

(1) order the guardian to file the account, exhibit, or report; and

(2) unless good cause is shown for the failure to file:

(A) revoke the guardian's letters of guardianship;

(B) fine the guardian in an amount not to exceed $1,000; or

(C) revoke the guardian's letters of guardianship and fine the guardian in an amount not to exceed $1,000. (Tex. Prob. Code, Sec. 744.)

Source Law

Sec. 744. If a guardian fails to file any accounting, exhibit, report of the guardian of the person, or other report required by this chapter, any person interested in the estate may, on written complaint filed with the clerk of the court, or the court on its own motion, may cause the guardian to be cited to appear and show cause why the guardian should not file the account, exhibit, or report; and, on hearing, the court may order the guardian to file the account, exhibit, or report, and, unless good cause is shown for the failure to file the account, exhibit, or report, the court may fine the guardian an amount not
to exceed $1,000, revoke the letters of the guardian, or fine the guardian an amount not to exceed $1,000 and revoke the letters of the guardian.

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

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CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

Revised Law

Sec. 1164.001. LIABILITY OF GUARDIAN. A person is not liable to a third person solely because the person has been appointed guardian of a ward under this title. (Tex. Prob. Code, Sec. 673.)

Source Law

Sec. 673. A person is not liable to a third person solely because the person has been appointed guardian of a ward under this chapter.

Revised Law

Sec. 1164.002. IMMUNITY OF GUARDIANSHIP PROGRAM. A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission was:

(1) wilfully wrongful;
(2) taken or made:
   (A) with conscious indifference to or reckless disregard for the safety of the ward or another;
   (B) in bad faith; or
   (C) with malice; or
(3) grossly negligent. (Tex. Prob. Code, Sec. 674.)

Source Law

Sec. 674. A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission:

(1) was wilfully wrongful;
(2) was taken or made with conscious indifference or reckless disregard to the safety of the incapacitated person or another;
(3) was taken or made in bad faith or with malice; or
(4) was grossly negligent.
Section 674(2), Texas Probate Code, refers to "the incapacitated person." The revised law substitutes "the ward" for "the incapacitated person" because it is clear from the context of Section 674 that "the incapacitated person" is the previously referenced ward to whom the guardianship services are provided.

[Chapters 1165-1200 reserved for expansion]

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTER 1201. EVALUATION OF GUARDIANSHIP

SUBCHAPTER A. REVIEW OF GUARDIANSHIP

Sec. 1201.001. DETERMINING GUARDIAN'S PERFORMANCE OF DUTIES. The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian's ward. (Tex. Prob. Code, Sec. 671(a).)
Sec. 671. (a) The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that pertain to the guardian's ward.

Revised Law
Sec. 1201.002. ANNUAL EXAMINATION OF GUARDIANSHIP; BOND OF GUARDIAN. (a) At least annually, the judge shall examine the well-being of each ward of the court and the solvency of the bond of the guardian of the ward's estate.

(b) If after examining the solvency of a guardian's bond as provided by Subsection (a) the judge determines that the guardian's bond is not sufficient to protect the ward or the ward's estate, the judge shall require the guardian to execute a new bond.

(c) The judge shall notify the guardian and the sureties on the guardian's bond as provided by law. (Tex. Prob. Code, Secs. 671(b), (c), (d) (part).)

Sec. 671(c), Texas Probate Code, refers to the judge's examination of the solvency of a guardian's bond "under this section," meaning Section 671, Texas Probate Code. The requirement that the judge examine the solvency of a guardian's bond is found in Section 671(b), Texas Probate Code, revised as Subsection (a) of this section. Therefore, the revised law substitutes a reference to "Subsection (a)" for the quoted language.

Sec. 1201.003. JUDGE'S LIABILITY. A judge is liable on the
judge's bond to those damaged if damage or loss results to a
 guardianship or ward because of the gross neglect of the judge to
 use reasonable diligence in the performance of the judge's duty
 under this subchapter. (Tex. Prob. Code, Sec. 671(d) (part).)

Source Law
(d) . . . If damage or loss results to a
 guardian or ward because of gross neglect of the
 judge to use reasonable diligence in the performance
 of the judge's duty under this section, the judge shall
 be liable on the judge's bond to those damaged by the
 judge's neglect.

Revised Law
Sec. 1201.004. IDENTIFYING INFORMATION. (a) The court may
request an applicant or court-appointed fiduciary to produce other
information identifying an applicant, ward, or guardian, including
a social security number, in addition to identifying information
the applicant or fiduciary is required to produce under this title.
(b) The court shall maintain any information required under
this section, and the information may not be filed with the clerk.

Source Law
(e) The court may request an applicant or
court-appointed fiduciary to produce other
information identifying an applicant, ward, or
guardian, including social security numbers, in
addition to identifying information the applicant or
fiduciary is required to produce under this code. The
court shall maintain the information required under
this subsection, and the information may not be filed
with the clerk.

Revisor's Note
Section 671(e), Texas Probate Code, refers to
certain information required from applicants and
court-appointed fiduciaries under "this code,"
meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this code" because the provisions of the
Texas Probate Code that relate to information required
in a guardianship proceeding are revised in Title 3 of
this code, and this chapter is included in that title.

[Sections 1201.005-1201.050 reserved for expansion]
SUBCHAPTER B. ANNUAL DETERMINATION TO CONTINUE, MODIFY, OR TERMINATE GUARDIANSHIP

Revised Law
Sec. 1201.051. APPLICABILITY. This subchapter does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source. (Tex. Prob. Code, Sec. 672(e).)

Source Law
(e) This section does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source.

Revised Law
Sec. 1201.052. ANNUAL DETERMINATION. To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:
(1) shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993; and
(2) may review annually any other guardianship. (Tex. Prob. Code, Sec. 672(a).)

Source Law
Sec. 672. (a) A court in which a guardianship proceeding is pending shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993, and may review annually any other guardianship to determine whether the guardianship should be continued, modified, or terminated.

Revised Law
Sec. 1201.053. METHOD OF DETERMINATION. (a) In reviewing a guardianship under Section 1201.052, a statutory probate court may:
(1) review any report prepared by:
(A) a court investigator under Section 1054.153 or 1202.054;
(B) a guardian ad litem under Section 1202.054;
or
(C) a court visitor under Section 1054.104;
(2) conduct a hearing; or
(3) review an annual account prepared under Subchapter A, Chapter 1163, or a report prepared under Subchapter C, Chapter 1163.

(b) A court that is not a statutory probate court may use any method to review a guardianship under Section 1201.052 that is determined appropriate by the court according to the court's caseload and available resources. (Tex. Prob. Code, Secs. 672(b), (c).)

Source Law

(b) In reviewing a guardianship as provided by Subsection (a) of this section, a statutory probate court may:

(1) review any report prepared by a court investigator under Section 648A or 694A(c) of this code;

(2) review any report prepared by a guardian ad litem under Section 694A(c) of this code;

(3) review any report prepared by a court visitor under Section 648 of this code;

(4) conduct a hearing; or

(5) review an annual account prepared under Section 741 of this code or a report prepared under Section 743 of this code.

(c) In reviewing a guardianship as provided by Subsection (a) of this section, a court that is not a statutory probate court may use any appropriate method determined by the court according to the court's caseload and the resources available to the court.

Revised Law

Sec. 1201.054. FORM OF DETERMINATION. A determination under this subchapter must be in writing and filed with the clerk. (Tex. Prob. Code, Sec. 672(d).)

Source Law

(d) A determination under this section must be in writing and filed with the clerk.
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CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP
SUBCHAPTER A. TERMINATION AND SETTLEMENT OF GUARDIANSHIP
Revised Law
Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP. (a)
Unless otherwise discharged as provided by law, a guardian remains

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in office until the estate is closed.

(b) A guardianship shall be settled and closed when the ward:

(1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity to care for himself or herself and to manage the ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.

(c) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

(d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(e) If a nonresident guardian of a nonresident ward qualifies as guardian under this title, any resident guardian's guardianship may be terminated. (Tex. Prob. Code, Sec. 694.)

Source Law

Sec. 694. (a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

(b) The guardianship shall be settled and closed when the incapacitated person:

(1) dies and, if the person was married, the person's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity to care for himself or herself and to manage the person's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the person from any governmental source.

(c) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the incapacitated person no longer requires the guardianship may not be filed without special leave.

(d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt.
of court.
(e) If a nonresident guardian of a nonresident
ward qualifies as guardian under this chapter, the
guardianship of any resident guardian may be
terminated.

Revisor's Note
Sections 694(b) and (c), Texas Probate Code,
refer to "the incapacitated person" for whom a
guardian or successor guardian has been appointed.
Section 601(31), Texas Probate Code, revised in this
title as Section 1002.030, defines "ward" as a person
for whom a guardian has been appointed. The revised
law substitutes "the ward" for "the incapacitated
person" for consistency of terminology in this title.

Revised Law
Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT IS NO
LONGER INCAPACITATED. (a) The powers of a person appointed to
serve as the designated guardian of the person or estate, or both,
of a minor child solely because of the incapacity of the minor's
surviving parent and in accordance with Section 1104.053 and
Subchapter D, Chapter 1104, terminate when a probate court enters
an order finding that the surviving parent is no longer an
incapacitated person.

(b) The powers of a person appointed to serve as the
designated guardian of the person or estate, or both, of an adult
individual solely because of the incapacity of the individual's
surviving parent and in accordance with Section 1104.103 and
Subchapter D, Chapter 1104, terminate when a probate court enters
an order finding that the surviving parent is no longer an
incapacitated person and reappointing the surviving parent as the
individual's guardian. (Tex. Prob. Code, Secs. 676(g), 677(e).)

Source Law
[Sec. 676]
(g) The powers of a person appointed to serve as
the designated guardian of the person or estate, or
both, of a minor child solely because of the incapacity
of the minor's surviving parent and in accordance with
this section and Section 677A of this code terminate
when a probate court enters an order finding that the
surviving parent is no longer an incapacitated person.
The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual's surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual's guardian.

[Sections 1202.003-1202.050 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

Revised Law

Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the guardian's powers or duties; and

(B) permitting the ward to care for himself or herself or to manage the ward's own financial affairs commensurate with the ward's ability. (Tex. Prob. Code, Sec. 694A(a).)

Source Law

Sec. 694A. (a) A ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or
to manage the ward's own financial affairs and granting
additional powers or duties to the guardian; or
(3) finding that the ward has the capacity
to do some, but not all, of the tasks necessary to
provide food, clothing, or shelter for himself or
herself, to care for the ward's own physical health, or
to manage the ward's own financial affairs and:
(A) limiting the powers or duties of
the guardian; and
(B) permitting the ward to care for
himself or herself or to manage the ward's own
financial affairs commensurate with the ward's
ability.

Revised Law
Sec. 1202.052. CONTENTS OF APPLICATION. An application
filed under Section 1202.051 must be sworn to by the applicant and
must state:
(1) the ward's name, sex, date of birth, and address;
(2) the name and address of any person serving as
guardian of the person of the ward on the date the application is
filed;
(3) the name and address of any person serving as
guardian of the estate of the ward on the date the application is
filed;
(4) the nature and description of the ward's
guardianship;
(5) the specific areas of protection and assistance
and any limitation of rights that exist;
(6) whether the relief being sought is:
(A) a restoration of the ward's capacity because
the ward is no longer an incapacitated person;
(B) the granting of additional powers or duties
performed by the guardian;
(C) the limitation of powers granted to or duties
performed by the guardian;
(7) if the relief being sought under the application
is described by Subdivision (6)(B) or (C):
(A) the nature and degree of the ward's
incapacity;
(B) the specific areas of protection and
assistance to be provided to the ward and requested to be included
in the court's order; and

   (C) any limitation of the ward's rights requested
to be included in the court's order;

   (8) the approximate value and description of the
ward's property, including any compensation, pension, insurance,
or allowance to which the ward is or may be entitled; and

   (9) if the ward is 60 years of age or older, the names
and addresses, to the best of the applicant's knowledge, of the
ward's spouse, siblings, and children or, if there is no known
spouse, sibling, or child, the names and addresses of the ward's
next of kin. (Tex. Prob. Code, Sec. 694B.)

Source Law

Sec. 694B. An application filed under Section
694A of this code must be sworn to by the applicant and
must:

   (1) contain the name, sex, date of birth,
   and address of the ward;
   (2) contain the name and address of any
   person serving as guardian of the person of the ward on
   the date the application is filed;
   (3) contain the name and address of any
   person serving as guardian of the estate of the ward on
   the date the application is filed;
   (4) state the nature and description of
   the ward's guardianship;
   (5) state the specific areas of protection
   and assistance and any limitation of rights that
   exist;
   (6) state whether the relief being sought
   is:
       (A) a restoration of the ward's
capacity because the ward is no longer an
incapacitated person;
       (B) the granting of additional powers
or duties to the guardian; or
       (C) the limitation of powers granted
to or duties performed by the guardian;
   (7) if the relief being sought under the
application is described by Subdivision (6)(B) or (C)
of this section, state:
       (A) the nature and degree of the
ward's incapacity;
       (B) the specific areas of protection
and assistance to be provided to the ward and requested
to be included in the court's order; and
       (C) any limitation of the ward's
rights requested to be included in the court's order;
   (8) state the approximate value and
description of the ward's property, including any
compensation, pension, insurance, or allowance to
which the ward is or may be entitled; and
   (9) if the ward is 60 years of age or
older, contain the names and addresses, to the best of
the applicant's knowledge, of the ward's spouse,
siblings, and children or, if there is no known spouse,
sibling, or child, the names and addresses of the
ward's next of kin.

Revisor's Note

Section 694B, Texas Probate Code, refers to an application filed under Section 694A, Texas Probate Code. The portion of Section 694A that relates to an application for an order terminating or modifying a guardianship is revised in this chapter as Section 1202.051. Throughout this chapter, the revised law is drafted accordingly.

Revised Law

Sec. 1202.053. CITATION REQUIRED. When an application is filed under Section 1202.051, citation shall be served on:
(1) the ward's guardian; and
(2) the ward if the ward is not the applicant. (Tex. Prob. Code, Sec. 694A(d).)

Source Law

(d) When an application is filed under this section, citation shall be served on the ward's guardian and on the ward if the ward is not the applicant.

Revised Law

Sec. 1202.054. INFORMAL REQUEST FOR ORDER BY WARD; INVESTIGATION AND REPORT. (a) A ward may request an order under Section 1202.051 by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.
(b) On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the ward's circumstances, including any circumstances alleged in the letter, to determine whether:
(1) the ward is no longer an incapacitated person; or
(2) a modification of the guardianship is necessary.
(c) The court investigator or guardian ad litem shall file with the court a report of the investigation's findings and conclusions. If the court investigator or guardian ad litem determines that it is in the best interest of the ward to terminate
or modify the guardianship, the court investigator or guardian ad
litem shall file an application under Section 1202.051 on the
ward's behalf.

(d) A guardian ad litem appointed under this section may
also be appointed by the court to serve as attorney ad litem under
Section 1202.101. (Tex. Prob. Code, Secs. 694A(b), (c).)

**Source Law**

(b) A ward may make a request for an order under
this section by informal letter to the court. A person
who knowingly interferes with the transmission of the
request to the court may be adjudged guilty of contempt
of court.

(c) On receipt of an informal letter under
Subsection (b) of this section, the court shall
appoint the court investigator or a guardian ad litem
to investigate the circumstances of the ward,
including any circumstances alleged in the informal
letter, to determine whether the ward is no longer an
incapacitated person or whether a modification of the
guardianship is necessary. The court investigator or
guardian ad litem shall file with the court a report of
the investigation's findings and conclusions and, if
the court investigator or the guardian ad litem
determines that it is in the best interest of the ward
to terminate or modify the guardianship, the court
investigator or guardian ad litem, as appropriate,
shall file an application under Subsection (a) of this
section on the ward's behalf. A guardian ad litem
appointed under this subsection may also be appointed
by the court to serve as attorney ad litem under
Section 694C of this code.

**Revised Law**

Sec. 1202.055. RESTRICTION ON SUBSEQUENT APPLICATION
REGARDING CAPACITY OR MODIFICATION. A person may not reapply for
complete restoration of a ward's capacity or modification of a
ward's guardianship before the first anniversary of the date of the
hearing on the last preceding application, except as otherwise
provided by the court on good cause shown by the applicant. (Tex.
Prob. Code, Sec. 694A(e).)

**Source Law**

(e) Except as otherwise provided by the court,
on good cause shown by the applicant, a person may not
reapply for complete restoration of a ward's capacity
or modification of a ward's guardianship before the
first anniversary of the date of the hearing on the
last preceding application.

[Sections 1202.056-1202.100 reserved for expansion]
SUBCHAPTER C. REPRESENTATION OF WARD IN PROCEEDING FOR COMPLETE
RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

Revised Law
Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM. The court
shall appoint an attorney ad litem to represent a ward in a
proceeding for the complete restoration of the ward's capacity or
for the modification of the ward's guardianship. Unless otherwise
provided by the court, the attorney ad litem shall represent the
ward only for purposes of the restoration or modification
proceeding. (Tex. Prob. Code, Secs. 694C(a), (b).)

Source Law
Sec. 694C. (a) The court shall appoint an
attorney ad litem to represent a ward in a proceeding
for the complete restoration of the ward's capacity or
for the modification of the ward's guardianship.
(b) Unless otherwise provided by the court, an
attorney ad litem appointed under this section shall
represent the ward only for purposes of the
restoration or modification proceeding.

Revised Law
Sec. 1202.102. COMPENSATION FOR ATTORNEY AD LITEM AND
GUARDIAN AD LITEM. (a) An attorney ad litem appointed under
Section 1202.101 is entitled to reasonable compensation for
services in the amount set by the court to be taxed as costs in the
proceeding, regardless of whether the proceeding results in the
restoration of the ward's capacity or a modification of the ward's
guardianship.
(b) A guardian ad litem appointed in a proceeding involving
the complete restoration of a ward's capacity or modification of a
ward's guardianship is entitled to reasonable compensation, as
provided by Section 1054.055(a), regardless of whether the
proceeding results in the restoration of the ward's capacity or a
modification of the ward's guardianship. (Tex. Prob. Code, Secs.
694C(c), 694L.)

Source Law
[Sec. 694C]
(c) An attorney ad litem appointed under this
section is entitled to reasonable compensation for
services in the amount set by the court to be taxed as
costs in the proceeding, regardless of whether the
proceeding results in the restoration of the ward's capacity or a modification of the ward's guardianship.

Sec. 694L. As provided by Section 645(b) of this code, a guardian ad litem appointed in a proceeding involving the complete restoration of a ward's capacity or modification of a ward's guardianship is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding, regardless of whether the proceeding results in the restoration of the ward's capacity or modification of the ward's guardianship.

Revisor's Note

Section 694L, Texas Probate Code, provides that a guardian ad litem appointed in a specified type of proceeding is entitled to reasonable compensation as provided by Section 645(b), Texas Probate Code, and that the compensation shall be "for services in the amount set by the court to be taxed as costs in the proceeding." The revised law omits the quoted language as unnecessary because it duplicates Section 645(b), Texas Probate Code, revised in this code as Section 1054.055(a).

Revised Law

Sec. 1202.103. RETENTION AND COMPENSATION OF ATTORNEY FOR WARD. (a) A ward may retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward's estate only if the court finds that the attorney had a good faith belief that the ward had the capacity necessary to retain the attorney's services. (Tex. Prob. Code, Sec. 694K.)

Source Law

Sec. 694K. (a) A ward may retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward's estate only if the court finds that the attorney had a good-faith belief that the ward had the capacity necessary to retain the attorney's services.

[Sections 1202.104-1202.150 reserved for expansion]
Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING. (a) At a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The party who filed the application has the burden of proof at the hearing. (Tex. Prob. Code, Sec. 694D.)

Sec. 694D. (a) At a hearing on an application for complete restoration of a ward's capacity or modification of a ward's guardianship, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the restoration of capacity or modification of the guardianship, as appropriate.

(b) The party who filed the application has the burden of proof at the hearing.

Sec. 1202.152. PHYSICIAN’S LETTER OR CERTIFICATE REQUIRED. (a) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(b) A letter or certificate presented under Subsection (a) must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity to:
(A) provide food, clothing, and shelter for
himself or herself;
(B) care for the ward's own physical health; and
(C) manage the ward's financial affairs;
(2) provide a medical prognosis specifying the
estimated severity of any incapacity;
(3) state how or in what manner the ward's ability to
make or communicate responsible decisions concerning himself or
herself is affected by the ward's physical or mental health;
(4) state whether any current medication affects the
ward's demeanor or the ward's ability to participate fully in a
court proceeding;
(5) describe the precise physical and mental
conditions underlying a diagnosis of senility, if applicable; and
(6) include any other information required by the
court.

(c) If the court determines it is necessary, the court may
appoint the necessary physicians to examine the ward in the same
manner and to the same extent as a ward is examined by a physician
under Section 1101.103 or 1101.104. (Tex. Prob. Code, Sec. 694F.)

Source Law
Sec. 694F. (a) The court may not grant an order
completely restoring a ward's capacity or modifying a
ward's guardianship under an application filed under
Section 694A of this code unless, in addition to other
requirements prescribed by this code, the applicant
presents to the court a written letter or certificate
from a physician licensed in this state that is dated
not earlier than the 120th day before the date of the
filing of the application or dated after the date on
which the application was filed but before the date of
the hearing. The letter or certificate must:
(1) describe the nature and degree of
incapacity, including the medical history if
reasonably available, or state that, in the
physician's opinion, the ward has the capacity to
provide food, clothing, and shelter for himself or
herself, to care for the ward's own physical health,
and to manage the financial affairs of the ward;
(2) provide a medical prognosis specifying the
estimated severity of any incapacity;
(3) state how or in what manner the ward's
ability to make or communicate responsible decisions
concerning himself or herself is affected by the
person's physical or mental health;
(4) state whether any current medication
affects the demeanor of the ward or the ward's ability
to participate fully in a court proceeding;
(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and
(6) include any other information required by the court.
(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 687 of this code.

Revisor's Note
Section 694F(a), Texas Probate Code, provides that, for certain court orders to be granted, an applicant under Section 694A, Texas Probate Code, must meet specified requirements "in addition to other requirements prescribed by this code," meaning the Texas Probate Code. The revised law omits the quoted language as unnecessary because an accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless the statute provides otherwise or unless the statute conflicts with another statute. That general principle applies to the revised law.

Revised Law
Sec. 1202.153. FINDINGS REQUIRED. (a) Before ordering the settlement and closing of a guardianship under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.
(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.
(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the
evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored. (Tex. Prob. Code, Sec. 694E.)

Source Law

Sec. 694E. (a) Before ordering the settlement and closing of the guardianship under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored.

Revised Law

Sec. 1202.154. GENERAL REQUIREMENTS FOR ORDER. (a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward's capacity or modify a ward's guardianship must state:

1. the guardian's name;
2. the ward's name; and
3. whether the type of guardianship being addressed at the proceeding is a:
   (A) guardianship of the person;
   (B) guardianship of the estate; or
   (C) guardianship of both the person and the estate.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian. (Tex. Prob. Code, Sec. 694J.)

Source Law

Sec. 694J. (a) A court order entered with
respect to a request made under Section 694A of this code to completely restore a ward's capacity or modify a ward's guardianship must:

1. contain the name of the guardian;
2. contain the name of the ward; and
3. state whether the type of guardianship being addressed at the proceeding is a:
   (A) guardianship of the person;
   (B) guardianship of the estate; or
   (C) guardianship of both the person and the estate.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

Revisor's Note

Section 694J(a), Texas Probate Code, prescribes general requirements for a court order entered with respect to "a request made" under Section 694A, Texas Probate Code, to completely restore a ward's capacity or modify a ward's guardianship. Section 694A(a), Texas Probate Code, revised as Section 1202.051 of this chapter, authorizes a ward or an interested person to file an application for a court order to completely restore the ward's capacity or modify the ward's guardianship. Section 694A(b), Texas Probate Code, revised as Section 1202.054(a) of this chapter, authorizes a ward to "request" an order by informal letter to the court. Under Section 694A(c), Texas Probate Code, revised in relevant part in this chapter as Sections 1202.054(b) and (c), a court may issue an order in response to an informal letter only after the court appoints the court investigator or an attorney ad litem to investigate the ward's circumstances and the court investigator or attorney ad litem determines that a termination or modification of the guardianship is in the ward's best interests and files an application to terminate or modify the guardianship. Accordingly, the revised law substitutes "an application filed under Section 1202.051" of this chapter for the reference to "a request made" under...
Section 694A because, under Section 694A, a court order is available only as a result of an application filed under that section.

Revised Law

Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING WARD'S CAPACITY. If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify, in addition to the information required by Section 1202.154:

1. that the ward is no longer an incapacitated person;
2. that there is no further need for a guardianship of the person or estate of the ward;
3. if the ward's incapacity resulted from a mental condition, that the ward's mental capacity is completely restored;
4. that the guardian is required to:
   (A) immediately settle the guardianship in accordance with this title; and
   (B) deliver all of the remaining guardianship estate to the ward; and
5. that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

(Tex. Prob. Code, Sec. 694G.)

Source Law

Sec. 694G. If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify:

1. the information required by Section 694J of this code;
2. that the ward is no longer an incapacitated person;
3. that there is no further need for a guardianship of the person or estate of the ward;
4. (3-a) if the ward's incapacity resulted from a mental condition, that the ward's mental capacity is completely restored;
5. that the guardian is required to:
   (A) immediately settle the guardianship in accordance with this chapter; and
   (B) deliver all of the remaining guardianship estate to the ward; and
6. that the clerk shall revoke letters of guardianship when the guardianship is finally settled.
and closed.

Revised Law
Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;
(2) the specific areas of protection and assistance to be provided to the ward;
(3) any limitation of the ward's rights;
(4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote; and
(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

(Tex. Prob. Code, Sec. 694H.)

Source Law
Sec. 694H. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify:
(1) the information required by Section 694J of this code;
(2) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the property of the ward, as appropriate;
(3) the specific areas of protection and assistance to be provided to the ward;
(4) any limitation of the ward's rights;
(5) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote; and
(6) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Revised Law
Sec. 1202.157. ADDITIONAL REQUIREMENTS FOR ORDER DISMISSING APPLICATION. If the court finds that a modification of the ward's guardianship is not necessary or that the ward's capacity has not been restored, the court shall dismiss the application and enter an order that contains findings of fact and specifies, in
addition to the information required by Section 1202.154, that the
 guardian's powers, limitations, or duties with respect to the
 ward's care or the management of the ward's property remain
 unchanged. (Tex. Prob. Code, Sec. 694I.)

Source Law

Sec. 694I. If the court finds that a
modification of the ward's guardianship is not
necessary, including that the ward's capacity has not
been restored, the court shall dismiss the application
and enter an order that contains findings of fact and
specifies:
(1) the information required by Section
694J of this code; and
(2) that the powers, limitations, or
duties of the guardian with respect to the care of the
ward or the management of the ward's property will
remain unchanged.

CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN;
APPOINTMENT OF SUCCESSOR

SUBCHAPTER A. RESIGNATION OF GUARDIAN

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[Sections 1203.007-1203.050 reserved for expansion]

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CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN;
APPOINTMENT OF SUCCESSOR

SUBCHAPTER A. RESIGNATION OF GUARDIAN

Revised Law
Sec. 1203.001. RESIGNATION APPLICATION. A guardian of the estate or guardian of the person who wishes to resign the guardian's trust shall file a written application with the court clerk, accompanied by:

(1) in the case of a guardian of the estate, a complete and verified exhibit and final account showing the true condition of the guardianship estate entrusted to the guardian's care; or

(2) in the case of a guardian of the person, a verified report containing the information required in the annual report required under Subchapter C, Chapter 1163, showing the condition of the ward entrusted to the guardian's care. (Tex. Prob. Code, Sec. 760(a).)

Source Law
Sec. 760. (a) A guardian of the estate who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the guardianship estate entrusted to the guardian's care. A guardian of the person who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a report setting forth the information required in the annual report required under this chapter, duly verified, showing the condition of the ward entrusted to the guardian's care.

Revisor's Note
(1) Section 760(a), Texas Probate Code, refers to a "full and complete" exhibit and final account. The revised law omits "full" as unnecessary because in this context the meaning of that term is included within the meaning of "complete."
Section 760(a), Texas Probate Code, refers to an exhibit and final account, and a report of a guardian of the person, that have been "duly verified." The revised law omits the references to "duly" in this context as unnecessary because the requirement that the exhibit and final account or the report be verified is sufficient to convey that the exhibit and final account or report, as applicable, must have met the requirements for verification.

Section 760(a), Texas Probate Code, requires a guardian of the person to file a report containing the information required in the annual report required under "this chapter," meaning Chapter XIII, Texas Probate Code. Section 743, Texas Probate Code, is included in that chapter and prescribes the requirements for the referenced annual report. That section is revised in Subchapter C, Chapter 1163 of this code. The revised law substitutes a reference to Subchapter C, Chapter 1163 for the reference to "this chapter" for the convenience of the reader.

Revised Law
Sec. 1203.002. IMMEDIATE ACCEPTANCE OF RESIGNATION; DISCHARGE AND RELEASE. (a) If the necessity exists, the court may immediately accept the resignation of a guardian and appoint a successor guardian as provided by Section 1203.102(b).

(b) The court may not discharge a person resigning as guardian of the estate whose resignation is accepted under Subsection (a), or release the person or the sureties on the person's bond, until a final order has been issued, or a final judgment has been rendered, on the final account required under Section 1203.001. (Tex. Prob. Code, Sec. 760(b) (part).)

Source Law
(b) If the necessity exists, the court may immediately accept a resignation and appoint a successor . . . [but] may not discharge the person resigning as guardian of the estate or release the
person or the sureties on the person's bond until final
order or judgment is rendered on the final account of
the guardian.

Revised Law
Sec. 1203.003. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR
GUARDIAN FOLLOWING RESIGNATION. The court at any time may order a
resigning guardian who has any part of a ward's estate to deliver
any part of the estate to a person who has been appointed and has
qualified as successor guardian. (Tex. Prob. Code, Sec. 760(g).)

Source Law
(g) The court at any time may order a resigning
guardian who has all or part of the estate of a ward to
deliver all or part of the ward's estate to a person who
has been appointed and has qualified as successor
guardian.

Revised Law
Sec. 1203.004. HEARING DATE; CITATION. (a) When an
application to resign as guardian is filed under Section 1203.001,
supported by the exhibit and final account or report required under
that section, the court clerk shall bring the application to the
judge's attention and the judge shall set a date for a hearing on
the matter.
(b) After a hearing is set under Subsection (a), the clerk
shall issue a citation to all interested persons, showing:
(1) that an application that complies with Section
1203.001 has been filed; and
(2) the time and place set for the hearing at which the
interested persons may appear and contest the exhibit and final
account or report supporting the application.
(c) Unless the court directs that the citation under
Subsection (b) be published, the citation must be posted. (Tex.
Prob. Code, Sec. 760(c).)

Source Law
(c) On the filing of an application to resign,
supported by an exhibit and final account, the clerk
shall call the application to the attention of the
judge, who shall set a date for a hearing on the
matter. The clerk shall then issue a citation to all
interested persons, showing that proper application
has been filed and the time and place set for hearing,
at which time the interested persons may appear and
contest the exhibit and account or report. The
citation shall be posted, unless the court directs
that it be published.

Revisor's Note

Section 760(c), Texas Probate Code, refers to the
"exhibit and final account" supporting a guardian's
application to resign and subsequently refers to a
hearing at which an interested person may contest the
"exhibit and account or report." It is clear from the
context that both references refer to the supporting
materials required by Section 760(a), Texas Probate
Code, revised in this chapter as Section 1203.001.
That section requires a guardian of the estate to file
an exhibit and final account with an application to
resign and requires a guardian of the person to file a
report with that type of application. The revised law
substitutes "exhibit and final account or report" for
the reference to the "exhibit and final account"
supporting the application because it is clear from
the context provided by the subsequent reference to
contesting the "exhibit and account or report" that
the omission of "or report" in the first reference was
inadvertent. Subsequent references in Section 760(d),
Texas Probate Code, revised in this chapter as Section
1203.005, to the "account or report" confirm that the
hearing may involve an application supported by a
report. In addition, the revised law throughout this
chapter substitutes "exhibit and final account" for
references to "exhibit and account" for consistency of
terminology.

Revised Law

Sec. 1203.005. HEARING. (a) At the time set for the
hearing under Section 1203.004, unless the court continues the
hearing, and if the court finds that the citation required under
that section has been properly issued and served, the court shall:

(1) examine the exhibit and final account or report
required by Section 1203.001;

(2) hear all evidence for and against the exhibit, final account, or report; and

(3) if necessary, restate and audit and settle the exhibit, final account, or report.

(b) If the court is satisfied that the matters entrusted to the guardian applying to resign have been handled and accounted for in accordance with the law, the court shall:

(1) enter an order approving the exhibit and final account or report; and

(2) require that any estate property remaining in the applicant's possession be delivered to the person entitled by law to receive the property.

(c) A guardian of the person shall comply with all court orders concerning the guardian's ward. (Tex. Prob. Code, Sec. 760(d).)

Source Law

(d) At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, the court shall proceed to examine the exhibit and account or report and hear all evidence for and against the exhibit, account, or report and shall, if necessary, restate, and audit and settle the exhibit, account, or report. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with the law, the court shall enter an order of approval and require that the estate remaining in the possession of the applicant, if any, be delivered to the person entitled by law to receive it. A guardian of the person is required to comply with all orders of the court concerning the ward of the guardian.

Revisor's Note

(1) Section 760(d), Texas Probate Code, provides that the court shall proceed with a hearing on a resignation application if the court finds that citation has been "duly" issued and served. The revised law substitutes "properly" for "duly" because the terms are synonymous in context and "properly" is more consistent with modern usage.

(2) Section 760(d), Texas Probate Code,
requires the court to examine an exhibit and final account or report supporting a resignation application and to enter an "order of approval" if the court is satisfied as to certain matters. It is clear from the context that the referenced order is an order approving the exhibit and final account or report the court is required to examine. Therefore, the revised law substitutes "order approving the exhibit and final account or report" for "order of approval" for clarity.

**Revised Law**

Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A guardian applying to resign may not be discharged until:

(1) the resignation application has been heard;

(2) the exhibit and final account or report required under Section 1203.001 has been examined, settled, and approved; and

(3) the applicant has satisfied the court that the applicant has:

(A) delivered any estate property remaining in the applicant's possession; or

(B) complied with all court orders relating to the applicant's trust as guardian.

(b) When a guardian applying to resign has fully complied with the court orders, the court shall enter an order:

(1) accepting the resignation; and

(2) discharging the applicant and, if the applicant is under bond, the applicant's sureties. (Tex. Prob. Code, Secs. 760(e), (f).)

**Source Law**

(e) A resigning guardian may not be discharged until the application has been heard, the exhibit and account or report examined, settled, and approved, and the guardian has satisfied the court that the guardian has delivered the estate, if there is any part of the estate remaining in the possession of the guardian, or has complied with all orders of the court with relation to the guardian's trust.
(f) When the resigning guardian has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if the applicant is under bond, the sureties of the guardian.

[Sections 1203.007-1203.050 reserved for expansion]

SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF GUARDIAN

Revised Law

Sec. 1203.051. REMOVAL WITHOUT NOTICE. The court, on the court's own motion or on the motion of an interested person, including the ward, and without notice, may remove a guardian appointed under this title who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, not later than the 30th day after the date the guardian qualifies, an inventory of the guardianship estate property and a list of claims that have come to the guardian's knowledge, unless that deadline is extended by court order;

(3) if required, fails to give a new bond within the period prescribed;

(4) is absent from the state for a consecutive period of three or more months without the court's permission, or removes from the state;

(5) cannot be served with notices or other processes because:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) subject to Section 1203.056(a):

(A) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care; or

(B) has neglected or cruelly treated a ward; or
has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit. (Tex. Prob. Code, Sec. 761(a).)

Source Law

Sec. 761. (a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who:

(1) neglects to qualify in the manner and time required by law;
(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;
(3) having been required to give a new bond, fails to do so within the time prescribed;
(4) absents himself from the state for a period of three months at one time without permission of the court, or removes from the state;
(5) cannot be served with notices or other processes because of the fact that:
   (A) the guardian's whereabouts are unknown;
   (B) the guardian is eluding service; or
   (C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;
(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;
(7) has neglected or cruelly treated a ward; or
(8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

Revisor's Note

(1) Section 761(a)(4), Texas Probate Code, provides for the removal of a guardian who is absent from the state "for a period of three months at one time." It is clear from the context that this section applies to a guardian who is absent from the state for more than three consecutive months, as well as to a guardian who is absent for exactly three consecutive months. For that reason, the revised law substitutes "for a consecutive period of three or more months" for the quoted language.

(2) Sections 761(a)(6) and (7), Texas Probate
Code, specify certain grounds on which a guardian may be removed. Section 761(b), Texas Probate Code, revised in this chapter as Section 1203.056(a), prescribes additional requirements relating to evidence and the standard of proof for removal of a guardian on those grounds. The revised law adds a cross-reference to Section 1203.056(a) for the convenience of the reader.

(3) Section 761(a)(6), Texas Probate Code, refers to property "committed" to the guardian's care. Throughout this chapter, the revised law substitutes "entrusted" for "committed" for consistency of terminology.

Revised Law
Sec. 1203.052. REMOVAL WITH NOTICE. (a) The court may remove a guardian on the court's own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of
properly performing the duties of the guardian's trust;

(6) the guardian neglects or cruelly treats the ward;

(7) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(8) the guardian interferes with the ward's progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(b) In addition to the authority granted to the court under Subsection (a), the court may, on the complaint of the Guardianship Certification Board, remove a guardian who would be ineligible for appointment under Subchapter H, Chapter 1104, because of the guardian's failure to maintain the certification required under Subchapter F, Chapter 1104. The guardian shall be cited to appear and contest the request for removal under this subsection in the manner provided by Subsection (a). (Tex. Prob. Code, Secs. 761(c), (c-1).)

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been
guilty of gross misconduct or mismanagement in the
performance of the duties of the guardian;
(5) the guardian becomes incapacitated, or
is sentenced to the penitentiary, or from any other
cause becomes incapable of properly performing the
duties of the guardian's trust;
(6) the guardian neglects or cruelly
treats the ward;
(6-a) the guardian neglects to educate or
maintain the ward as liberally as the means of the
ward's estate and the ward's ability or condition
permit;
(7) the guardian interferes with the
ward's progress or participation in programs in the
community;
(8) the guardian fails to comply with the
requirements of Section 697 of this code;
(9) the court determines that, because of
the dissolution of the joint guardians' marriage, the
termination of the guardians' joint appointment and
the continuation of only one of the joint guardians as
the sole guardian is in the best interest of the ward;
or
(10) the guardian would be ineligible for
appointment as a guardian under Section 681 of this
code.
(c-1) In addition to the authority granted to
the court under Subsection (c) of this section, the
court may, on the complaint of the Guardianship
Certification Board, remove a guardian who would be
ineligible for appointment under Section 681 of this
code because of the guardian's failure to maintain the
certification required under Section 697B of this
code. The guardian shall be cited to appear and
contest the request for removal under this subsection
in the manner provided by Subsection (c) of this
section.

Revised Law

Sec. 1203.053. REMOVAL ORDER. An order removing a guardian
shall:
(1) state the cause of the removal;
(2) require that, if the removed guardian has been
personally served with citation, any letters of guardianship issued
to the removed guardian be surrendered and that, regardless of
whether the letters have been delivered, all the letters be
canceled of record; and
(3) require the removed guardian to:
(A) deliver any estate property in the guardian's
possession to the persons entitled to the property or to one who has
been appointed and has qualified as successor guardian; and
(B) relinquish control of the ward's person as
required in the order. (Tex. Prob. Code, Sec. 761(d).)
(d) The order of removal shall state the cause of the removal. It must require that any letters issued to the person who is removed shall, if the removed person has been personally served with citation, be surrendered and that all those letters be cancelled of record, whether or not delivered. It must further require, as to all the estate remaining in the hands of a removed person, delivery of the estate to the person or persons entitled to the estate, or to one who has been appointed and has qualified as successor guardian, and as to the person of a ward, that control be relinquished as required in the order.

Revisor's Note

(1) Section 761(d), Texas Probate Code, refers to "letters" issued to a removed guardian. For clarity and the convenience of the reader, throughout this chapter the revised law specifies that the revised law concerns "letters of guardianship" to distinguish those letters from letters testamentary or of administration.

(2) Section 761(d), Texas Probate Code, refers to the estate remaining in the "hands" of a removed guardian. Throughout this chapter, the revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

Revised Law

Sec. 1203.054. DISCHARGE AND RELEASE FOLLOWING REMOVAL. With respect to a person who is removed as guardian of the estate and whose successor is appointed without citation or notice as provided by Section 1203.102(b), the court may not discharge the person or release the person or the sureties on the person's bond until a final order has been issued or final judgment has been rendered on the guardian's final account. (Tex. Prob. Code, Sec. 761(f) (part).)
judgment is rendered on the final account of the
guardian.

Revised Law
Sec. 1203.055. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR
GUARDIAN FOLLOWING REMOVAL. The court at any time may order a
person removed as guardian under this subchapter who has any part of
a ward's estate to deliver any part of the estate to a person who has
been appointed and has qualified as successor guardian. (Tex.
Prob. Code, Sec. 761(g).)

Source Law
(g) The court at any time may order a person
removed as guardian under this section who has all or
part of the estate of a ward to deliver all or part of
the ward's estate to a person who has been appointed
and has qualified as successor guardian.

Revisor's Note
Section 761(g), Texas Probate Code, refers to a
person removed as guardian under "this section,"
meaning Section 761, Texas Probate Code. Section 761
is revised in this subchapter, which also contains the
revision of other provisions not derived from Section
761. However, the revised law substitutes a reference
to "this subchapter" for the reference to "this
section" because the other provisions revised in the
subchapter are not provisions under which a guardian
may be removed.

Revised Law
Sec. 1203.056. REMOVAL AND REINSTATEMENT OF GUARDIAN UNDER
CERTAIN CIRCUMSTANCES. (a) The court may remove a guardian under
Section 1203.051(6)(A) or (B) only on the presentation of clear and
convincing evidence given under oath.
(b) Not later than the 10th day after the date the court
signs the order of removal, a guardian who is removed under Section
1203.051(6)(A) or (B) may file an application with the court for a
hearing to determine whether the guardian should be reinstated.
(c) On the filing of an application under Subsection (b),
the court clerk shall issue to the applicant, the ward, a person
interested in the ward's welfare or estate, and, if applicable, a
person who has control of the care and custody of the ward a notice
stating:

(1) that an application for reinstatement has been
filed;
(2) the name of the ward; and
(3) the name of the applicant for reinstatement.

(d) The notice required by Subsection (c) must cite all
persons interested in the ward's welfare or estate to appear at the
time and place stated in the notice if the persons wish to contest
the application.

(e) If, at the conclusion of a hearing under this section,
the court is satisfied by a preponderance of the evidence that the
applicant did not engage in the conduct that directly led to the
applicant's removal, the court shall:

(1) set aside any order appointing a successor
guardian; and
(2) enter an order reinstating the applicant as
guardian of the ward or estate.

(f) If the court sets aside the appointment of a successor
guardian under this section, the court may require the successor
guardian to prepare and file, under oath, an accounting of the
estate and to detail the disposition the successor has made of the
estate property. (Tex. Prob. Code, Secs. 761(b), 762.)

Source Law

[Sec. 761]

(b) The court may remove a personal
representative under Subsection (a)(6) or (7) of this
section only on the presentation of clear and
convincing evidence given under oath.

Sec. 762. (a) Not later than the 10th day after
the date the court signs the order of removal, a
personal representative who is removed under
Subsection (a)(6) or (7), Section 761, of this code may
file an application with the court for a hearing to
determine whether the personal representative should
be reinstated.

(b) On the filing of an application for a
hearing under this section, the court clerk shall
issue a notice stating that the application for
reinstatement was filed, the name of the ward, and the
name of the applicant. The clerk shall issue the
notice to the applicant, the ward, a person interested in the welfare of the ward or the ward's estate, and, if applicable, a person who has control of the care and custody of the ward. The notice must cite all persons interested in the estate or welfare of the ward to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Revisor's Note

Section 761(b), Texas Probate Code, prescribes a standard of proof to remove a "personal representative" under Section 761(a)(6) or (7), Texas Probate Code, and Section 762, Texas Probate Code, provides a procedure for the reinstatement of that removed "personal representative." Section 3(aa), Texas Probate Code, revised as Section 22.031 of this code, defines "personal representative" for purposes of the code to include executors and administrators. Section 601(23), Texas Probate Code, revised as Section 1002.028 of this code, further provides that in Chapter XIII, Texas Probate Code, which includes Sections 761 and 762, the term includes a guardian. Although it is clear from these definitions that "personal representative" could mean an executor, administrator, or guardian, the revised law substitutes "guardian" for "personal representative" because Sections 761(b) and 762 relate to a removal under Section 761(a)(6) or (7), and those sections clearly only address the removal of a guardian.

Revised Law

Sec. 1203.057. REMOVAL OF JOINT GUARDIAN. If a joint guardian is removed under Section 1203.052(a)(10), the other joint
guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians’ marriage. (Tex. Prob. Code, Sec. 761(e).)

Source Law

(e) If a joint guardian is removed under Subsection (c)(9) of this section, the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians’ marriage.

[Sections 1203.058-1203.100 reserved for expansion]

SUBCHAPTER C. APPOINTMENT OF SUCCESSOR GUARDIAN; REVOCATION OF LETTERS

Revised Law

Sec. 1203.101. REQUIREMENTS FOR REVOCATION OF LETTERS.
Except as otherwise expressly provided by this title, letters of guardianship may be revoked only:

(1) on application; and

(2) after personal service of citation on the person whose letters are sought to be revoked requiring the person to appear and show cause why the application should not be granted.

(Tex. Prob. Code, Sec. 759(f).)

Source Law

(f) Except when otherwise expressly provided in this chapter, letters may not be revoked except on application, and after personal service of citation on the person whose letters are sought to be revoked, that person appear and show cause why the application should not be granted.

Revised Law

Sec. 1203.102. APPOINTMENT BECAUSE OF RESIGNATION, REMOVAL, OR DEATH. (a) If a guardian resigns, is removed, or dies, the court may appoint a successor guardian on application and on service of notice as directed by the court, except as provided by Subsection (b). In the event the guardian of the person or of the estate of a ward dies, a personal representative of the deceased guardian, at the time and in the manner ordered by the court, shall account for, pay, and deliver all guardianship property entrusted to the representative's care to a person legally entitled to receive the property.
(b) The court may appoint a successor guardian under this section without citation or notice if the court finds that a necessity exists for the immediate appointment. (Tex. Prob. Code, Secs. 695(a), 759(a), 760(b) (part), 761(f) (part).)

Source Law

Sec. 695. (a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian. On a finding that a necessity for the immediate appointment of a successor guardian exists, the court may appoint a successor guardian without citation or notice.

Sec. 759. (a) In case of the death of the guardian of the person or of the estate of a ward, a personal representative of the deceased guardian shall account for, pay, and deliver to a person legally entitled to receive the property, all the property belonging to the guardianship that is entrusted to the care of the representative, at the time and in the manner as the court orders.

[Sec. 760]

(b) [If the necessity exists, the court may immediately . . . appoint a successor] without citation or notice but . . . .

[Sec. 761]

(f) If the necessity exists, the court may immediately appoint a successor without citation or notice but . . . .

Revised Law

Sec. 1203.103. APPOINTMENT BECAUSE OF EXISTENCE OF PRIOR RIGHT. If letters of guardianship have been granted to a person and another person applies for letters, the previously issued letters shall be revoked, and letters shall be granted to the subsequent applicant if that applicant:

(1) is qualified;

(2) has a prior right to be appointed successor guardian; and

(3) has not waived that prior right. (Tex. Prob. Code, Sec. 759(b).)

Source Law

(b) If letters have been granted to a person, and another person whose right to be appointed successor guardian is prior and who has not waived the right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.
Revised Law
Sec. 1203.104. APPOINTMENT WHEN GUARDIAN NAMED IN WILL BECOMES AN ADULT. (a) A person named as guardian in a will who was not an adult when the will was probated is entitled to have letters of guardianship that were granted to another person revoked and appropriate letters granted to the named guardian on proof that the named guardian has become an adult and is not otherwise disqualified from serving as a guardian.

(b) This subsection applies only if a will names two or more persons as guardian. A person named as a guardian in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters of guardianship if:

(1) letters have been issued to the named guardians in the will who are adults; and

(2) the person is not otherwise disqualified from receiving letters. (Tex. Prob. Code, Sec. 759(c).)

Source Law
(c) If a person named in a will as guardian is not an adult when the will is probated and letters in any capacity have been granted to another person, the nominated guardian, on proof that the nominated guardian has become an adult and is not otherwise disqualified from serving as a guardian, is entitled to have the former letters revoked and appropriate letters granted to the nominated guardian. If the will names two or more persons as guardian, any one or more of whom are minors when the will is probated and letters have been issued to the persons who are adults, a minor, on becoming an adult, if not otherwise disqualified, is permitted to qualify and receive letters.

Revisor's Note
Section 759(c), Texas Probate Code, refers to "letters in any capacity." The revised law substitutes "letters of guardianship" for the quoted language for the reason stated in Revisor's Note (1) to Section 1203.053 of this chapter.

Revised Law
Sec. 1203.105. APPOINTMENT OF FORMERLY ILL OR ABSENT GUARDIAN NAMED IN WILL. (a) This section applies only to a person named as guardian in a will who was ill or absent from the state when
the testator died or the will was proved and, as a result, could not:

(1) present the will for probate not later than the 30th day after the testator's death; or

(2) accept and qualify as guardian not later than the 20th day after the date the will was probated.

(b) A person to whom this section applies may accept and qualify as guardian not later than the 60th day after the date the person recovers from illness or returns to the state if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as guardian under Subsection (b) and letters of guardianship have been issued to another person, the other person's letters shall be revoked. (Tex. Prob. Code, Sec. 759(d).)

(d) If a person named in a will as guardian was ill or absent from the state when the testator died, or when the will was proved, and for that reason could not present the will for probate not later than the 30th day after the testator's death, or accept and qualify as guardian not later than the 20th day after the date the will was probated, the person may accept and qualify as guardian not later than the 60th day after the person's return or recovery from illness, on proof to the court that the person was absent or ill. If the letters have been issued to another person, the letters shall be revoked.

Source Law

Sec. 1203.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT OF LETTERS. If, after letters of guardianship have been issued, it is discovered that the decedent left a lawful will, the letters shall be revoked and proper letters shall be issued to a person entitled to the letters. (Tex. Prob. Code, Sec. 759(e).)

Revised Law

Sec. 1203.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT OF LETTERS. If, after letters of guardianship have been issued, it is discovered that the decedent left a lawful will, the letters shall be revoked and proper letters shall be issued to a person entitled to the letters. (Tex. Prob. Code, Sec. 759(e).)

Source Law

(e) If it is discovered after letters of guardianship have been issued that the deceased person left a lawful will, the letters shall be revoked and proper letters of guardianship issued to a person entitled to receive the letters.

Revisor's Note

Section 759(e), Texas Probate Code, refers to "the deceased person." Throughout the Texas Probate
Code, a deceased person is more commonly referred to as a "decedent." The revised law substitutes a reference to the "decedent" for the reference to the "deceased person" for consistency of terminology throughout this code.

**Revised Law**

Sec. 1203.107. APPOINTMENT ON REMOVAL OF LITIGATION CONFLICT. The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who was disqualified from serving as guardian because of a litigation conflict under Section 1104.354(1) on the removal of the conflict that caused the disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian. (Tex. Prob. Code, Sec. 759(h).)

**Source Law**

(h) The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who has been disqualified from serving as guardian because of a litigation conflict under Section 681(4) of this code on removal of the conflict that caused the initial disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian.

**Revised Law**

Sec. 1203.108. APPOINTMENT OF DEPARTMENT OF AGING AND DISABILITY SERVICES AS SUCCESSOR GUARDIAN. (a) In this section, "department" means the Department of Aging and Disability Services. (b) The court may appoint the department as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

1. there is no less-restrictive alternative to continuation of the guardianship;
2. there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian;
3. the ward is located more than 100 miles from the court that created the guardianship;
4. the ward has private assets or access to government benefits to pay for the ward's needs;
(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (c).

(c) The number of appointments under Subsection (b) is subject to an annual limit of 55. The appointments must be distributed equally or as equally as possible among the health and human services regions of this state. The department, at the department's discretion, may establish a different distribution scheme to promote the efficient use and administration of resources.

(d) If the department is named as a proposed successor guardian in an application in which the department is not the applicant, citation must be issued and served on the department as provided by Section 1051.103(5). (Tex. Prob. Code, Secs. 695(c), (d), (e).)

Source Law

(c) The court may appoint the Department of Aging and Disability Services as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less restrictive alternative to continuation of the guardianship;

(2) there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian;

(3) the ward is located more than 100 miles from the court that created the guardianship;

(4) the ward has private assets or access to government benefits to pay for the needs of the ward;

(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (d) of this section.

(d) The number of appointments under Subsection (c) of this section is subject to an annual limit of 55. The appointments must be distributed equally or as near as equally as possible among the health and human services regions of this state. The Department of Aging and Disability Services at its discretion may establish a different distribution scheme to promote the efficient use and administration of resources.

(e) If the Department of Aging and Disability Services is named as a proposed successor guardian in an application in which the department is not the
applicant, citation must be issued and served on the
department as provided by Section 633(c)(5) of this
code.

[Sections 1203.109-1203.150 reserved for expansion]

SUBCHAPTER D. SUCCESSOR GUARDIANS FOR WARDS OF GUARDIANSHIP
PROGRAMS OR GOVERNMENTAL ENTITIES

Revised Law
Sec. 1203.151. NOTICE OF AVAILABILITY OF SUCCESSOR
GUARDIAN. (a) If a guardianship program or governmental entity
serving as a guardian for a ward under this title becomes aware of a
family member or friend of the ward, or any other interested person,
who is willing and able to serve as the ward's successor guardian,
the program or entity shall notify the court in which the
guardianship is pending of the individual's willingness and ability
to serve.

(b) If, while serving as a guardian for a ward under this
title, the Department of Aging and Disability Services becomes
aware of a guardianship program or private professional guardian
willing and able to serve as the ward's successor guardian, and the
department is not aware of a family member or friend of the ward, or
any other interested person, who is willing and able to serve in
that capacity, the department shall notify the court in which the
guardianship is pending of the guardianship program's or private
professional guardian's willingness and ability to serve. (Tex.
Prob. Code, Secs. 695A(a), (a-1).)

Source Law
Sec. 695A. (a) If a guardianship program or
governmental entity serving as a guardian for a ward
under this chapter becomes aware of a family member or
friend of the ward or any other interested person who
is willing and able to serve as the ward's successor
guardian, the program or entity shall notify the court
in which the guardianship is pending of the
individual's willingness and ability.

(a-1) If, while serving as a guardian for a ward
under this chapter, the Department of Aging and
Disability Services becomes aware of a guardianship
program or private professional guardian willing and
able to serve as the ward's successor guardian and the
department is not aware of a family member or friend of
the ward or any other interested person who is willing
and able to serve as the ward's successor guardian, the
department shall notify the court in which the
guardianship is pending of the guardianship program's
or private professional guardian's willingness and
ability to serve.

Revised Law
Sec. 1203.152. DETERMINATION OF PROPOSED SUCCESSOR GUARDIAN'S QUALIFICATION TO SERVE. When the court is notified of the existence of a proposed successor guardian under Section 1203.151(a), or the court otherwise becomes aware of a family member, a friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this title as the ward's successor guardian. (Tex. Prob. Code, Sec. 695A(b).)

Source Law
(b) When the court is notified of the existence of a proposed successor guardian under Subsection (a) of this section or the court otherwise becomes aware of a family member, friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this chapter as the ward's successor guardian.

Revised Law
Sec. 1203.153. APPLICATION TO APPOINT SUCCESSOR GUARDIAN. (a) If the court finds under Section 1203.152 that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Subchapter H, Chapter 1104, and that the appointment is in the ward's best interests, the guardianship program or governmental entity serving as the ward's guardian or the court, on the court's own motion, may file an application to appoint the individual as the ward's successor guardian.

(b) Service of notice on an application filed under this section shall be made as directed by the court. (Tex. Prob. Code, Sec. 695A(c).)

Source Law
(c) If the court finds under Subsection (b) of this section that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Section 681 of this code and that the appointment is in the ward's best
interests, the guardianship program or governmental entity serving as the ward's guardian or the court, on the court's own motion, may file an application to appoint the individual as the ward's successor guardian. Service of notice on an application filed under this subsection shall be made as directed by the court.

[Sections 1203.154-1203.200 reserved for expansion]

SUBCHAPTER E. PROCEDURES AFTER RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN

Revised Law

Sec. 1203.201. PAYMENT TO WARD WHILE OFFICE OF GUARDIAN IS VACANT. (a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to a ward while the office of guardian is vacant to the court clerk for the credit of the ward.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) The court clerk shall issue a receipt for any payment or tender accepted under this section. (Tex. Prob. Code, Sec. 759(g).)

Source Law

(g) Money or any other thing of value falling due to a ward while the office of the guardian is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the ward, and the debtor, obligor, or payor shall be discharged of the obligation for all purposes to the extent and purpose of the payment or tender. If the clerk accepts the payment or tender, the clerk shall issue a proper receipt for the payment or tender.

Revisor's Note

(1) Section 759(g), Texas Probate Code, provides that "[m]oney or any other thing of value . . . may be paid, delivered, or tendered." The revised law omits "delivered" as unnecessary because, in this context, the meaning of "delivered" is included within the meaning of "paid." Black's Law Dictionary (revised eighth edition, 2004) defines "payment" as the "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the
obligation."

(2) Section 759(g), Texas Probate Code, requires a court clerk to issue a "proper receipt." The revised law omits "proper" in this context as unnecessary. The requirement that the clerk issue a receipt is sufficient to convey that the receipt must be proper.

**Revised Law**

Sec. 1203.202. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR GUARDIAN. (a) A successor guardian has the rights and powers and is subject to all the duties of the predecessor.

(b) A guardian who accepts appointment and qualifies after letters of guardianship have been granted on the estate shall:

(1) succeed in like manner to the predecessor; and

(2) administer the estate in like manner as if the guardian's administration were a continuation of the former administration.

(c) A successor guardian may:

(1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor;

(2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the successor's possession; or

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor. (Tex. Prob. Code, Secs. 695(b), 763, 764.)

**Source Law**

[Sec. 695]

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

Sec. 763. In addition, a successor guardian may make himself, and may be made, a party to a suit prosecuted by or against the predecessor of the
successor guardian. The successor guardian may settle
with the predecessor and receive and receipt for all
the portion of the estate as remains in the hands of
the successor guardian. The successor guardian may
bring suit on the bond or bonds of the predecessor in
the guardian's own name and capacity for all the estate
that came into the hands of the predecessor and has not
been accounted for by the predecessor.

Sec. 764. Whenever a guardian shall accept and
qualify after letters of guardianship are granted on
the estate, the guardian shall, in like manner,
succeed to the previous guardian, and the guardian
shall administer the estate in like manner as if the
administration by the guardian were a continuation of
the former one.

Revisor's Note
Section 763, Texas Probate Code, provides that a
successor guardian may settle with the predecessor and
receive and give a receipt for the portion of the
estate that remains in the possession of the
"successor guardian." It is probable that the
reference to the estate remaining in the possession of
the "successor" is erroneous and that "predecessor"
was intended. However, the revised law preserves the
ambiguity by retaining the reference to "successor."

Revised Law
Sec. 1203.203. SUCCESSOR GUARDIAN TO RETURN INVENTORY,
APPRAISEMENT, AND LIST OF CLAIMS. (a) A successor guardian who has
qualified to succeed a former guardian shall, in the manner
required of an original appointee:

(1) make and return to the court an inventory,
appraisement, and list of claims of the estate not later than the
30th day after the date the successor qualifies; and

(2) return additional inventories, appraisements, and
lists of claims.

(b) On the application of any person interested in the
estate, the court shall, in an order appointing a successor
guardian, appoint an appraiser as in an original appointment of a
guardian. (Tex. Prob. Code, Sec. 765.)

Source Law
Sec. 765. A successor guardian who has qualified
to succeed a prior guardian shall make and return to
the court an inventory, appraisement, and list of
claims of the estate, not later than the 30th day after
the date the successor guardian qualifies as guardian,
in the same manner as is required of an original
appointee. The successor guardian shall in like
manner as is required of an original appointee return
additional inventories, appraisements, and lists of
claims. In all orders appointing a successor
guardian, the court shall appoint an appraiser as in
original appointments on the application of any person
interested in the estate.

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CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

SUBCHAPTER A. TIME FOR SETTLEMENT OF GUARDIANSHIP

Revised Law

Sec. 1204.001. SETTLEMENT OF GUARDIANSHIP. (a) A
guardianship shall be settled and closed as provided by this
section and Section 1202.001.

(b) A guardianship of the estate of a ward shall be settled
when:

(1) the ward dies;
(2) a minor ward becomes an adult by:
   (A) becoming 18 years of age;
   (B) removal of disabilities of minority
according to the law of this state; or
(3) an incapacitated ward is decreed as provided by
   law to have been restored to full legal capacity;
(4) the spouse of a married ward has qualified as
survivor in community and the ward does not own separate property;

(5) the ward's estate is exhausted;

(6) the foreseeable income accruing to the ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome;

(7) all of the assets of the estate have been placed in a management trust under Chapter 1301 and the court determines that a guardianship for the ward is no longer necessary; or

(8) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(c) In a case arising under Subsection (b)(6), the court may authorize the income to be paid to a parent, or other person who has acted as guardian of the ward, to assist in the maintenance of the ward and without liability to account to the court for the income.

(d) If the estate of a minor ward consists only of cash or cash equivalents in an amount of $100,000 or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Chapter 1355.

(e) In the settlement of a guardianship of the estate, the court may appoint an attorney ad litem to represent the ward's interests and may allow the attorney reasonable compensation for services provided by the attorney out of the ward's estate. (Tex. Prob. Code, Sec. 745; New.)

Source Law

Sec. 745. (a) A guardianship of the estate of a ward shall be settled when:

(1) a minor ward dies or becomes an adult by becoming 18 years of age, or by removal of disabilities of minority according to the law of this state, or by marriage;

(2) an incapacitated ward dies, or is decreed as provided by law to have been restored to full legal capacity;

(3) the spouse of a married ward has qualified as survivor in community and the ward owns no separate property;

(4) the estate of a ward becomes exhausted;

(5) the foreseeable income accruing to a ward or to his estate is so negligible that maintaining
the guardianship in force would be burdensome;
(6) all of the assets of the estate have been placed in a management trust under Subpart N, Part 4, of this code and the court determines that a guardianship for the ward is no longer necessary; or
(7) the court determines for any other reason that a guardianship for the ward is no longer necessary.
(b) In a case arising under Subsection (a)(5) of this section, the court may authorize the income to be paid to a parent, or other person who has acted as guardian of the ward, to assist in the maintenance of the ward and without liability to account to the court for the income.
(c) When the estate of a minor ward consists only of cash or cash equivalents in an amount of $100,000 or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Section 887 of this code.
(d) In the settlement of a guardianship, the court may appoint an attorney ad litem to represent the interests of the ward, and may allow the attorney reasonable compensation for services provided by the attorney out of the ward's estate.

Revisor's Note
Section 745, Texas Probate Code, requires a guardianship of the estate to be settled under certain circumstances. Section 694, Texas Probate Code, revised as Section 1202.001 of this code, also provides circumstances under which a guardianship must be settled and closed. The revised law, therefore, adds a reference to Section 1202.001 for the convenience of the reader.

Revised Law
Sec. 1204.002. APPOINTMENT OF ATTORNEY AD LITEM TO REPRESENT WARD IN FINAL SETTLEMENT UNDER CERTAIN CIRCUMSTANCES.
(a) The court may appoint an attorney ad litem to represent the ward's interest in the final settlement with the guardian if:
(1) the ward is deceased and there is no executor or administrator of the ward's estate;
(2) the ward is a nonresident; or
(3) the ward's residence is unknown.
(b) The court shall allow the attorney ad litem appointed under this section reasonable compensation out of the ward's estate for any services provided by the attorney. (Tex. Prob. Code, Sec.
Sec. 755. When the ward is dead and there is no executor or administrator of the ward's estate, or when the ward is a nonresident, or the ward's residence is unknown, the court may appoint an attorney ad litem to represent the interest of the ward in the final settlement with the guardian, and shall allow the attorney reasonable compensation out of the ward's estate for any services provided by the attorney.

[Sections 1204.003-1204.050 reserved for expansion]

SUBCHAPTER B. PAYMENT OF CERTAIN EXPENSES AND DEBTS

Sec. 1204.051. FUNERAL ARRANGEMENTS AND OTHER DEBTS; ACCOUNT FOR FINAL SETTLEMENT ON COMPLAINT OF PERSONAL REPRESENTATIVE. Before a guardianship of the person or estate of a ward is closed on the ward's death, the guardian may, subject to the court's approval, make all funeral arrangements and pay the funeral expenses and all other debts out of the deceased ward's estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the written complaint of the personal representative have the guardian of the deceased ward cited to appear and present an account for final settlement as provided by Section 1204.101. (Tex. Prob. Code, Sec. 746.)

Sec. 746. Before the guardianship of a person or estate of a ward is closed on the death of a ward, the guardian, subject to the approval of the court, may make all funeral arrangements, pay for the funeral expenses out of the estate of the deceased ward, and pay all other debts out of the estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 749 of this code.

Revisor's Note

Section 746, Texas Probate Code, refers to the presentation of "a final account as provided in Section 749," Texas Probate Code. The revised law substitutes a reference to Section 1204.101 because the portion of Section 749, Texas Probate Code, that requires the presentation of an account for final
settlement is revised in this chapter as Section 1204.101.

Revised Law
Sec. 1204.052. TAXES AND EXPENSES OF ADMINISTRATION; SALE OF ESTATE PROPERTY. Notwithstanding any other provision of this title, a probate court in which proceedings to declare heirship are maintained may order:

(1) the guardian to pay any taxes or expenses of administering the estate; and

(2) the sale of property in the ward's estate, when necessary, to:

(A) pay the taxes or expenses of administering the estate; or

(B) distribute the estate among the heirs. (Tex. Prob. Code, Sec. 748.)

Source Law
Sec. 748. Notwithstanding any other provision of this chapter, a probate court in which proceedings to declare heirship are maintained may order the payment by the guardian of any and all taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying the taxes or expenses of administering the estate or for the purpose of distributing the estate among the heirs.

Revised Law
Sec. 1204.053. INHERITANCE TAXES; LIMITATION ON CLOSING ESTATE. If the guardian has been ordered to pay inheritance taxes under this code, a deceased ward's estate may not be closed unless the account for final settlement shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and property passing through the guardian's possession have been paid. (Tex. Prob. Code, Sec. 754.)

Source Law
Sec. 754. If the guardian has been ordered to make payment of inheritance taxes under this code, an estate of a deceased ward may not be closed unless the final account shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and properties passing through the hands of the guardian have been paid.
SUBCHAPTER C. ACCOUNT FOR FINAL SETTLEMENT

Revised Law

Sec. 1204.101. VERIFIED ACCOUNT REQUIRED. A guardian of the estate shall present to the court the guardian's verified account for final settlement when the guardianship of the estate is required to be settled. (Tex. Prob. Code, Sec. 749 (part).)

Source Law

Sec. 749. When a guardianship of the estate is required to be settled, the guardian shall present to the court the guardian's verified account for final settlement.

Revised Law

Sec. 1204.102. CONTENTS OF ACCOUNT. (a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:

(1) refer to the inventory without describing each item of property in detail; and

(2) refer to and adopt any guardianship proceeding concerning sales, renting, leasing for mineral development, or any other transaction on behalf of the guardianship estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items.

(b) An account for final settlement shall be accompanied by proper vouchers supporting each item included in the account for which the guardian has not already accounted and, either by reference to any proceeding described by Subsection (a) or by a statement of the facts, must show:

(1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;

(2) the disposition made of the property, rents, revenues, and profits;

(3) any expenses and debts against the estate that remain unpaid;

(4) any estate property that remains in the guardian's
possession;
(5) that the guardian has paid all required bond premiums;
(6) the tax returns the guardian has filed during the guardianship;
(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;
(8) a complete account of the taxes the guardian has paid during the guardianship, including:
   (A) the amount of the taxes;
   (B) the date the guardian paid the taxes; and
   (C) the name of the governmental entity to which the guardian paid the taxes;
(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes, including a reason for each delinquency; and
(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

(Tex. Prob. Code, Sec. 749 (part).)

Source Law
Sec. 749. ... In the account it shall be sufficient to refer to the inventory without describing each item of property in detail and to refer to and adopt any and all guardianship proceedings that concern sales, renting or hiring, leasing for mineral development, or any other transaction on behalf of the guardianship estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items. Each final account shall be accompanied by proper vouchers in support of each item not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:
(1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;
(2) the disposition made of the property, rents, revenues, and profits;
(3) the expenses and debts against the estate that remain unpaid, if any;
(4) the property of the estate that remains in the hands of the guardian, if any;
(5) that the guardian has paid all required bond premiums;
(6) the tax returns the guardian has filed during the guardianship;
(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;
(8) a complete account of the taxes the
guardian has paid during the guardianship, including
the amount of the taxes, the date the guardian paid the
taxes, and the name of the governmental entity to which
the guardian paid the taxes;
(9) a description of all current
delinquencies in the filing of tax returns and the
payment of taxes and a reason for each delinquency; and
(10) other facts as appear necessary to a
full and definite understanding of the exact condition
of the guardianship.

Revisor's Note

(1) Section 749, Texas Probate Code, refers to
guardianship proceedings that concern "renting or
hiring," meaning the renting or hiring of guardianship
estate property. The revised law omits the reference
to "hiring" because "hiring" property is synonymous
with "renting" property, and "renting" property is
more consistent with modern usage. In addition,
"renting" is consistent with the terminology used in
Chapter 1159 of this code, which is the revision of
Sections 839-846, Texas Probate Code, relating to the
renting of guardianship estate property.

(2) Section 749(4), Texas Probate Code, refers
to property in the guardian's "hands." Throughout this
chapter, the revised law substitutes "possession" for
"hands" because the terms are synonymous in context
and "possession" is more consistent with modern usage.

Revised Law

Sec. 1204.103. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT
COMPUTATION. In the settlement of any of the accounts of the
guardian of the estate, all debts due the estate that the court is
satisfied could not have been collected by due diligence and that
have not been collected shall be excluded from the computation.
(Tex. Prob. Code, Sec. 756.)

Source Law

Sec. 756. In the settlement of any of the
accounts of the guardian of an estate, all debts due
the estate that the court is satisfied could not have
been collected by due diligence, and that have not been
collected, shall be excluded from the computation.
Revised Law
Sec. 1204.104. GUARDIAN TO ACCOUNT FOR WARD’S LABOR OR SERVICES. (a) Subject to Subsection (b), the guardian of a ward shall account for:

(1) the reasonable value of labor or services provided by the ward; or

(2) the proceeds of labor or services provided by the ward.

(b) The guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward. (Tex. Prob. Code, Sec. 757.)

Source Law
Sec. 757. The guardian of a ward shall account for the reasonable value of the labor or services of the ward of the guardian, or the proceeds of the labor or services, if the labor or services have been rendered by the ward, but the guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward.

Revised Law
Sec. 1204.105. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On presentation of an account for final settlement by a guardian of the estate of a ward, the county clerk shall issue citation to the persons and in the manner provided by this section.

(b) Citation issued under Subsection (a) must contain:

(1) a statement that an account for final settlement has been presented;

(2) the time and place the court will consider the account; and

(3) a statement requiring the person cited to appear and contest the account, if the person determines contesting the account is proper.

(c) Except as provided by Subsection (d) or (e), the county clerk shall:

(1) issue a citation to be personally served on a ward if:

(A) the ward is 14 years of age or older;
the ward is a living resident of this state;

and

the ward's residence is known;

(2) issue a citation to be personally served on the
executor or administrator of a deceased ward's estate, if one has
been appointed; and

(3) issue a citation to a ward or the ward's estate by
publication, or by posting if directed by written court order, if:

(A) the ward's residence is unknown;

(B) the ward is not a resident of this state; or

(C) the ward is deceased and no representative of
the ward's estate has been appointed and has qualified in this
state.

(d) The ward, in person or by attorney, may waive by writing
filed with the county clerk the issuance and personal service of
citation required by Subsection (c)(1).

(e) Service of citation is not required under Subsection
(c)(2) if the executor or administrator is the same person as the
guardian.

(f) The court may allow the waiver of notice of an account
for final settlement in a guardianship proceeding.

(g) The court by written order shall require additional
notice if the court considers the additional notice necessary.

(Tex. Prob. Code, Sec. 751.)

Source Law

Sec. 751. (a) On the filing of an account for
final settlement by a guardian of the estate of a ward,
citation must contain a statement that the final
account has been filed, the time and place when it will
be considered by the court, and a statement requiring
the person cited to appear and contest the final
account if the person determines it is proper. The
county clerk shall issue the citation to the following
persons and in the manner provided by this section.

(b) If a ward is a living resident of this state
who is 14 years of age or older, and the ward's
residence is known, the ward shall be cited by personal
service, unless the ward, in person or by attorney, by
writing filed with the clerk, waives the issuance and
personal service of citation.

(c) If one who has been a ward is deceased, the
ward's executor or administrator, if one has been
appointed, shall be personally served, but no service
is required if the executor or administrator is the same person as the guardian.

(d) If a ward's residence is unknown, or if the ward is a nonresident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the ward's estate shall be by publication, unless the court by written order directs citation by posting.

(e) If the court deems further additional notice necessary, it shall require the additional notice by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

Revisor's Note

Section 751(a), Texas Probate Code, refers to the "filing of" an account for final settlement and requires the issuance of citation containing a statement that the account has been "filed." Section 749, Texas Probate Code, revised in relevant part as Section 1204.101 of this chapter, requires a guardian to "present" an account for final settlement when the guardianship of the estate is to be settled. Furthermore, other portions of Subpart C, Part 4, Chapter XIII, Texas Probate Code, revised in this chapter and of which Section 751 is a part, also refer to the "presentation of" an account for final settlement. In context, the terms "presentation" and "filing" are synonymous. For consistency of terminology throughout this chapter, the revised law substitutes "presentation of" for "filing of" and substitutes "presented" for "filed." Similar changes are made throughout this chapter.

Revised Law

Sec. 1204.106. EXAMINATION OF AND HEARING ON ACCOUNT. (a)
On the court's satisfaction that citation has been properly served on all persons interested in the guardianship estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) After hearing all exceptions or objections to the account and evidence in support of or against the account, the court
shall audit and settle the account and, if necessary, restate the
account. (Tex. Prob. Code, Sec. 752(a).)

Source Law

Sec. 752. (a) On being satisfied that citation
has been duly served on all persons interested in the
estate, the court shall examine the account for final
settlement and the vouchers accompanying the account.
After hearing all exceptions or objections to the
account and evidence in support of or against the
account, the court shall audit and settle the same, and
restate it if that is necessary.

Revisor's Note

(1) Section 752(a), Texas Probate Code, refers
to a citation that has been "duly served." The revised
law substitutes "properly" for "duly" because the
terms are synonymous in context and "properly" is more
consistent with modern usage.

(2) Section 752(a), Texas Probate Code,
requires the court to examine the account for final
settlement and the vouchers accompanying the account
when the court is satisfied that all persons
interested in "the estate" have been served with
citation. The citation to which Section 752 refers is
issued under Section 751, Texas Probate Code, revised
as Section 1204.105 of this chapter. Under Section
751, the citation is issued when "a guardian of the
estate of a ward" files an account for final
settlement. Because it is clear from the combined
context of Sections 751 and 752 that the estate to
which Sections 751 and 752 refer is a guardianship
estate, as opposed to the estate of a decedent, and
because Section 601(9), Texas Probate Code, revised as
Section 1002.010 of this code, provides that "estate"
and "guardianship estate" have the same meaning, the
revised law substitutes "guardianship estate" for
"estate."

Revised Law

Sec. 1204.107. ASSETS BECOMING DUE PENDING FINAL
SETTLEMENT; RECEIPT AND DISCHARGE. (a) This section does not apply to money or another thing of value held under Section 1105.153.

(b) Until the order of final discharge of the guardian is entered in the judge's guardianship docket, money or another thing of value falling due to the ward or the ward's estate while the account for final settlement is pending may be paid or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate. The ward, guardian, or personal representative to whom the money or other thing of value is paid or tendered shall issue a receipt for the money or other thing of value, and the obligor or payor is discharged of the obligation for all purposes. (Tex. Prob. Code, Sec. 753.)

Source Law

Sec. 753. Money or any other thing of value falling due to the estate or ward while the account for final settlement is pending, other than money or any other thing of value held under Section 703(c) of this code, until the order of final discharge of the guardian is entered in the judge's guardianship docket, may be paid, delivered, or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate, who shall issue a receipt for the money or other thing of value, and the obligor or payor shall be discharged of the obligation for all purposes.

Revisor's Note

Section 753, Texas Probate Code, provides that "[m]oney or any other thing of value ... may be paid, delivered, or tendered." The revised law omits "delivered" as unnecessary because, in this context, the meaning of "delivered" is included within the meaning of "paid." Black's Law Dictionary (revised eighth edition, 2004) defines "payment" as the "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation."

Revised Law

Sec. 1204.108. DELIVERY OF WARD'S PROPERTY IN POSSESSION OF GUARDIAN OF THE PERSON ON SETTLEMENT OF GUARDIANSHIP OF THE ESTATE.

(a) If the guardianship of a ward is required to be settled as
provided by Section 1204.001, the guardian of the person shall
deliver all of the ward's property in the guardian's possession or
control to the emancipated ward or other person entitled to the
property. If the ward is deceased, the guardian shall deliver the
property to the personal representative of the deceased ward's
estate or other person entitled to the property.

(b) If none of the ward's property is in the guardian of the
person's possession or control, the guardian shall, not later than
the 60th day after the date the guardianship is required to be
settled, file with the court a sworn affidavit that states:

(1) the reason the guardianship was terminated; and

(2) to whom the ward's property in the guardian's
possession was delivered.

(c) The judge may issue orders as necessary for the best
interests of the ward or the deceased ward's estate.

(d) This section does not discharge a guardian of the person
from liability for breach of the guardian's fiduciary duties.

(Tex. Prob. Code, Sec. 747.)

Source Law
Sec. 747. (a) When the guardianship of an
incapacitated person is required to be settled as
provided by Section 745 of this code, the guardian of
the person shall deliver all property of the ward in
the possession or control of the guardian to the
emancipated ward or other person entitled to the
property. If the ward is deceased, the guardian shall
deliver the property to the personal representative of
the deceased ward's estate or other person entitled to
the property.

(b) If there is no property of the ward in the
possession or control of the guardian of the person,
the guardian shall, not later than the 60th day after
the date on which the guardianship is required to be
settled, file with the court a sworn affidavit that
states the reason the guardianship was terminated and
to whom the property of the ward in the guardian's
possession was delivered. The judge may issue orders
as necessary for the best interests of the ward or of
the estate of a deceased ward. This section does not
discharge a guardian of the person from liability for
breach of the guardian's fiduciary duties.

Revisor's Note
Section 747(a), Texas Probate Code, refers to the
guardianship of "an incapacitated person." Section
601(31), Texas Probate Code, which is revised as
Section 1002.030 of this code, defines "ward" as a person for whom a guardian has been appointed. The revised law therefore substitutes "a ward" for the quoted language for consistency of terminology throughout this title.

Revised Law

Sec. 1204.109. DELIVERY OF REMAINING ESTATE PROPERTY. On final settlement of a guardianship estate, the court shall order that any part of the estate that remains in the guardian's possession be delivered to:

(1) the ward;
(2) the personal representative of the ward's estate, if the ward is deceased and a personal representative has been appointed; or
(3) any other person legally entitled to the estate.

(Tex. Prob. Code, Sec. 752(b).)

Source Law

(b) On final settlement of an estate, if there is any part of the estate remaining in the hands of the guardian, the court shall order that it be delivered, in case of a ward, to the ward, or in the case of a deceased ward, to the personal representative of the deceased ward's estate if one has been appointed, or to any other person legally entitled to the estate.

[Sections 1204.110-1204.150 reserved for expansion]

SUBCHAPTER D. CLOSING OF GUARDIANSHIP AND DISCHARGE OF GUARDIAN

Revised Law

Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE PROPERTY REMAINS. The court shall enter an order discharging a guardian from the guardian's trust and closing the guardianship estate if, on final settlement of the estate, none of the estate remains in the guardian's possession. (Tex. Prob. Code, Sec. 752(c).)

Source Law

(c) If on final settlement of an estate there is no part of the estate remaining in the hands of the guardian, the court shall discharge the guardian from the guardian's trust and order the estate closed.
Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY ADMINISTERED. The court shall enter an order discharging a guardian of the estate from the guardian's trust and declaring the estate closed when:

1. The guardian has fully administered the estate in accordance with this title and the court's orders;

2. The guardian's account for final settlement has been approved; and

3. The guardian has delivered all of the estate remaining in the guardian's possession to any person entitled to receive the estate. (Tex. Prob. Code, Sec. 752(d).)

(d) When the guardian of an estate has fully administered the estate in accordance with this chapter and the orders of the court and the guardian's final account has been approved, and the guardian has delivered all of the estate remaining in the guardian's hands to any person entitled to receive the estate, the court shall enter an order discharging the guardian from the guardian's trust, and declaring the estate closed.

[Sections 1204.153-1204.200 reserved for expansion]

SUBCHAPTER E. FAILURE OF GUARDIAN TO ACT

Sec. 1204.201. FAILURE TO PRESENT FINAL ACCOUNT OR REPORT.

(a) The court may, on the court's own motion, and shall, on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, have the guardian who is charged with the duty of presenting a final account or report cited to appear and present the account or report within the time specified in the citation if the guardian failed or neglected to present the account or report at the proper time.

(b) If a written complaint has not been filed by anyone interested in the guardianship of the person or estate of a minor or deceased ward, on or after the third anniversary of the date the minor ward reaches the age of majority or the date the ward dies, as applicable, the court may remove the estate from the court's active
docket without a final accounting and without appointing a successor personal representative.

(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, on or after the fourth anniversary of the date the ward's whereabouts became unknown to the court, the court may remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative. (Tex. Prob. Code, Sec. 750.)

Source Law

Sec. 750. (a) If a guardian charged with the duty of filing a final account or report fails or neglects so to do at the proper time, the court may, on the court's own motion, or on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, shall cause the guardian to be cited to appear and present the account or report within the time specified in the citation.

(b) If a written complaint has not been filed by anyone interested in the guardianship of a person or estate of a minor or deceased ward, the court may, on or after the third anniversary after the date of the death of the ward or after the date the minor reaches the age of majority, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, the court may, on or after the fourth anniversary after the ward's whereabouts became unknown to the court, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

Revised Law

Sec. 1204.202. LIABILITY FOR FAILURE TO DELIVER ESTATE PROPERTY. (a) On final settlement or termination of the guardianship of the estate, if the guardian neglects when legally demanded to deliver a portion of the estate or any funds or money in the guardian's possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

(1) the fact of the neglect;
(2) the date of the person's demand; and
(3) other relevant facts.

(b) After the filing of a complaint under Subsection (a),
the court clerk shall issue a citation to be served personally on
the guardian. The citation must:

1. apprise the guardian of the complaint; and
2. cite the guardian to appear before the court and
answer, if the guardian desires, at a time designated in the
citation.

(c) If at the hearing the court finds that the citation was
properly served and returned, and that the guardian is guilty of the
neglect charged, the court shall enter an order to that effect.

(d) If the court enters an order under Subsection (c), the
 guardian is liable to the person who filed the complaint under
Subsection (a) for damages at the rate of 10 percent of the amount
or appraised value of the money or estate withheld, per month, for
each month or fraction of a month that the estate or money of a
guardianship of the estate, or on termination of guardianship of
the person, or funds is or has been withheld by the guardian after
the date of demand. Damages under this subsection may be recovered
758.)

Source Law

Sec. 758. If a guardian, on final settlement or
termination of the guardianship of the estate,
neglects to deliver to the person entitled when
legally demanded any portion of the estate or any funds
or money in the hands of the guardian ordered to be
delivered, a person entitled to the estate, funds, or
money may file with the clerk of the court a written
complaint alleging the fact of the guardian's neglect,
the date of the person's demand, and other relevant
facts. After the person files a complaint under this
section, the clerk shall issue a citation to be served
personally on the guardian, appraising the guardian of
the complaint and citing the guardian to appear before
the court and answer, if the guardian desires, at the
time designated in the citation. If at the hearing the
court finds that the citation was duly served and
returned and that the guardian is guilty of the neglect
charged, the court shall enter an order to that effect,
and the guardian shall be liable to the person who
filed the complaint in damages at the rate of 10
percent of the amount or appraised value of the money
or estate withheld, per month, for each month or
fraction of a month that the estate or money of a
guardianship of the estate, or on termination of
guardianship of the person, or funds is or has been
withheld by the guardian after the date of demand,
which damages may be recovered in any court of
competent jurisdiction.
Revisor's Note

(1) Section 758, Texas Probate Code, provides that after a person has filed a complaint "the clerk shall issue a citation . . . appraising the guardian of the complaint and citing the guardian to appear before the court and answer." The revised law substitutes "apprise" for "appraising" because it is clear from the context of Section 758, Texas Probate Code, that the citation is intended to notify the guardian of the complaint, and "apprise" means "to give notice to," while "appraise" means "to set a value on." Merriam-Webster's Collegiate Dictionary (eleventh edition, 2006).

(2) Section 758, Texas Probate Code, refers to a citation that has been "duly served." The revised law substitutes "properly" for "duly" for the reason stated in Revisor's Note (1) to Section 1204.106 of this chapter.

[Chapters 1205-1250 reserved for expansion]

CHAPTER 1251. TEMPORARY GUARDIANSHIPS

SUBCHAPTER A. APPOINTMENT OF TEMPORARY GUARDIAN GENERALLY

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Sec. 1251.001. APPOINTMENT OF TEMPORARY GUARDIAN. (a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:

(1) is presented with substantial evidence that a person may be an incapacitated person; and

(2) has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.

(b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court
Sec. 875. (a) If a court is presented with substantial evidence that a person may be a minor or other incapacitated person, and the court has probable cause to believe that the person or person's estate, or both, requires the immediate appointment of a guardian, the court shall appoint a temporary guardian with limited powers as the circumstances of the case require.

(b) The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

Revisor's Note
Section 875(a), Texas Probate Code, refers to "a minor or other incapacitated person." Throughout this chapter the revised law omits the references to "a minor" as unnecessary in this context because Section 601(14), Texas Probate Code, revised in this title as Section 1002.017, defines "incapacitated person" to include a minor.

Sec. 1251.002. NO PRESUMPTION OF INCAPACITY. A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated. (Tex. Prob. Code, Sec. 874.)

Sec. 874. The person for whom a temporary guardian is appointed under Section 875 of this code may not be presumed to be incapacitated.

Sec. 1251.003. APPLICATION. (a) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian.

(b) The application must state:
(1) the name and address of the person who is the subject of the guardianship proceeding;
(2) the danger to the person or property alleged to be imminent;
(3) the type of appointment and the particular protection and assistance being requested;
(4) the facts and reasons supporting the allegations and requests;
(5) the proposed temporary guardian's name, address, and qualification;
(6) the applicant's name, address, and interest; and
(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104. (Tex. Prob. Code, Sec. 875(c).)

(c) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian. The application must state:
(1) the name and address of the person who is the subject of the guardianship proceeding;
(2) the danger to the person or property alleged to be imminent;
(3) the type of appointment and the particular protection and assistance being requested;
(4) the facts and reasons supporting the allegations and requests;
(5) the name, address, and qualification of the proposed temporary guardian;
(6) the name, address, and interest of the applicant; and
(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

Sec. 1251.004. APPOINTMENT OF ATTORNEY. On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward. (Tex. Prob. Code, Sec. 875(d).)
(d) On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

Revised Law

Sec. 1251.005. NOTICE OF APPLICATION. (a) On the filing of an application for temporary guardianship, the clerk shall issue notice to be served on:

(1) the proposed ward;
(2) the proposed ward's appointed attorney; and
(3) the proposed temporary guardian named in the application, if that person is not the applicant.

(b) The notice must describe:

(1) the rights of the parties; and
(2) the date, time, place, purpose, and possible consequences of a hearing on the application.

(c) A copy of the application must be attached to the notice. (Tex. Prob. Code, Sec. 875(e).)

Revised Law

(e) On the filing of an application for temporary guardianship, the clerk shall issue notice that shall be served on the respondent, the respondent's appointed attorney, and the proposed temporary guardian named in the application, if that person is not the applicant. The notice must describe the rights of the parties and the date, time, place, purpose, and possible consequences of a hearing on the application. A copy of the application must be attached to the notice.

Revisor's Note

Section 875(e), Texas Probate Code, refers to "the respondent" and "the respondent's" appointed attorney. Throughout this chapter, the revised law substitutes "proposed ward" for "respondent" for consistency of terminology because it is clear from the context of Section 875 that the "respondent" is the proposed ward for whom an application for temporary guardianship has been filed. For example, Section
875(d), Texas Probate Code, provides that an attorney
shall be appointed to represent the proposed ward and
Section 875(e) refers to that attorney.

Revised Law
Sec. 1251.006. SCHEDULING OF HEARING. (a) Immediately
after an application for a temporary guardianship is filed, the
court shall issue an order setting a certain date for the hearing on
the application.

(b) Unless postponed as provided by Subsection (c), a
hearing shall be held not later than the 10th day after the date the
application for temporary guardianship is filed.

(c) The proposed ward or the proposed ward's attorney may
consent to postpone the hearing on the application for temporary
guardianship for a period not to exceed 30 days after the date the
application is filed.

(d) An application for temporary guardianship takes
precedence over all matters except older matters of the same
character. (Tex. Prob. Code, Secs. 875(f)(1) (part), (2), (3),
(4).)

Source Law
(f)(1) A hearing shall be held not later than
the 10th day after the date of the filing of the
application for temporary guardianship unless the
hearing date is postponed as provided by Subdivision
(2) of this subsection. . . .

(2) The respondent or the respondent's
attorney may consent to postpone the hearing on the
application for temporary guardianship for a period
not to exceed 30 days after the date of the filing of
the application.

(3) Every application for temporary
guardianship takes precedence over all matters except
older matters of the same character.

(4) Immediately after an application for
temporary guardianship is filed, the court shall issue
an order that sets a certain date for hearing on the
application for temporary guardianship.

Revised Law
Sec. 1251.007. MOTION FOR DISMISSAL OF APPLICATION. (a)
Subject to Subsection (b), the proposed ward or the proposed ward's
attorney may appear and move for the dismissal of the application
for temporary guardianship.
(b) At least one day before making a motion under Subsection (a), the proposed ward or the proposed ward's attorney shall provide notice to the party who filed the application for temporary guardianship.

(c) If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as justice requires. (Tex. Prob. Code, Sec. 875(f)(5).)

Source Law

(5) On one day's notice to the party who filed the application for temporary guardianship, the respondent or the respondent's attorney may appear and move for the dismissal of the application for temporary guardianship. If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as the ends of justice require.

Revised Law

Sec. 1251.008. RIGHTS OF PROPOSED WARD AT HEARING. At a hearing under this subchapter, the proposed ward has the right to:

(1) receive prior notice;
(2) be represented by counsel;
(3) be present;
(4) present evidence;
(5) confront and cross-examine witnesses; and
(6) a closed hearing if requested by the proposed ward or the proposed ward's attorney. (Tex. Prob. Code, Sec. 875(f)(1)(part).)

Source Law

(f)(1) ... At a hearing under this section, the respondent has the right to:
(A) receive prior notice;
(B) have representation by counsel;
(C) be present;
(D) present evidence and confront and cross-examine witnesses; and
(E) a closed hearing if requested by the respondent or the respondent's attorney.

Revisor's Note
Section 875(f)(1), Texas Probate Code, refers to "a hearing under this section," meaning Section 875,
Texas Probate Code. The relevant part of Section 875 that relates to a hearing on an application for a temporary guardianship is revised in this subchapter. The revised law is drafted accordingly.

Revised Law

Sec. 1251.009. APPEARANCE BY PROPOSED TEMPORARY GUARDIAN IN CERTAIN CIRCUMSTANCES. If the applicant for a temporary guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Section 1251.006(b) unless the proposed temporary guardian appears in court. (Tex. Prob. Code, Sec. 875(f)(6).)

Source Law

(6) If the applicant is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Subdivision (1) of this subsection unless the proposed temporary guardian appears in court.

Revisor's Note

Section 875(f)(6), Texas Probate Code, refers to "a hearing on the application required by Subdivision (1) of this subsection," meaning Section 875(f)(1), Texas Probate Code. The relevant part of Section 875(f)(1) that relates to a hearing on an application for a temporary guardianship is revised in this chapter as Section 1251.006(b). The revised law is drafted accordingly.

Revised Law

Sec. 1251.010. ORDER APPOINTING TEMPORARY GUARDIAN. (a) The court shall appoint a temporary guardian by written order if, at the conclusion of the hearing required by Section 1251.006(b), the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person, that there is imminent danger that the proposed ward's physical health or safety will be seriously impaired, or that the proposed ward's estate will be seriously damaged or dissipated unless immediate action is taken.

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(b) The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the proposed ward against the imminent danger shown.

(c) The order appointing the temporary guardian must describe:

(1) the reasons for the temporary guardianship; and

(2) the powers and duties of the temporary guardian.

(Tex. Prob. Code, Sec. 875(g) (part).)

Source Law

(g) If at the conclusion of the hearing required by Subsection (f)(1) of this section the court determines that the applicant has established that there is substantial evidence that the person is a minor or other incapacitated person, that there is imminent danger that the physical health or safety of the respondent will be seriously impaired, or that the respondent's estate will be seriously damaged or dissipated unless immediate action is taken, the court shall appoint a temporary guardian by written order. The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the respondent against the imminent danger shown. . . . The reasons for the temporary guardianship and the powers and duties of the temporary guardian must be described in the order of appointment.

Revisor's Note

Section 875(g), Texas Probate Code, requires the court to appoint a temporary guardian if the applicant establishes that there is substantial evidence that the "person" is an incapacitated person. The revised law substitutes "proposed ward" for the reference to "person" for consistency of terminology in this chapter and because it is clear from the context of Section 875(g) that the referenced "person" is the proposed ward for whom the temporary guardianship is sought by the applicant.

Revised Law

Sec. 1251.011. CERTAIN AGENCY AS TEMPORARY GUARDIAN. A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the department as a temporary guardian under this chapter should be made only as a last resort. (Tex. Prob.
Code, Sec. 875(j).)

Source Law

(j) The court may not customarily or ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this section. The appointment of the department as a temporary guardian under this section should be made only as a last resort.

Revisor's Note

Section 875(j), Texas Probate Code, provides that a court may not "customarily or ordinarily" appoint a certain agency as a temporary guardian. The revision omits "customarily" as unnecessary because in this context, "ordinarily" and "customarily" are synonymous.

Revised Law

Sec. 1251.012. TEMPORARY GUARDIAN'S BOND. The court shall set bond for a temporary guardian according to Chapter 1105. (Tex. Prob. Code, Sec. 875(g) (part).)

Source Law

(g) The court shall set bond according to Subpart B, Part 3, of this chapter.

Revised Law

Sec. 1251.013. COURT COSTS. If the court appoints a temporary guardian after the hearing required by Section 1251.006(b), all court costs, including attorney's fees, may be assessed as provided by Sections 1155.051, 1155.151, and 665B. (Tex. Prob. Code, Sec. 875(i).)

Source Law

(i) If the court appoints a temporary guardian after the hearing required by Subsection (f)(1) of this section, all court costs, including attorney's fees, may be assessed as provided in Section 665A, 665B, or 669 of this code.

[Sections 1251.014-1251.050 reserved for expansion]

SUBCHAPTER B. TEMPORARY GUARDIANSHIP PENDING CHALLENGE OR CONTEST OF CERTAIN GUARDIANSHIP APPLICATIONS

Revised Law

Sec. 1251.051. AUTHORITY TO APPOINT TEMPORARY GUARDIAN OR
GRANT RESTRAINING ORDER. The court, on the court's own motion or on the motion of any interested party, may appoint a temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if:

1. an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested; and
2. the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate. (Tex. Prob. Code, Sec. 875(k).)

Source Law

(k) If an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested, the court, on the court's own motion or on the motion of any interested party, may appoint a temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

Revised Law

Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN TEMPORARY GUARDIANSHIPS. (a) A temporary guardian appointed under Section 1251.051 must qualify in the same form and manner required of a guardian under this title.

(b) The term of a temporary guardian appointed under Section 1251.051 expires:

1. at the conclusion of the hearing challenging or contesting the application; or
2. on the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian. (Tex. Prob. Code, Sec. 875(1).)

Source Law

(1) A temporary guardian appointed under Subsection (k) of this section must qualify in the same form and manner required of a guardian under this code.
The term of the temporary guardian expires at the conclusion of the hearing challenging or contesting the application or on the date a permanent guardian the court appoints for the proposed ward qualifies to serve as the ward's guardian.

Revisor's Note
Section 875(l), Texas Probate Code, requires a temporary guardian to qualify in the same form and manner as a guardian under "this code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to qualification of guardians are revised in Title 3 of this code, and this chapter is included in that title.

Sections 1251.053-1251.100 reserved for expansion

SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY GUARDIANS

Revised Law
Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN. (a) When the temporary guardian files the oath and bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b) The clerk shall note compliance with the oath and bond requirements by the appointed temporary guardian on a certificate attached to the order.

(c) The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order.

(d) The clerk may not issue certified copies of the order until the oath and bond requirements are satisfied. (Tex. Prob. Code, Sec. 876.)

Source Law
Sec. 876. When the temporary guardian files the oath and bond required under this chapter, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship. The clerk shall note compliance with oath and bond requirements by the appointed guardian on a certificate attached to the order. The order
shall be evidence of the temporary guardian's
authority to act within the scope of the powers and
duties set forth in the order. The clerk may not issue
certified copies of the order until the oath and bond
requirements are satisfied.

Revised Law
Sec. 1251.102. APPLICABILITY OF GUARDIANSHIP PROVISIONS.
The provisions of this title relating to the guardianship of the
persons and estates of incapacitated persons apply to the temporary
guardianship of the persons and estates of incapacitated persons,
to the extent the provisions may be made applicable. (Tex. Prob.
Code, Sec. 877.)

Source Law
Sec. 877. All the provisions of this chapter
relating to the guardianship of persons and estates of incapitated persons apply to a temporary
guardianship of the persons and estates of incapitated persons, insofar as the same may be made applicable.

[Sections 1251.103-1251.150 reserved for expansion]

SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP

Revised Law
Sec. 1251.151. DURATION OF TEMPORARY GUARDIANSHIP. Except
as provided by Section 1251.052, a temporary guardianship may not
remain in effect for more than 60 days. (Tex. Prob. Code, Sec.
875(h).)

Source Law
(h) Except as provided by Subsection (k) of this section, a temporary guardianship may not remain in
effect for more than 60 days.

Revisor's Note
Section 875(h), Texas Probate Code, provides a
60-day term for a temporary guardianship "[e]xcept as
provided by Subsection (k)." Before 2003, Section
875(k), Texas Probate Code, provided for the
expiration of the term of a temporary guardian under
certain circumstances. Chapter 277, Acts of the 78th
Legislature, Regular Session, 2003, amended Section
875 and divided Subsection (k) of that section into
Subsections (k) and (l). Section 875(l) now contains
the provision relating to a temporary guardian's term.

Section 875(1) is revised as Section 1251.052 of this chapter. Accordingly, the revised law substitutes a cross-reference to Section 1251.052 for the reference to Section 875(k).

Revised Law

Sec. 1251.152. ACCOUNTING. (a) At the expiration of a temporary guardianship, the temporary guardian shall file with the court clerk:

1. a sworn list of all estate property that has come into the temporary guardian's possession;
2. a return of all sales made by the temporary guardian; and
3. a full exhibit and account of all the temporary guardian's acts as temporary guardian.

(b) The court shall act on the list, return, exhibit, and account filed under Subsection (a). (Tex. Prob. Code, Secs. 878, 879 (part).)

Source Law

Sec. 878. At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate that has come into the hands of the appointee, a return of all sales made by the appointee, and a full exhibit and account of all of the appointee's acts as temporary appointee.

Sec. 879. The court shall act on the list, return, exhibit, and account filed under Section 878 of this code. . . .

Revisor's Note

(1) Section 878, Texas Probate Code, refers to items that must be filed with the clerk of the court by the "appointee" at the expiration of the temporary "appointment." Throughout this subchapter, the revised law substitutes "temporary guardian" or "guardian," as appropriate, for "appointee" and "guardianship" for "appointment" for consistency of terminology throughout this chapter.

(2) Section 878, Texas Probate Code, refers to
property of the estate that has come into the "hands of
the appointee." The revised law substitutes
"possession" for "hands" because the terms are
synonymous in context and "possession" is more
consistent with modern usage.

Revised Law

Sec. 1251.153. DELIVERY OF ESTATE; DISCHARGE OF TEMPORARY
GUARDIAN. (a) When temporary letters expire or cease to be
effective for any reason, the court immediately shall enter an
order requiring the temporary guardian to deliver the estate
remaining in the temporary guardian's possession to the person
legally entitled to possession of the estate.

(b) On proof of delivery under Subsection (a):
(1) the temporary guardian shall be discharged; and
(2) the sureties on the temporary guardian's bond
shall be released as to future liability. (Tex. Prob. Code, Sec. 879
(part).)

Source Law

Sec. 879. . . . Whenever temporary letters expire or cease to be
effective for any reason, the
court shall immediately enter an order requiring the
temporary appointee to deliver the estate remaining in
the temporary appointee's possession to the person who
is legally entitled to the possession of the estate.
The temporary appointee shall be discharged and the
sureties on the bond of the temporary appointee shall
be released as to future liability on proof that the
appointee delivered the property as required by this
section.

CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

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CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

SUBCHAPTER A. RESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Revised Law

Sec. 1252.001. GRANTING OF GUARDIANSHIP OF ESTATE FOR
NONRESIDENT. (a) A guardianship of the estate of a nonresident
incapacitated person who owns property in this state may be
granted, if necessary, in the same manner as for the property of a
resident of this state.

(b) A court in the county in which the principal estate of
the nonresident incapacitated person is located has jurisdiction to
appoint the guardian. (Tex. Prob. Code, Sec. 882 (part).)

Source Law

Sec. 882. Guardianship of the estate of a
nonresident incapacitated person who owns property in
this state may be granted, if necessary, in the same
manner as for the property of a resident of this state.
A court in the county in which the principal estate of
the ward is located has jurisdiction to appoint a
guardian. ....

Revisor's Note

Section 882, Texas Probate Code, refers both to
an "incapacitated person" and to a "ward." The revised
law substitutes "incapacitated person" for "ward" for
accuracy and consistency of terminology in this
section and this title. Under Section 601(31), Texas
Probate Code, revised in this code as Section
1002.030, an incapacitated person is not a ward until a
guardian has been appointed for that person. In the context of Section 882, Texas Probate Code, which authorizes the appointment of a guardian of the estate of a nonresident incapacitated person in certain circumstances, the person for whom the guardian may be appointed is not yet a "ward" because a guardian has not yet been appointed for that person.

Revised Law

Sec. 1252.002. COURT ACTIONS AND ORDERS CONCERNING ESTATE. The court shall take all actions and make all necessary orders with respect to the estate described by Section 1252.001 of a nonresident ward for the maintenance, support, care, or education of the ward out of the proceeds of the estate, in the same manner as if the ward were a resident of this state sent abroad by the court for education or treatment. (Tex. Prob. Code, Sec. 882 (part).)

Source Law

Sec. 882. . . . The court shall take all actions and make all necessary orders with respect to the estate of the ward for the maintenance, support, care, or education of the ward, out of the proceeds of the ward's estate, in the same manner as if the ward were a resident of this state and was sent abroad by the court for education or treatment. . . .

Revised Law

Sec. 1252.003. CLOSING RESIDENT GUARDIANSHIP. The court shall close a resident guardianship of an estate granted under this subchapter if a qualified nonresident guardian of the estate later qualifies in this state under Section 1252.051 as a nonresident guardian. (Tex. Prob. Code, Sec. 882 (part).)

Source Law

Sec. 882. . . . If a qualified nonresident guardian of the estate later qualifies in this state under Section 881 of this code, the court shall close the resident guardianship.

Revisor's Note

Section 882, Texas Probate Code, refers to a nonresident guardian who qualifies under Section 881, Texas Probate Code. The revised law substitutes a reference to Section 1252.051 because the portion of
Section 881, Texas Probate Code, that relates to the qualification of a nonresident guardian is revised in this chapter as Section 1252.051.

[Sections 1252.004-1252.050 reserved for expansion]

SUBCHAPTER B. NONRESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Revised Law

Sec. 1252.051. APPOINTMENT AND QUALIFICATION OF NONRESIDENT GUARDIAN. (a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate located in this state in the same manner provided by this title for the appointment and qualification of a resident guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by any name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) the nonresident, with the written application for appointment, files in the county court of a county of this state in which all or part of the nonresident ward's estate is located a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed.

(b) The transcript required by Subsection (a)(3) must:

(1) show the applicant's appointment and qualification as guardian or other fiduciary legal representative of the ward's property or estate;

(2) be certified to and attested by the clerk of the foreign court or the court officer charged by law with custody of the court records, under the court seal, if any; and

(3) have attached a certificate of the judge, chief justice, or presiding magistrate of the foreign court certifying that the attestation of the clerk or legal custodian of the court
records is in correct form. (Tex. Prob. Code, Secs. 881(a), (b).)

Source Law

Sec. 881. (a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate located in this state in the same manner provided by this code for the appointment and qualification of a resident as guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by whatever name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) with the written application for appointment in the county court of any county in this state in which all or part of the ward's estate is located, the nonresident files a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed, showing the applicant's appointment and qualification as the guardian or fiduciary legal representative of the ward's property or estate.

(b) The transcript required by Subsection (a) of this section must be certified to and attested by the clerk of the foreign court or the officer of the court charged by law with custody of the court records, under the court seal, if any. The certificate of the judge, chief justice, or presiding magistrate, as applicable, of the foreign court must be attached to the transcript, certifying that the attestation of the transcript by the clerk or legal custodian of the court records is in correct form.

Revisor's Note

Section 881(a), Texas Probate Code, provides that a nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate "in the same manner provided by this code" that a resident of this state may be appointed and qualified as guardian of an incapacitated person's estate. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to appointment and qualification of a resident of this state as a guardian are revised in this title.

Revised Law

Sec. 1252.052. APPOINTMENT; ISSUANCE OF LETTERS OF GUARDIANSHIP. (a) If a nonresident applicant meets the
requirements of Section 1252.051, without the necessity of notice
or citation, the court shall enter an order appointing the
nonresident as guardian or coguardian of a nonresident ward's
estate located in this state.

(b) After the nonresident applicant qualifies in the manner
required of resident guardians and files with the court a power of
attorney appointing a resident agent to accept service of process
in all actions or proceedings with respect to the estate, the clerk
shall issue the letters of guardianship to the nonresident
guardian. (Tex. Prob. Code, Sec. 881(c).)

Source Law

[Sec. 881. (a) A nonresident of this state may
be appointed and qualified as guardian or coguardian
of a nonresident ward's estate located in this state
...]

(c) If the nonresident applicant meets the
requirements of this section, without the necessity of
any notice or citation, the court shall enter an order
appointing the nonresident. After the nonresident
applicant qualifies in the manner required of resident
guardians and files with the court a power of attorney
appointing a resident agent to accept service of
process in all actions or proceedings with respect to
the estate, the clerk shall issue the letters of
guardianship to the nonresident guardian.

Revisor's Note

Section 881(c), Texas Probate Code, refers to a
nonresident applicant for appointment as a nonresident
guardian who meets the "requirements of this section,"
meaning Section 881, Texas Probate Code. The revised
law substitutes a reference to Section 1252.051 for
"this section" because the only requirements of
Section 881, Texas Probate Code, that a nonresident
applicant must meet are those found in Section 881(a),
Texas Probate Code. That section is revised in this
subchapter as Section 1252.051.

Revised Law

Sec. 1252.053. INVENTORY AND APPRAISEMENT; ADMINISTRATION
OF ESTATE. After qualification, a nonresident guardian:

(1) shall file an inventory and appraisement of the
ward's estate in this state subject to the court's jurisdiction, as
in ordinary cases; and

(2) is subject to the applicable provisions of this code governing the handling and settlement of an estate by a resident guardian. (Tex. Prob. Code, Sec. 881(d).)

Source Law

(d) After qualification, the nonresident guardian shall file an inventory and appraisement of the estate of the ward in this state subject to the jurisdiction of the court, as in ordinary cases, and is subject to all applicable provisions of this code with respect to the handling and settlement of estates by resident guardians.

Revised Law

Sec. 1252.054. DELIVERY OF ESTATE TO CERTAIN GUARDIANS. The court may order a resident guardian who has any of the ward's estate to deliver the estate to a qualified and acting guardian of the ward. (Tex. Prob. Code, Sec. 881(e).)

Source Law

(e) A resident guardian who has any of the estate of a ward may be ordered by the court to deliver the estate to a duly qualified and acting guardian of the ward.

Revisor's Note

Section 881(e), Texas Probate Code, states that a court may order property to be delivered "to a duly qualified and acting" guardian of the ward. The revised law omits "duly" in this context as unnecessary. The requirement that the guardian be qualified and acting is sufficient to convey that the guardian must have met the requirements to qualify and act as guardian.

Revised Law

Sec. 1252.055. REMOVAL OF WARD'S PROPERTY FROM STATE BY NONRESIDENT GUARDIAN. Regardless of whether qualified under this title, a nonresident guardian may remove personal property of the ward from this state if:

(1) the removal does not conflict with the tenure of the property or the terms of the guardianship under which the property is held; and
(2) all known debts against the estate in this state are paid or secured by a bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state. (Tex. Prob. Code, Sec. 881A.)

Source Law

Sec. 881A. A nonresident guardian, regardless of whether the nonresident guardian is qualified under this code, may remove personal property of the ward out of the state if:

1. the removal does not conflict with the tenure of the property or the terms and limitations of the guardianship under which the property is held; and
2. all debts known to exist against the estate in this state are paid or secured by bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

Revisor's Note

(1) Section 881A, Texas Probate Code, authorizes certain actions by a nonresident guardian, regardless of whether the nonresident guardian is qualified under "this code." The revised law substitutes a reference to "this title" for "this code" because the only requirements of the Texas Probate Code that relate to the qualification of a guardian are revised in this title.

(2) Section 881A, Texas Probate Code, refers to "the terms and limitations of the guardianship." The revised law omits the reference to "limitations" because, in this context, "limitations" is included in the meaning of "terms."

CHAPTER 1253. INTERSTATE GUARDIANSHIPS

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CHAPTER 1253. INTERSTATE GUARDIANSHIPS

SUBCHAPTER A. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION

Revised Law

Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION. A guardian of the person or estate may apply to the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved. (Tex. Prob. Code, Sec. 891(a).)

Source Law

Sec. 891. (a) A guardian of the person or estate of a ward may apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

Revised Law

Sec. 1253.002. NOTICE OF APPLICATION. Notice of an application to transfer a guardianship under this subchapter shall
be:

(1) served personally on the ward; and

(2) given to the foreign court to which the guardianship is to be transferred. (Tex. Prob. Code, Sec. 891(b).)

Source Law

(b) Notice of the application to transfer a guardianship under this section shall be served personally on the ward and shall be given to the foreign court to which the guardianship is to be transferred.

Revised Law

Sec. 1253.003. DETERMINATION REGARDING TRANSFER OF GUARDIANSHIP. (a) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider an application to transfer a guardianship under this subchapter.

(b) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction.

(c) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship. (Tex. Prob. Code, Secs. 891(c), (d).)

Source Law

(c) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application to transfer the guardianship.

(d) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction. To facilitate the orderly transfer of the guardianship, the court shall coordinate efforts with the appropriate foreign court.

[Sections 1253.004-1253.050 reserved for expansion]

SUBCHAPTER B. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

Revised Law

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to
represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. (Tex. Prob. Code, Sec. 892(a).)

Source Law

Sec. 892. (a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court.

Revisor's Note

Section 892(a), Texas Probate Code, authorizes a guardian appointed by a foreign court to file an application for receipt and acceptance of the foreign guardianship "with a court in which the ward resides or intends to reside." The intent of the quoted language is not clear. The revised law is, therefore, drafted to preserve the ambiguity of Section 892(a), Texas Probate Code.

Revised Law

Sec. 1253.052. NOTICE OF APPLICATION. Notice of an application for receipt and acceptance of a foreign guardianship under this subchapter shall be:

(1) served personally on the ward; and

(2) given to the foreign court from which the guardianship is to be transferred. (Tex. Prob. Code, Sec. 892(b).)

Source Law

(b) Notice of the application for receipt and acceptance of a foreign guardianship under this section shall be served personally on the ward and shall be given to the foreign court from which the guardianship is to be transferred.

Revised Law

Sec. 1253.053. DETERMINATION REGARDING RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider an application for receipt and
acceptance of a foreign guardianship under this subchapter.

(b) In reviewing the application, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more states may have jurisdiction, that the application has been filed in the court that is best suited to consider the matter.

(c) The court shall grant the application if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward.

(d) In granting the application, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(e) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship. (Tex. Prob. Code, Secs. 892(d), (e), (f), (g).)

(d) In reviewing an application for receipt and acceptance of a foreign guardianship, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more states may have jurisdiction, that the application has been filed in the court that is best suited to consider the matter.

(e) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application for receipt and acceptance of a foreign guardianship.

(f) The court shall grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. In granting an application under this subsection, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(g) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.
Sec. 1253.054. HEARING TO CONSIDER MODIFICATION. Not later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under this subchapter, the court shall hold a hearing to consider modifying the administrative procedures or requirements of the transferred guardianship in accordance with local and state law. (Tex. Prob. Code, Sec. 893.)

Sec. 893. Not later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under Section 892 of this code, the court shall hold a hearing to consider modifying the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

Sec. 1253.055. GUARDIANSHIP TRANSFER PROCEEDINGS FILED IN TWO OR MORE COURTS. If an application for receipt and acceptance of a foreign guardianship under this subchapter is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the application filed on the earliest date, if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court. (Tex. Prob. Code, Sec. 892(c).)

(c) If an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the application filed on the earliest date if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court.

Sec. 1253.056. CONSTRUCTION WITH OTHER LAW. The denial of an application for receipt and acceptance of a guardianship under this subchapter does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 1101.001. (Tex. Prob. Code, Sec. 892(h).)
(h) The denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

[Sections 1253.057-1253.100 reserved for expansion]

SUBCHAPTER C. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN FOREIGN JURISDICTION

Revised Law

Sec. 1253.101. DELAY OF CERTAIN GUARDIANSHIP PROCEEDINGS.
A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper. (Tex. Prob. Code, Sec. 894(a).)

Sec. 894. (a) A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper.

Sec. 1253.102. DETERMINATION OF VENUE; ACTION FOLLOWING DETERMINATION. (a) A court that delays further action in a guardianship proceeding under Section 1253.101 shall determine whether venue of the proceeding is more suitable in that court or in the foreign court.

(b) In making a determination under Subsection (a), the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward;
and

(3) the convenience of the parties.

(c) The court shall resume the guardianship proceeding delayed under Section 1253.101 if the court determines under this section that venue is more suitable in that court. If the court determines that venue is more suitable in the foreign court, the court shall, with the consent of the foreign court, transfer the proceeding to that foreign court. (Tex. Prob. Code, Secs. 894(b), (d).)

Source Law

(b) A court that delays further action in a guardianship proceeding under Subsection (a) of this section shall determine whether venue of the proceeding is more suitable in that court or in the foreign court. In making that determination, the court may consider:

(1) the interests of justice;
(2) the best interests of the ward or proposed ward; and
(3) the convenience of the parties.

(d) The court shall resume the guardianship proceeding if the court determines that venue is more suitable in that court. If the court determines that venue is more suitable in the foreign court, the court shall, with the consent of the foreign court, transfer the proceeding to the foreign court.

Revised Law

Sec. 1253.103. NECESSARY ORDERS. A court that delays further action in a guardianship proceeding under Section 1253.101 may issue any order the court considers necessary to protect the proposed ward or the proposed ward's estate. (Tex. Prob. Code, Sec. 894(c).)

Source Law

(c) A court that delays further action under Subsection (a) of this section may issue any order it considers necessary to protect the proposed ward or the proposed ward's estate.

[Chapters 1254-1300 reserved for expansion]
SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING ALLEGED INCAPACITATED PERSON

Sec. 1301.053. CREATION OF TRUST FOR WARD

Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON WITHOUT GUARDIAN

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST

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SUBCHAPTER C. TERMS OF MANAGEMENT TRUST

Sec. 1301.101. REQUIRED TERMS

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Sec. 1301.154. ANNUAL ACCOUNTING

Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE

Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR CONDUCT OF TRUSTEE

SUBCHAPTER E. MODIFICATION, REVOCAUTION, OR TERMINATION OF MANAGEMENT TRUSTS

Sec. 1301.201. MODIFICATION OR REVOCAUTION OF TRUST

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT
Sec. 1301.001. DEFINITION. In this chapter, "management trust" means a trust created under Section 1301.053 or 1301.054.

(New.)

Revisor's Note
Throughout Subpart N, Part 4, Chapter XIII, Texas Probate Code (revised as this chapter), a management trust created under authority of that subpart is referred to in various ways. For example, Subpart N contains references to "a trust created under this section" (within Section 867, Texas Probate Code), "a trust created under Section 867" (see Sections 868 and 869B, Texas Probate Code), "the creation of a trust under this subpart" (see Section 868A, Texas Probate Code), and "a management trust created under Section 867" (see Section 868C, Texas Probate Code), as well as references to "the trust" (see Sections 867, 869, 870, and 873, Texas Probate Code). For consistency of terminology and to eliminate frequent, unnecessary repetition of the substance of the definition, the revised law adds a definition of "management trust" that cites to the provisions that contain the specific authority to create a management trust, which are Sections 1301.053 (containing the revision of Section 867(b), Texas Probate Code) and 1301.054 (containing the revision of Section 867(b-1), Texas Probate Code) of this chapter.

Revised Law
Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE. (a) A management trust is subject to Subtitle B, Title 9, Property Code.
(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this chapter or of a management trust, the provision of this chapter or of the trust controls.

(Tex. Prob. Code, Sec. 869B.)

Source Law

Sec. 869B. (a) A trust created under Section 867 of this code is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this subpart or of the trust, the provision of the subpart or trust controls.

[Sections 1301.003-1301.050 reserved for expansion]

SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

Revised Law

Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST.

The following persons may apply for the creation of a trust under this subchapter:

(1) the guardian of a ward;

(2) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;

(3) a person interested in the welfare of an alleged incapacitated person who does not have a guardian of the estate; or

(4) an attorney ad litem or guardian ad litem appointed to represent:

(A) an alleged incapacitated person who does not have a guardian; or

(B) the interests of a person described by Paragraph (A). (Tex. Prob. Code, Sec. 867(a-1).)

Source Law

(a-1) The following persons may apply for the creation of a trust under this section:

(1) the guardian of the estate of a ward;

(2) the guardian of the person of a ward;

(3) the guardian of both the person of and estate of a ward;

(4) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;

(5) a person interested in the welfare of an alleged incapacitated person who does not have a guardian of the estate; or

(6) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated
person who does not have a guardian or that person's interests.

Revisor's Note

Section 867(a-1), Texas Probate Code, provides that certain persons may apply for the creation of a management trust, including a guardian "of the estate," "of the person," or "of both the person of and estate of," a ward. The revised law omits the quoted phrases as unnecessary because Section 601(11), Texas Probate Code, revised in this code as Section 1002.012, defines "guardian" as a person appointed guardian under Section 693, Texas Probate Code. Section 693, the relevant part of which is revised in Chapter 1101 of this code, provides for the appointment of a guardian of an individual's "person or estate, or both." Furthermore, Section 601(11), Texas Probate Code, states that the term "guardian" includes a guardian of the estate and a guardian of the person unless a provision expressly provides otherwise.

Revised Law

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING ALLEGED INCAPACITATED PERSON. (a) An application for the creation of a trust under Section 1301.054 for an alleged incapacitated person must be filed in the same court in which a proceeding for the appointment of a guardian for the person is pending, if any.

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 610. (Tex. Prob. Code, Secs. 867(b-2), 867A.)

Source Law

[Sec. 867] (b-2) If a proceeding for the appointment of a guardian for an alleged incapacitated person is pending, an application for the creation of a trust for
the alleged incapacitated person under Subsection (b-1) of this section must be filed in the same court in which the guardianship proceeding is pending.

Sec. 867A. If a proceeding for the appointment of a guardian for the alleged incapacitated person is not pending on the date the application is filed, venue for a proceeding to create a trust for an alleged incapacitated person under Section 867(b-1) of this code must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 610 of this code.

Revised Law

Sec. 1301.053. CREATION OF TRUST FOR WARD. (a) On application by an appropriate person as provided by Section 1301.051, the court with jurisdiction over a guardianship may enter an order that creates for the ward's benefit a trust for the management of guardianship funds if the court finds that the creation of the trust is in the ward's best interests.

(b) The court shall maintain a trust created under this section under the same cause number as the guardianship proceeding.

(Tex. Prob. Code, Secs. 867(b), (f) (part).)

Source Law

(b) On application by an appropriate person as provided by Subsection (a-1) of this section, the court with jurisdiction over the guardianship may enter an order that creates for the ward's benefit a trust for the management of guardianship funds if the court finds that the creation of the trust is in the ward's best interests.

(f) [If a trust is created for a ward] . . . .

The court shall maintain the trust under the same cause number as the guardianship proceeding. . . .

Revised Law

Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON WITHOUT GUARDIAN. (a) On application by an appropriate person as provided by Section 1301.051 and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

(1) the person is an incapacitated person; and

(2) the creation of the trust is in the incapacitated
(b) The court shall conduct the hearing to determine incapacity under Subsection (a) using the same procedures and evidentiary standards as are required in a hearing for the appointment of a guardian for a proposed ward.

(c) The court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a).

(d) The court shall maintain a trust created under this section under the same cause number as the guardianship proceeding, if applicable. (Tex. Prob. Code, Secs. 867(b-1), (b-3), (f) (part).)

Source Law

(b-1) On application by an appropriate person as provided by Subsection (a-1) of this section and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

(1) the person is an incapacitated person; and

(2) the creation of the trust is in the incapacitated person's best interests.

(b-3) The court shall conduct a hearing to determine incapacity under Subsection (b-1) of this section using the same procedures and evidentiary standards as required in a hearing for the appointment of a guardian for a proposed ward. The court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the proceeding.

(f) . . . [If a trust is created for an incapacitated person who does not have a guardian] . . . . The court shall maintain the trust under the same cause number as the guardianship proceeding, if applicable.

Revisor's Note

Section 867(b-3), Texas Probate Code, prescribes procedures and evidentiary standards for "a hearing to determine incapacity under Subsection (b-1)" of that section, revised as Subsection (a) of this section.
Section 867(b-3) further provides that a court shall appoint an attorney ad litem, and may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person "in the proceeding." It is clear from the context of Section 867(b-3) that the "proceeding" being referred to is the "hearing" to determine incapacity. Accordingly, the revised law substitutes "the hearing to determine incapacity under Subsection (a)" for "the proceeding."

Revised Law

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST. If, after a hearing under Section 1301.054, the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the person's best interests for the court to create a trust under this subchapter for the person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose. (Tex. Prob. Code, Sec. 867(b-4).)

Source Law

(b-4) If, after a hearing, the court finds that a person for whom an application is filed under Subsection (b-1) of this section is an incapacitated person but that it is not in the incapacitated person's best interests to have the court create a management trust for the person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without the necessity of instituting a separate proceeding for that purpose.

Revisor's Note

Section 867(b-4), Texas Probate Code, authorizes a court to appoint, without instituting a separate guardianship proceeding, a guardian for a person "for whom an application [for the creation of a management trust] is filed under Subsection (b-1)" of Section 867. Section 867(b-1), revised in Section 1301.054 of this chapter, is not the section under which an application is filed. Section 867(b-1) requires a
hearing on an application for the creation of a management trust for an incapacitated person. For clarity and accuracy, the revised law refers to a hearing under Section 1301.054 instead of referring to an application under that section.

Revised Law

Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST. An order creating a management trust must:

(1) direct a person holding property that belongs to the ward or incapacitated person, as applicable, for whom the trust is created or to which the ward or incapacitated person is entitled, to deliver all or part of that property to the corporate fiduciary or other person appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust.

(Tex. Prob. Code, Sec. 867(f) (part).)

Source Law

(f) If a trust is created for a ward, the order shall direct a person holding property belonging to the ward or to which the ward is entitled to deliver all or part of the property to a person or corporate fiduciary appointed by the court as trustee of the trust. If a trust is created for an incapacitated person who does not have a guardian, the order shall direct a person holding property belonging to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as trustee of the trust. The order shall include terms, conditions, and limitations placed on the trust. . . .

Revisor's Note

(1) Section 867(f), Texas Probate Code, specifies what must be included in an order creating a management trust "[i]f a trust is created for a ward" or "[i]f a trust is created for an incapacitated person who does not have a guardian." The revised law omits the quoted language as unnecessary because, in accordance with Sections 867(b) and (b-1), Texas Probate Code, revised as Sections 1301.053(a) and 1301.054(a) of this chapter, respectively, a management trust may only be created for a ward or an
incapacitated person who does not have a guardian.

(2) Section 867(f), Texas Probate Code, requires an order creating a management trust to include "terms, conditions, and limitations" placed on the trust. The revised law omits the reference to "conditions" because, in this context, "conditions" is included within the meaning of "terms."

Revised Law

Sec. 1301.057. APPOINTMENT OF TRUSTEE. (a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this state, another state, or the United States.

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the ward or incapacitated person for whom the trust is created; and

(2) if the value of the trust's principal is more than $150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) The following are eligible for appointment as trustee under Subsection (c):

(1) an individual, including an individual who is certified as a private professional guardian;

(2) a nonprofit corporation qualified to serve as a guardian; and

(3) a guardianship program. (Tex. Prob. Code, Secs. 867(a), (b-5), (c), (d), (e).)
Sec. 867. (a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this or another state or the United States.

(b-5) Except as provided by Subsections (c) and (d) of this section, the court shall appoint a financial institution to serve as trustee of a trust created under this section.

(c) Subject to Subsection (d) of this section, if the court finds that it is in the ward's or incapacitated person's best interests, the court may appoint a person or entity that meets the requirements of Subsection (e) of this section to serve as trustee of the trust instead of appointing a financial institution to serve in that capacity.

(d) If the value of the trust's principal is more than $150,000, the court may appoint a person or entity other than a financial institution in accordance with Subsection (c) of this section to serve as trustee of the trust only if the court, in addition to the finding required by that subsection, finds that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(e) The following are eligible for appointment as trustee under Subsection (c) or (d) of this section:

1. an individual, including an individual who is certified as a private professional guardian;
2. a nonprofit corporation qualified to serve as a guardian; and
3. a guardianship program.

Revisor's Note

Section 867(a), Texas Probate Code, defines "financial institution" for purposes of "this section," meaning Section 867, Texas Probate Code. Section 867 is revised as this subchapter. However, the revised law retains the reference to "this section" because the relevant provisions of Section 867 that use the term "financial institution" are revised in this section.

Revised Law

Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES. (a) A trustee of a management trust that is a corporate fiduciary serves without giving a bond in accordance with the trust terms required by Section 1301.101(a)(4).

(b) The court shall require a person, other than a corporate fiduciary, serving as trustee of a management trust to file with the
county clerk a bond that:

(1) is in an amount equal to the value of the trust's principal and projected annual income; and

(2) meets the conditions the court determines are necessary. (Tex. Prob. Code, Secs. 868(a) (part), 868B.)

Source Law
Sec. 868. (a) . . . [a trust created under Section 867 of this code must provide that:]

(4) if the trustee is a corporate fiduciary, the trustee serves without giving a bond

Sec. 868B. The court shall require a person, other than a corporate fiduciary, serving as trustee to file with the county clerk a bond in an amount equal to the value of the trust's principal and projected annual income and with the conditions the court determines are necessary.

Revisor's Note
Section 868B, Texas Probate Code, refers to a person appointed as "trustee." The revised law adds "of a management trust" because it is clear from the context that the reference is to a person appointed to serve as the trustee of a management trust under Subpart N, Part 4, Chapter XIII, Texas Probate Code, which is revised as this chapter. Similar changes are made throughout this chapter.

[Sections 1301.059-1301.100 reserved for expansion]

SUBCHAPTER C. TERMS OF MANAGEMENT TRUST

Revised Law
Sec. 1301.101. REQUIRED TERMS. (a) Except as provided by Subsection (c), a management trust must provide that:

(1) the ward or incapacitated person for whom the trust is created is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the ward or incapacitated person;

(3) the trust income that the trustee does not
disburse under Subdivision (2) must be added to the trust principal;

(4) a trustee that is a corporate fiduciary serves without giving a bond; and

(5) subject to the court's approval and Subsection (b), the trustee is entitled to receive reasonable compensation for services the trustee provides to the ward or incapacitated person as trustee.

(b) A trustee's compensation under Subsection (a)(5) must be:

(1) paid from the management trust's income, principal, or both; and

(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian of an estate under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify terms required by Subsection (a)(1) or (2) only if the court determines that the omission or modification:

(1) is necessary and appropriate for the ward or incapacitated person to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the ward or incapacitated person; and

(2) is in the ward's or incapacitated person's best interests. (Tex. Prob. Code, Secs. 868(a), (d).)

Source Law

Sec. 868. (a) Except as provided by Subsection (d) of this section, a trust created under Section 867 of this code must provide that:

(1) the ward or incapacitated person is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to expend for the health, education, support, or maintenance of the ward or incapacitated person;

(3) the income of the trust that the trustee does not disburse under Subdivision (2) of this subsection must be added to the principal of the trust;

(4) if the trustee is a corporate fiduciary, the trustee serves without giving a bond; and

(5) the trustee, subject to the court's
approval, is entitled to receive reasonable compensation for services that the trustee provided to the ward or incapacitated person as the ward's or incapacitated person's trustee that is:
(A) to be paid from the trust's income, principal, or both; and
(B) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian of an estate under Section 665 of this code.

(d) When creating or modifying a trust, the court may omit or modify terms required by Subsection (a)(1) or (2) of this section only if the court determines that the omission or modification:
(1) is necessary and appropriate for the ward or incapacitated person to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the ward or incapacitated person; and
(2) is in the ward's or incapacitated person's best interests.

Revised Law
Sec. 1301.102. OPTIONAL TERMS. (a) A management trust may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the ward or incapacitated person for whom the trust is created or of another person whom the ward or incapacitated person is legally obligated to support:
(1) as necessary and without the intervention of:
(A) a guardian or other representative of the ward; or
(B) a representative of the incapacitated person; and
(2) to:
(A) the ward's guardian;
(B) a person who has physical custody of the ward or incapacitated person or of another person whom the ward or incapacitated person is legally obligated to support; or
(C) a person providing a good or service to the ward or incapacitated person or to another person whom the ward or incapacitated person is legally obligated to support.

(b) The court may include additional provisions in a management trust on the trust's creation or modification under this chapter if the court determines the addition does not conflict with Section 1301.101. (Tex. Prob. Code, Secs. 868(b), (e).)
Sec. 868. [(a) ... a trust created under Section 867 of this code] ...

(b) The trust may provide that a trustee make a distribution, payment, use, or application of trust funds for the health, education, support, or maintenance of the ward or incapacitated person or of another person whom the ward or incapacitated person is legally obligated to support, as necessary and without the intervention of a guardian or other representative of the ward or of a representative of the incapacitated person, to:

(1) the ward's guardian;
(2) a person who has physical custody of the ward or incapacitated person or another person whom the ward or incapacitated person is legally obligated to support; or
(3) a person providing a good or service to the ward or incapacitated person or another person whom the ward or incapacitated person is legally obligated to support.

(e) The court may include additional provisions in a trust created or modified under this section if the court determines an addition does not conflict with Subsection (a) and, if appropriate, Subsection (d) of this section.

Revisor's Note

Section 868(e), Texas Probate Code, refers to a trust created or modified "under this section," meaning Section 868, Texas Probate Code. However, Section 868 governs the terms of a management trust rather than the creation of a trust. Section 867, Texas Probate Code, revised as Subchapter B of this chapter, as well as other provisions revised in this chapter, govern the creation of a trust. Further, Section 869, Texas Probate Code, revised as Section 1301.201 of this chapter, governs a court's authority to modify a trust. Consequently, the revised law substitutes a reference to a trust's creation or modification "under this chapter" for the reference to "this section."

Revised Law

Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS. A provision in a management trust that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B, Title 9, Property Code, is enforceable only if:
(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the trust beneficiary. (Tex. Prob. Code, Sec. 868(c).)

Source Law

(c) A provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

Revisor's Note

Section 868(c), Texas Probate Code, refers to a trust provision that relieves a trustee from "a duty, responsibility, or liability." The revised law omits the reference to "responsibility" as unnecessary because "responsibility" is included within the meaning of "duty."

[Sections 1301.104-1301.150 reserved for expansion]

SUBCHAPTER D. ADMINISTRATION OF MANAGEMENT TRUSTS

Revised Law

Sec. 1301.151. JURISDICTION OVER TRUST MATTERS. A court that creates a management trust has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this title. (Tex. Prob. Code, Sec. 869C.)

Source Law

Sec. 869C. A court that creates a trust under Section 867 of this code has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this chapter.
Revised Law

Sec. 1301.152. COURT'S AUTHORITY TO DISCHARGE GUARDIAN OF ESTATE. On or at any time after the creation of a management trust, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests. (Tex. Prob. Code, Sec. 868A.)

Source Law

Sec. 868A. On or at any time after the creation of a trust under this subpart, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests.

Revised Law

Sec. 1301.153. INVESTMENT IN TEXAS TOMORROW FUND. The trustee of a management trust may invest trust funds in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code, if the trustee determines that investment is in the best interest of the ward or incapacitated person for whom the trust is created. (Tex. Prob. Code, Sec. 868(f).)

Source Law

(f) If the trustee determines that it is in the best interest of the ward or incapacitated person, the trustee may invest funds of the trust in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code.

Revised Law

Sec. 1301.154. ANNUAL ACCOUNTING. (a) The trustee of a management trust shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this title.

(b) The trustee of a management trust created for a ward shall provide a copy of the annual account to the guardian of the ward's estate or person.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this title. (Tex. Prob. Code, Sec. 871.)
Sec. 871. (a) The trustee shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this chapter. 

(b) If a trust has been created under this section for a ward, the trustee shall provide a copy of the annual account to the guardian of the ward's estate or person.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this chapter.

Revisor's Note

Section 871(b), Texas Probate Code, refers to "a trust . . . created under this section," meaning Section 871, Texas Probate Code. As explained in the revisor's note to Section 1301.102 of this chapter, Section 867, Texas Probate Code, and other provisions revised in this chapter govern the creation of a management trust. Accordingly, the revised law substitutes the defined term "management trust" for the quoted language.

Revised Law

Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE. The court may appoint a successor trustee if the trustee of a management trust resigns, becomes ineligible, or is removed. (Tex. Prob. Code, Sec. 869A.)

Source Law

Sec. 869A. The court may appoint a successor trustee if the trustee resigns, becomes ineligible, or is removed.

Revised Law

Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR CONDUCT OF TRUSTEE. The guardian of the person or of the estate of a ward for whom a management trust is created or the surety on the guardian's bond is not liable for an act or omission of the trustee of the trust. (Tex. Prob. Code, Sec. 872.)

Source Law

Sec. 872. The guardian of the person or of the estate of the ward or the surety on the bond of the guardian is not liable for an act or omission of the
trustee.

[Sections 1301.157-1301.200 reserved for expansion]

SUBCHAPTER E. MODIFICATION, REVOCATION, OR TERMINATION OF
MANAGEMENT TRUSTS

Revised Law

Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST. (a) The court may modify or revoke a management trust at any time before
the date of the trust's termination.

(b) The following may not revoke a management trust:

(1) the ward for whom the trust is created or the
guardian of the ward's estate; or

(2) the incapacitated person for whom the trust is
created. (Tex. Prob. Code, Sec. 869.)

Source Law

Sec. 869. (a) The court may amend, modify, or
revoke the trust at any time before the date of the
trust's termination.

(b) The ward or guardian of the ward's estate or
the incapacitated person, as applicable, may not
revoke the trust.

Revisor's Note

Section 869(a), Texas Probate Code, provides that
a court may "amend, modify, or revoke" a management
trust. The revised law omits the reference to "amend"
because, in context, the meaning of that term is
included in the meaning of "modify."

Revised Law

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT. (a) If
the court determines that it is in the best interests of a ward or
incapacitated person for whom a management trust is created, the
court may order the transfer of all property in the management trust
to a pooled trust subaccount established in accordance with Chapter
1302.

(b) The transfer of property from the management trust to
the pooled trust subaccount shall be treated as a continuation of
the management trust and may not be treated as the establishment of
a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)
or otherwise for purposes of the ward's or incapacitated person's eligibility for medical assistance under Chapter 32, Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount. (Tex. Prob. Code, Sec. 868C.)

Source Law

Sec. 868C. (a) If the court determines that it is in the ward's or incapacitated person's best interests, the court may order the transfer of all property in a management trust created under Section 867 of this code to a subaccount of a pooled trust established in accordance with Subpart I, Part 5, of this chapter. The transfer of property from the management trust to the subaccount of the pooled trust shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the ward's or incapacitated person's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) The court may not allow termination of the management trust created under Section 867 of this code from which property is transferred under this section until all of the property in the management trust has been transferred to the subaccount of the pooled trust.

Revised Law

Sec. 1301.203. TERMINATION OF TRUST. (a) If the ward or incapacitated person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the ward's or incapacitated person's death;

or

(B) the ward's or incapacitated person's 18th birthday;

(2) the date provided by court order, which may not be later than the ward's or incapacitated person's 25th birthday.

(b) If the ward or incapacitated person for whom a management trust is created is not a minor, the trust terminates on:

(1) the date the court determines that continuing the trust is no longer in the ward's or incapacitated person's best interests;
interests, subject to Section 1301.202(c); or

(2) the ward's or incapacitated person's death. (Tex. Prob. Code, Sec. 870.)

Source Law

Sec. 870. (a) If the ward or incapacitated person is a minor, the trust terminates:
(1) on the death of the ward or incapacitated person or the ward's or incapacitated person's 18th birthday, whichever is earlier; or
(2) on the date provided by court order which may not be later than the ward's or incapacitated person's 25th birthday.

(b) If the ward or incapacitated person is not a minor, the trust terminates on the date the court determines that continuing the trust is no longer in the ward's or incapacitated person's best interests, subject to Section 868C(b) of this code, or on the death of the ward or incapacitated person.

Revised Law

Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY. Unless otherwise provided by the court, the trustee of a management trust shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Sections 1204.101 and 1204.102; and

(2) on court approval, distribute the principal or any undistributed income of the trust to:

(A) the ward or incapacitated person when the trust terminates on the trust's own terms;

(B) the successor trustee on appointment of a successor trustee; or

(C) the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death. (Tex. Prob. Code, Sec. 873.)

Source Law

Sec. 873. Unless otherwise provided by the court, the trustee shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Section 749 of this code; and

(2) on court approval, distribute the principal or any undistributed income of the trust:

(A) to the ward or incapacitated person when the trust terminates on its own terms;

(B) to the successor trustee on appointment of a successor trustee; or
(C) to the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

CHAPTER 1302. POOLED TRUST SUBACCOUNTS

Sec. 1302.001. DEFINITIONS. In this chapter:

(1) "Beneficiary" means a person for whom a subaccount is established.

(2) "Medical assistance" means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Pooled trust" means a trust that meets the requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of exempting the trust from the applicability of 42 U.S.C. Section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

(4) "Subaccount" means an account in a pooled trust established solely for the benefit of a beneficiary. (Tex. Prob. Code, Sec. 910.)

Sec. 910. In this subpart:

(1) "Beneficiary" means a minor, a disabled person, or any other incapacitated person for whom a subaccount is established.

(2) "Medical assistance" means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Pooled trust" means a trust that meets the requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of exempting the trust from the applicability of 42 U.S.C. Section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

(4) "Subaccount" means an account in a pooled trust established solely for the benefit of a beneficiary. (Tex. Prob. Code, Sec. 910.)
beneficiary.

Revisor's Note

Section 910(1), Texas Probate Code, defines "beneficiary" as "a minor, a disabled person, or any other incapacitated person for whom a [pooled trust] subaccount is established" for purposes of Subpart I, Part 5, Chapter XIII, Texas Probate Code, which is revised as this chapter. The revised law omits from the definition the references to the specific types of persons for whom a pooled trust subaccount is established as unnecessary. Section 911, Texas Probate Code, revised in this chapter as Section 1302.002, authorizes an application for the establishment of a subaccount for a minor, a disabled person, or any other incapacitated person as beneficiary. In addition, it is clear from the other sections of Subpart I, Part 5, Chapter XIII, that those specified persons are the only persons who may be beneficiaries of subaccounts established under the subpart.

Revised Law

Sec. 1302.002. APPLICATION TO ESTABLISH SUBACCOUNT. A person interested in the welfare of a minor, a disabled person, or any other incapacitated person may apply to the court for the establishment of a subaccount for the benefit of the minor, disabled person, or other incapacitated person as the beneficiary. (Tex. Prob. Code, Sec. 911.)

Source Law

Sec. 911. A person interested in the welfare of a minor, a disabled person, or any other incapacitated person may apply to the court for the establishment of a subaccount for the benefit of the minor, disabled person, or other incapacitated person as the beneficiary.

Revised Law

Sec. 1302.003. APPOINTMENT OF ATTORNEY AD LITEM. (a) The court shall appoint an attorney ad litem for a person who is a minor
or has a mental disability and who is the subject of an application under Section 1302.002.

(b) The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person's property. (Tex. Prob. Code, Sec. 912.)

Source Law
Sec. 912. The court shall appoint an attorney ad litem for a person who is a minor or has a mental disability and who is the subject of an application under Section 911 of this code. The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person's property.

Revised Law
Sec. 1302.004. ESTABLISHMENT OF SUBACCOUNT. If the court finds that it is in the best interests of a person who is the subject of an application under Section 1302.002, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person's property on hand or accruing to the person. (Tex. Prob. Code, Sec. 913.)

Source Law
Sec. 913. If the court finds that it is in the best interests of a person who is the subject of an application under Section 911 of this code, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person's property on hand or accruing to the person.

Revised Law
Sec. 1302.005. TERMS OF SUBACCOUNT. Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:

(A) the beneficiary's 18th birthday, if the beneficiary is not disabled on that date and was a minor at the time the subaccount was established;

(B) the beneficiary's death; or
(C) a court order terminating the subaccount; and

(2) on termination, any property remaining in the beneficiary's subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state's medical assistance program and other states' medical assistance programs shall be distributed to:

(A) the beneficiary, if on the date of termination the beneficiary is living and is not incapacitated;

(B) the beneficiary's guardian, if on the date of termination the beneficiary is living and is incapacitated; or

(C) the personal representative of the beneficiary's estate, if on the date of termination the beneficiary is deceased. (Tex. Prob. Code, Sec. 914.)

Source Law

Sec. 914. Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:
   (A) the beneficiary's 18th birthday, if the beneficiary is not disabled on that date and was a minor at the time the subaccount was established;
   (B) the beneficiary's death; or
   (C) an order of the court terminating the subaccount; and

(2) on termination, any property remaining in the beneficiary's subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state's medical assistance program and other states' medical assistance programs shall be distributed to:

(A) the beneficiary, if on the date of termination the beneficiary is living and is not incapacitated;

(B) the beneficiary's guardian, if on the date of termination the beneficiary is living and is incapacitated; or

(C) the personal representative of the beneficiary's estate, if the beneficiary is deceased on the date of termination.

Revised Law

Sec. 1302.006. FEES AND REPORTING. (a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with
the manager's or trustee's standard fee structure; and

(2) pay fees assessed under Subdivision (1) from the
subaccount.

(b) If required by the court, the manager or trustee of the
pooled trust shall file a copy of the annual report of account with
the court clerk. (Tex. Prob. Code, Sec. 916.)

Source Law

Sec. 916. (a) The manager or trustee of a
pooled trust may:

(1) assess fees against a subaccount of
that pooled trust established under this subpart in
accordance with the manager's or trustee's standard fee
structure; and

(2) pay those fees from the subaccount.

(b) If required by the court, the manager or
trustee of the pooled trust shall file a copy of the
annual report of account with the court clerk.

Revised Law

Sec. 1302.007. JURISDICTION EXCLUSIVE. Notwithstanding
any other law, the court that orders the establishment of a
subaccount for a beneficiary has exclusive jurisdiction of a
subsequent proceeding or action that relates to both the
beneficiary and the subaccount, and the proceeding or action may be
brought only in that court. (Tex. Prob. Code, Sec. 915.)

Source Law

Sec. 915. Notwithstanding any other law, the
court that orders the establishment of a subaccount
for a beneficiary has exclusive jurisdiction of a
subsequent proceeding or action that relates to both
the beneficiary and the subaccount, and the proceeding
or action may only be brought in that court.

[Chapters 1303-1350 reserved for expansion]

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO
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CHAPTER 1351. SALE OF PROPERTY OF CERTAIN INCAPACITATED PERSONS  
SUBCHAPTER A. SALE OF MINOR’S INTEREST IN PROPERTY WITHOUT  
GUARDIANSHIP  

Revised Law

Sec. 1351.001. AUTHORITY TO SELL MINOR’S INTEREST IN  
PROPERTY WITHOUT GUARDIANSHIP. A parent or managing conservator of  
a minor who is not a ward may apply to the court under this  
subchapter for an order to sell an interest of the minor in property  
without being appointed guardian if the net value of the interest  
does not exceed $100,000. (Tex. Prob. Code, Sec. 889(a) (part).)

Source Law

Sec. 889. (a) When a minor has an interest in  
real or personal property and the net value of the  
interest does not exceed $100,000, a natural or  
adoptive parent, or the managing conservator, of a  
minor who is not a ward may apply to the court for an  
order to sell the minor's interest in the property  
without being appointed guardian. . . .
Revisor's Note

(1) Section 889(a), Texas Probate Code, refers to an interest in "real or personal property." Throughout this chapter, the revised law omits "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(2) Section 889(a), Texas Probate Code, refers to a "natural or adoptive" parent. The revised law omits "natural or adoptive" as unnecessary because Section 601(20), Texas Probate Code, revised in this code as Section 1002.022, defines "parent" to include both biological and adoptive mothers and fathers.

(3) Section 889(a), Texas Probate Code, provides that a parent or managing conservator of a minor "may apply to the court for an order to sell the minor's interest in the property." The revised law provides that a parent or managing conservator of a minor "may apply to the court under this subchapter for an order to sell an interest of the minor in property" for clarity and the convenience of the reader because the provisions relating to the sale of a minor's interest in property are revised in this subchapter.

Revised Law

Sec. 1351.002. APPLICATION; VENUE. (a) A parent or managing conservator shall apply to the court under oath for the sale of property under this subchapter.

(b) An application must contain:

(1) the minor's name;

(2) a legal description of the real property or a description that identifies the personal property, as applicable;

(3) the minor's interest in the property;

(4) the purchaser's name;
(5) a statement that the sale of the minor's interest in the property is for cash; and
(6) a statement that all money received by the parent or managing conservator shall be used for the minor's use and benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor. (Tex. Prob. Code, Sec. 889(b).)

Source Law

(b) The parent shall apply to the court under oath for the sale of the property. Venue for the application under this section is the same as venue for an application for the appointment of a guardian for a minor. The application must contain:
(1) a legal description of the real property and a description that identifies the personal property;
(2) the name of the minor and the minor's interest in the property;
(3) the name of the purchaser;
(4) a statement that the sale of the minor's interest in the property is for cash; and
(5) a statement that all funds received by the parent shall be used for the use and benefit of the minor.

Revisor's Note

(1) Section 889(b), Texas Probate Code, provides that the "parent" shall apply to the court for the sale of property and the application must state that funds received by the "parent" will be used for the minor's use and benefit. The revised law substitutes "parent or managing conservator" for accuracy and consistency of terminology in this subchapter. Section 889(a), Texas Probate Code, the relevant part of which is revised in this chapter as Section 1351.001, authorizes a parent or managing conservator of a minor to seek a court order under this subchapter.

(2) Section 889(b), Texas Probate Code, provides that "[t]he parent shall apply to the court . . . for the sale of the property" meaning an application for the sale of property of a minor. The
revised law provides that "[a] parent or managing conservator shall apply to the court . . . for the sale of property under this subchapter" for clarity and the convenience of the reader because the provisions relating to the sale of a minor's property are revised in this subchapter.

Revised Law

Sec. 1351.003. HEARING; REQUIREMENTS FOR SALE. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the minor's best interests. The court may require an independent appraisal of the property to be sold to establish the minimum sale price. (Tex. Prob. Code, Secs. 889(c), (d).)

Source Law

(c) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the court deems it necessary, the court may cause citation to be issued.

(d) At the time of the hearing of the application filed under this section, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the best interests of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

Revisor's Note

Section 889(c), Texas Probate Code, refers to "receipt of the application" meaning receipt by the court of an application to sell property of a minor. The revised law refers to "receipt of an application under this subchapter" for clarity and the convenience of the reader because the provisions relating to the sale of a minor's property are revised in this
subchapter.

Revised Law

Sec. 1351.004. PAYMENT OF SALE PROCEEDS INTO COURT REGISTRY. If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry. (Tex. Prob. Code, Sec. 889(e).)

Source Law

(e) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry.

Revisor's Note

Section 889(e), Texas Probate Code, refers to "[w]hen the court enters the order of sale" meaning the court has ordered the property of a minor to be sold. The revised law refers to "[i]f the court enters an order of sale of property as provided by this subchapter" for clarity.

Revised Law

Sec. 1351.005. WITHDRAWAL OF SALE PROCEEDS FROM REGISTRY NOT PROHIBITED. This subchapter does not prevent the sale proceeds deposited into the court registry under Section 1351.004 from being withdrawn from the court registry under Chapter 1355. (Tex. Prob. Code, Sec. 889(f).)

Source Law

(f) Nothing in this section prevents the proceeds deposited in the registry from being withdrawn from the court registry under Section 887 of this code.

Revised Law

Sec. 1351.006. DISAFFIRMATION OF SALE PROHIBITED. A minor may not disaffirm a sale of property made in accordance with a court order under this subchapter. (Tex. Prob. Code, Sec. 889(a)(part).)

Source Law

(a) . . . A minor may not disaffirm a sale of property pursuant to a court order under this section.
SUBCHAPTER B. SALE OF WARD'S PROPERTY WITHOUT GUARDIANSHIP OF THE ESTATE

Revised Law

Sec. 1351.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a ward who has a guardian of the person but does not have a guardian of the estate. (Tex. Prob. Code, Sec. 890(a).)

Source Law

Sec. 890. (a) This section applies only to a ward who has a guardian of the person but does not have a guardian of the estate.

Revised Law

Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE. A guardian of the person of a ward may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate if the net value of the interest does not exceed $100,000. (Tex. Prob. Code, Sec. 890(b) (part).)

Source Law

(b) When a ward has an interest in real or personal property in an estate and the net value of the interest does not exceed $100,000, the guardian may apply . . . to the court for an order to sell the ward's interest in the property without being appointed guardian of the estate. . . .

Revisor's Note

(1) Section 890(b), Texas Probate Code, authorizes "the guardian" of a ward in certain circumstances to seek court authorization to sell property without being appointed "guardian of the estate." In the context of this section, it is evident that the guardian referenced in the section is more accurately referred to as the "guardian of the person." The revised law is drafted accordingly.

(2) Section 890(b), Texas Probate Code, provides that "the guardian may apply . . . to the
court for an order to sell the ward's interest in the property." The revised law provides that a guardian of a ward "may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate" for clarity and the convenience of the reader because the provisions relating to the sale of a ward's interest in property are revised in this subchapter.

Revised Law
Sec. 1351.053. APPLICATION; VENUE. (a) An application under this subchapter must:

(1) be under oath; and

(2) contain the information required by Section 1351.002(b).

(b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to:

(1) "minor" are replaced with references to "ward";

and

(2) "parent or managing conservator" are replaced with references to "guardian of the person."

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for the ward. (Tex. Prob. Code, Secs. 890(b) (part), (c); New.)

Source Law
(b) . . . [the guardian may apply] under oath

(c) Venue for an application under this section is the same as venue for an application for the appointment of a guardian for the ward. The application must contain the same information required by Section 889(b) of this code.

Revisor's Note
(1) Section 890(b), Texas Probate Code, provides that ". . . the guardian may apply" meaning an application for the sale of property of a ward. The revised law refers to "[a]n application under this subchapter" for clarity and the convenience of the
reader because the provisions relating to the sale of a ward's property are revised in this subchapter.

(2) Section 890(c), Texas Probate Code, provides that an application for a court order to sell a ward's interest in property "must contain the same information required by Section 889(b) of this code."

Section 889, Texas Probate Code, revised in this code as Subchapter A of this chapter, authorizes a parent or managing conservator of a minor to obtain a court order to sell the minor's interest in property. The relevant part of Section 889(b), Texas Probate Code, which is revised in this chapter as Section 1351.002(b), specifically lists the information required to be included in an application under that subchapter, including information relating to "the minor" and "the parent or managing conservator." In the context of Section 890, Texas Probate Code, it is clear that Section 890 requires the specified information to be provided regarding "the ward" instead of "the minor" and regarding "the guardian of the person" instead of "the parent or managing conservator." The revised law is drafted accordingly.

Revised Law
Sec. 1351.054. HEARING. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) The procedures and evidentiary requirements for the hearing are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter A. (Tex. Prob. Code, Secs. 890(d), (e).)
(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the court considers it necessary, the court may cause citation to be issued.

(e) The procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889 of this code.

Revisor's Note

Section 890(d), Texas Probate Code, refers to "receipt of the application" meaning receipt by the court of an application to sell property of a ward. The revised law refers to "receipt of an application under this subchapter" for clarity and the convenience of the reader because the provisions relating to the sale of a ward's property are revised in this subchapter.

Revised Law

Sec. 1351.055. PAYMENT OF SALE PROCEEDS INTO COURT REGISTRY. If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry. (Tex. Prob. Code, Sec. 890(f).)

Source Law

(f) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry.

Revisor's Note

Section 890(f), Texas Probate Code, refers to "[w]hen the court enters the order of sale," meaning the court has ordered the property of a ward to be sold. The revised law refers to "[i]f the court enters an order of sale of property as provided by this subchapter" for clarity.

Revised Law

Sec. 1351.056. WITHDRAWAL OF SALE PROCEEDS FROM REGISTRY NOT PROHIBITED. This subchapter does not prevent the sale proceeds
deposited into the court registry under Section 1351.055 from being
withdrawn from the court registry under Chapter 1355. (Tex. Prob.
Code, Sec. 890(g).)

Source Law

(g) Nothing in this section prevents the
proceeds deposited in the court registry from being
withdrawn as prescribed by Section 887 of this code.

Revised Law

Sec. 1351.057. DISAFFIRMATION OF SALE PROHIBITED. A ward
may not disaffirm a sale of property made in accordance with a court
order under this subchapter. (Tex. Prob. Code, Sec. 890(b)
(part).)

Source Law

(b) ... A ward may not disaffirm a sale of
property pursuant to a court order under this section.

CHAPTER 1352. MORTGAGE OF MINOR’S INTEREST IN RESIDENCE HOMESTEAD

SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 1352.002-1352.050 reserved for expansion]

SUBCHAPTER B. MORTGAGE OF MINOR'S INTEREST WITHOUT GUARDIANSHIP

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SUBCHAPTER C. MORTGAGE OF MINOR WARD’S INTEREST WITHOUT
GUARDIANSHIP OF THE ESTATE

Sec. 1352.101. APPLICABILITY OF SUBCHAPTER ............ 634
Sec. 1352.001. DEFINITIONS. In this chapter:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code. (Tex. Prob. Code, Secs. 889A(a), 890A(a).)

Sec. 889A. (a) In this section:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

Sec. 890A. (a) In this section:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

[Sections 1352.002-1352.050 reserved for expansion]
(2) has an interest in a residence homestead. (Tex. Prob. Code, Sec. 889A(b) (part).)

**Source Law**

(b) When a minor has an interest in a residence homestead and . . . [a natural or adoptive parent . . . or the managing conservator, of] a minor who is not a ward [may apply to the court for an order authorizing . . . an extension of credit on the minor's behalf]

**Revised Law**

Sec. 1352.052. AUTHORITY TO MORTGAGE MINOR'S INTEREST WITHOUT GUARDIANSHIP. (a) If the net value of a minor's interest in a residence homestead does not exceed $100,000, a parent, subject to Subsection (b), or managing conservator of the minor may apply to the court under this subchapter for an order authorizing the parent or managing conservator to receive on the minor's behalf, without being appointed guardian, an extension of credit that is secured wholly or partly by a lien on the homestead.

(b) A parent of a minor may file an application under this subchapter only if the parent has a homestead interest in the property that is the subject of the application. (Tex. Prob. Code, Secs. 889A(b) (part), (j).)

**Source Law**

(b) When [a minor has an interest in a residence homestead and] the net value of the interest does not exceed $100,000, a natural or adoptive parent, subject to Subsection (j) of this section, or the managing conservator, of . . . may apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, an extension of credit on the minor's behalf that is secured, wholly or partly, by a lien on the homestead. . . .

(j) A parent of a minor may file an application under this section only if the parent has a homestead interest in the property that is the subject of the application.

**Revisor's Note**

Section 889A(b), Texas Probate Code, refers to a "natural or adoptive" parent. The revised law omits "natural or adoptive" as unnecessary because Section 601(20), Texas Probate Code, revised in this code as Section 1002.022, defines "parent" to include both...
biological and adoptive mothers and fathers.

Revised Law
Sec. 1352.053. APPLICATION; VENUE. (a) A parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this subchapter.

(b) The application must contain:

(1) the minor's name and address;

(2) a legal description of the property constituting the homestead;

(3) a description of the minor's ownership interest in the property constituting the homestead;

(4) the fair market value of the property constituting the homestead;

(5) the amount of the home equity loan;

(6) the purpose or purposes for which the home equity loan is being sought;

(7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor's behalf; and

(8) a statement that all loan proceeds received by the parent or managing conservator on the minor's behalf through a home equity loan authorized under this subchapter shall be used in a manner that is for the minor's benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor. (Tex. Prob. Code, Sec. 889A(c).)

Source Law
(c) The parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this section. Venue for the application is the same as venue for an application for the appointment of a guardian for a minor. The application must contain:

(1) the name and address of the minor;

(2) a legal description of the property constituting the homestead;

(3) a description of the minor's ownership interest in the property constituting the homestead;

(4) the name of the minor and the fair market value of the property constituting the homestead;
market value of the property constituting the homestead;

(5) the amount of the home equity loan;

(6) the purpose or purposes for which the home equity loan is being sought;

(7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor's behalf; and

(8) a statement that all loan proceeds received by the parent or managing conservator on the minor's behalf through a home equity loan authorized under this section shall be used in a manner that is for the minor's benefit.

Revised Law

Sec. 1352.054. HEARING; REQUIREMENTS TO MORTGAGE MINOR'S INTEREST. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.055, shall authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:

(1) for a purpose described by Section 1352.056(1) or (2); and

(2) in the minor's best interests. (Tex. Prob. Code, Secs. 889A(d), (f).)

Source Law

(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(f) At the time of the hearing of the application filed under this section, the court, on approval of the bond required by Subsection (e) of this section, shall authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (b)(1) or (2) of this section and is in the minor's best interests.

Revisor's Note

Section 889A(d), Texas Probate Code, refers to
"receipt of the application," meaning receipt by the court of an application for authorization to mortgage a minor's interest in a residence homestead. The revised law refers to "receipt of an application under this subchapter" for clarity and the convenience of the reader because the provisions relating to the mortgage of a minor's interest in a residence homestead are revised in this subchapter.

Revised Law

Sec. 1352.055. SURETY BOND; DISCHARGE OF SURETIES. (a) Before a hearing under Section 1352.054 is held, the parent or managing conservator shall file with the county clerk a surety bond. The bond must be:

(1) in an amount at least equal to two times the amount of the proposed home equity loan;

(2) payable to and approved by the court; and

(3) conditioned on the parent or managing conservator:

(A) using the proceeds of the home equity loan attributable to the minor's interest solely for the purposes authorized by Section 1352.056; and

(B) making payments on the minor's behalf toward the outstanding balance of the home equity loan.

(b) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this subchapter, the court may, on motion of the borrower, reduce the amount of the surety bond required under this section to an amount that is not less than the loan's outstanding balance.

(c) The court may not discharge the person's sureties from all further liability under a surety bond until the court:

(1) approves the filing of the parent's or managing conservator's reports required under Sections 1352.057 and 1352.058;

(2) finds that the parent or managing conservator used loan proceeds resulting from the minor's interest solely for the

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purposes authorized by Section 1352.056; and

(3) is presented with satisfactory evidence that the
home equity loan has been repaid and is no longer considered an
outstanding obligation. (Tex. Prob. Code, Secs. 889A(e), (h), (i).)

Source Law

(e) Before the hearing, the parent or managing
conservator shall file with the county clerk a surety
bond in an amount at least equal to two times the
amount of the proposed home equity loan. The bond
must be:
(1) payable to and approved by the court;
and
(2) conditioned on the parent or managing
conservator:
(A) using the proceeds of the home
equity loan attributable to the minor's interest
solely for the purposes authorized by this section;
and
(B) making payments on the minor's
behalf toward the outstanding balance of the home
equity loan.

(h) The court may not discharge the person's
sureties from all further liability under the bond
until the court:
(1) has approved the filing of the parent's
or managing conservator's reports required under
Subsection (g) of this section;
(2) finds that the parent or managing
conservator used loan proceeds resulting from the
minor's interest solely for the purposes authorized by
this section; and
(3) has been presented with satisfactory
evidence that the home equity loan has been repaid and
is no longer considered an outstanding obligation.
(i) After the first anniversary of the date a
parent or managing conservator executes a home
equity loan authorized under this section, the court
may, on motion of the borrower, reduce the amount of
the surety bond required under this section to an
amount that is not less than the outstanding balance of
the loan.

Revisor's Note

(1) Section 889A(e), Texas Probate Code,
provides that "[b]efore the hearing," the parent or
managing conservator shall file a surety bond. The
revised law provides that the parent or managing
conservator shall file a surety bond "[b]efore a
hearing under Section 1352.054 is held" for clarity
and the convenience of the reader because the
provisions relating to the hearing are revised in that
Sections 889A(e) and (h), Texas Probate Code, refer to the use of loan proceeds "solely for the purposes authorized by this section." The reference to "this section" means Section 889A, Texas Probate Code. The relevant portion of Section 889A providing for the authorized purposes for which loan proceeds may be used is contained in Section 889A(b), Texas Probate Code, and revised as Section 1352.056 of this chapter. The revised law is drafted accordingly.

(3) Section 889A(i), Texas Probate Code, refers to "the surety bond required under this section." The reference to "this section" means Section 889A, Texas Probate Code. The relevant portion of Section 889A requiring a surety bond is contained in Section 889A(e), Texas Probate Code, which is revised in this section. Consequently, the revised law retains the reference to "this section."

Revised Law
Sec. 1352.056. USE OF PROCEEDS. Proceeds of a home equity loan that is the subject of an application under Section 1352.053 that are attributable to the minor's interest may be spent only to:

(1) make improvements to the homestead;
(2) pay for the minor's education or medical expenses;
or
(3) pay the loan's outstanding balance. (Tex. Prob. Code, Sec. 889A(b) (part).)

Source Law
(b) . . . [a natural or adoptive parent . . . or the managing conservator, of a minor who is not a ward may apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, an extension of credit on the minor's behalf that is secured, wholly or partly, by a lien on the homestead.] Proceeds of the home equity loan attributable to the minor's interest may be used only to:

(1) make improvements to the homestead;
(2) pay for education or medical expenses of the minor; or
(3) pay the outstanding balance of the loan.

Revised Law
Sec. 1352.057. ANNUAL REPORT. A parent or managing conservator executing a home equity loan on a minor's behalf under this subchapter shall file an annual report with the court regarding the transaction. (Tex. Prob. Code, Sec. 889A(g) (part).)

Source Law
(g) A parent or managing conservator executing a home equity loan on a minor's behalf under this section shall file an annual report with the court regarding the transaction.

Revised Law
Sec. 1352.058. SWORN REPORT OF EXPENDITURES. When the parent or managing conservator has spent the proceeds of a home equity loan authorized under this subchapter, the parent or managing conservator shall file with the county clerk a sworn report accounting for the proceeds. (Tex. Prob. Code, Sec. 889A(g) (part).)

Source Law
(g) When the parent or managing conservator has expended the proceeds of a home equity loan authorized under this section, the parent or managing conservator, in addition, shall file with the county clerk a sworn report accounting for the proceeds.

Revised Law
Sec. 1352.059. DISAFFIRMATION OF HOME EQUITY LOAN PROHIBITED. A minor may not disaffirm a home equity loan authorized by the court under this subchapter. (Tex. Prob. Code, Sec. 889A(k).)

Source Law
(k) A minor may not disaffirm a home equity loan authorized by the court under this section.

[Sections 1352.060-1352.100 reserved for expansion]

SUBCHAPTER C. MORTGAGE OF MINOR WARD'S INTEREST WITHOUT GUARDIANSHIP OF THE ESTATE

Revised Law
Sec. 1352.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a minor ward who:
(1) has a guardian of the person but does not have a
guardian of the estate; and
(2) has an interest in a residence homestead. (Tex.
Prob. Code, Secs. 890A(b), (c) (part).)

**Source Law**

(b) This section applies only to a minor ward
who has a guardian of the person but does not have a
guardian of the estate.

(c) When a minor ward has an interest in a
residence homestead and . . . [the guardian of the
person of the ward may apply to the court for an order
authorizing the guardian to receive an extension of
credit on the ward's behalf]. . . .

**Revised Law**

Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST
WITHOUT GUARDIANSHIP OF THE ESTATE. If the net value of a minor
ward's interest in a residence homestead does not exceed $100,000,
the guardian of the person of the ward may apply to the court under
this subchapter for an order authorizing the guardian to receive on
the ward's behalf an extension of credit that is secured wholly or
partly by a lien on the homestead. (Tex. Prob. Code, Sec. 890A(c)
(part).)

**Source Law**

(c) When [a minor ward has an interest in a
residence homestead and] the net value of the interest
does not exceed $100,000, the guardian of the person of
the ward may apply to the court for an order
authorizing the guardian to receive an extension of
credit on the ward's behalf that is secured, wholly or
partly, by a lien on the homestead. . . .

**Revised Law**

Sec. 1352.103. APPLICATION; VENUE. (a) An application
under this subchapter must contain the information required by
Section 1352.053(b).

(b) For purposes of Subsection (a), references in Section
1352.053(b) to "parent or managing conservator" are replaced with
references to "guardian of the person."

(c) Venue for the application is the same as venue for an
application for the appointment of a guardian for a ward. (Tex.
Prob. Code, Sec. 890A(d); New.)
Source Law

(d) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward. The application must contain the same information required by Section 889A of this code.

Revisor's Note

(1) Section 890A(d), Texas Probate Code, refers to "[t]he application," meaning the application for authorization to mortgage a minor ward's interest in a residence homestead. The revised law refers to "[a]n application under this subchapter" for clarity and the convenience of the reader because the provisions relating to the mortgage of a minor ward's interest in a residence homestead are revised in this subchapter.

(2) Section 890A(d), Texas Probate Code, provides that an application for a court order to mortgage a minor ward's interest in a residence homestead "must contain the same information required by Section 889A of this code." Section 889A, Texas Probate Code, revised in this code as Subchapter B of this chapter, authorizes a parent or managing conservator of a minor to obtain a court order to mortgage the minor's interest in a residence homestead. The relevant part of Section 889A, Texas Probate Code, which is revised in this chapter as Section 1352.053(b), specifically lists the information required to be included in an application under that subchapter, including information relating to "the parent or managing conservator." In the context of Section 890A, Texas Probate Code, it is clear that Section 890A requires the specified information to be provided regarding "the guardian of the person" instead of "the parent or managing conservator." The revised law is drafted accordingly.
Sec. 1352.104. HEARING; REQUIREMENTS TO MORTGAGE MINOR WARD'S INTEREST. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) The procedures and evidentiary requirements for a hearing of an application filed under this subchapter are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter B.

(d) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.105, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:

(1) for a purpose described by Section 1352.106(1) or (2); and

(2) in the minor ward's best interests. (Tex. Prob. Code, Secs. 890A(e), (g), (h).)

Source Law

(e) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(g) The procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889A of this code.

(h) At the time of the hearing of the application filed under this section, the court, on approval of a bond required by Subsection (f) of this section, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (c)(1) or (2) of this section and is in the ward's best interests.

Revisor's Note

Section 890A(e), Texas Probate Code, refers to
"receipt of the application," meaning receipt by the
court of an application for authorization to mortgage
a minor ward's interest in a residence homestead. The
revised law refers to "receipt of an application under
this subchapter" for clarity and the convenience of
the reader because the provisions relating to the
mortgage of a minor ward's interest in a residence
homestead are revised in this subchapter.

**Revised Law**

Sec. 1352.105. SURETY BOND; DISCHARGE OF SURETIES. (a)

Before a hearing under Section 1352.104 is held, the guardian of the
person shall file a surety bond with the county clerk to the same
extent and in the same manner as a parent or managing conservator of
a minor is required to file a surety bond under Section 1352.055.

(b) The court may not discharge the guardian's sureties from
all further liability under a bond required by this section or
another provision of this title until the court:

(1) finds that the guardian used loan proceeds
resulting from the minor ward's interest solely for the purposes
authorized by Section 1352.106; and

(2) is presented with satisfactory evidence that the
home equity loan has been repaid and is no longer considered an
outstanding obligation. (Tex. Prob. Code, Secs. 890A(f), (j).)

**Source Law**

(f) The guardian of the person, before the
hearing, shall file a surety bond with the county clerk
to the same extent and in the same manner as a parent or
managing conservator of a minor is required to provide
a surety bond under Section 889A of this code.

(j) The court may not discharge a guardian's
sureties from all further liability under a bond
required by this section or another provision of this
code until the court:

(1) finds that the guardian used loan
proceeds resulting from the ward's interest solely for
the purposes authorized by this section; and

(2) has been presented with satisfactory
evidence that the home equity loan has been repaid and
is no longer considered an outstanding obligation.

**Revisor's Note**

(1) Section 890A(f), Texas Probate Code,
provides that "before the hearing" the guardian shall file a surety bond. The revised law provides that the guardian shall file a surety bond "[b]efore a hearing under Section 1352.104 is held" for clarity and the convenience of the reader because the provisions relating to the hearing are revised in that section.

(2) Section 890A(f), Texas Probate Code, refers to "a surety bond under Section 889A of this code." The relevant portion of Section 889A requiring a surety bond before the hearing is contained in Section 889A(e), Texas Probate Code, and revised in Section 1352.055 of this chapter. The revised law is drafted accordingly.

(3) Section 890A(j), Texas Probate Code, refers to "a bond required by this section." The reference to "this section" means Section 890A, Texas Probate Code. The relevant portion of Section 890A requiring a bond is contained in Section 890A(f), Texas Probate Code, which is revised in this section. Consequently, the revised law retains the reference to "this section."

(4) Section 890A(j), Texas Probate Code, refers to discharging a guardian's sureties from liability under a surety bond under "this code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to a guardian obtaining a surety bond are revised in Title 3 of this code, and this chapter is included in that title.

(5) Section 890A(j), Texas Probate Code, refers to "the purposes authorized by this section." The reference to "this section" means Section 890A, Texas Probate Code. The relevant portion of Section 890A providing for the purposes of use of the proceeds is
contained in Section 890A(c), Texas Probate Code, and
revised as Section 1352.106 of this chapter. The
revised law is drafted accordingly.

Revised Law
Sec. 1352.106. USE OF PROCEEDS. Proceeds of a home equity
loan that is the subject of an application under Section 1352.102
that are attributable to the minor ward's interest may be spent only
to:

(1) make improvements to the homestead;
(2) pay for the ward's education or maintenance
expenses; or
(3) pay the loan's outstanding balance. (Tex. Prob.
Code, Sec. 890A(c) (part).)

Source Law
(c) ... [the guardian of the person of the
ward may apply to the court for an order authorizing
the guardian to receive an extension of credit on the
ward's behalf that is secured, wholly or partly, by a
lien on the homestead.] Proceeds of the home equity
loan attributable to the minor's interest may be used
only to:

(1) make improvements to the homestead;
(2) pay for the education or maintenance
expenses of the ward; or
(3) pay the outstanding balance of the
loan.

Revised Law
Sec. 1352.107. ANNUAL ACCOUNTING. A guardian of the person
executing a home equity loan on a minor ward's behalf must account
for the transaction, including the expenditure of the loan
proceeds, in the annual account required by Subchapter A, Chapter
1163. (Tex. Prob. Code, Sec. 890A(i).)

Source Law
(i) A guardian of the person executing a home
equity loan on a ward's behalf must account for the
transaction, including the expenditure of the loan
proceeds, in the annual accounting required by Section
741 of this code.

Revised Law
Sec. 1352.108. DISAFFIRMATION OF HOME EQUITY LOAN
PROHIBITED. A minor ward may not disaffirm a home equity loan
authorized by the court under this subchapter. (Tex. Prob. Code,
Sec. 890A(k.)

Source Law

(k) A minor ward may not disaffirm a home equity loan authorized by the court under this section.

CHAPTER 1353. MANAGEMENT AND CONTROL OF INCAPACITATED SPOUSE'S PROPERTY

SUBCHAPTER A. APPOINTMENT OF COMMUNITY ADMINISTRATOR OR GUARDIAN OF THE ESTATE

Sec. 1353.001. EFFECT OF SUBCHAPTER
Sec. 1353.002. SPOUSE AS COMMUNITY ADMINISTRATOR
Sec. 1353.003. APPOINTMENT OF GUARDIAN OF THE ESTATE TO ADMINISTER SEPARATE PROPERTY
Sec. 1353.004. APPOINTMENT OF GUARDIAN OF THE ESTATE UNDER CERTAIN CIRCUMSTANCES
Sec. 1353.005. ADMINISTRATION OF CERTAIN PROPERTY BY NON-INCAPACITATED SPOUSE
Sec. 1353.006. EFFECT OF COURT ORDER ON CREDITORS' CLAIMS

[Sections 1353.007-1353.050 reserved for expansion]

SUBCHAPTER B. DUTIES OF COMMUNITY ADMINISTRATORS AND GUARDIANS OF THE ESTATE

Sec. 1353.051. INVENTORY AND APPRAISEMENT BY COMMUNITY ADMINISTRATOR
Sec. 1353.052. ACCOUNT BY COMMUNITY ADMINISTRATOR
Sec. 1353.053. DISCLOSURE OF CERTAIN LAWSUITS TO THE COURT BY COMMUNITY ADMINISTRATOR
Sec. 1353.054. DELIVERY OF COMMUNITY PROPERTY BY GUARDIAN OF THE ESTATE TO COMMUNITY ADMINISTRATOR

[Sections 1353.055-1353.100 reserved for expansion]

SUBCHAPTER C. REMOVAL OR TERMINATION OF POWERS OF COMMUNITY ADMINISTRATOR

Sec. 1353.101. GROUNDS FOR REMOVAL OF COMMUNITY ADMINISTRATOR
Sec. 1353.001. EFFECT OF SUBCHAPTER. (a) The manner in which community property is administered under this subchapter does not affect:
(1) the duties and obligations between spouses, including the duty to support the other spouse; and
(2) the rights of any creditor of either spouse.
(b) This subchapter does not partition community property between an incapacitated spouse and a spouse who is not incapacitated. (Tex. Prob. Code, Secs. 883(e), (f).)

Sec. 1353.002. SPOUSE AS COMMUNITY ADMINISTRATOR. (a) Except as provided by Section 1353.004, when a spouse is judicially declared to be incapacitated, the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate,
including the part of the community estate that the incapacitated
spouse legally has the power to manage in the absence of the
incapacity, as community administrator without an administration.

(b) The spouse who is not incapacitated is presumed to be
suitable and qualified to serve as community administrator. (Tex.
Prob. Code, Secs. 883(a) (part), (b) (part).)

Source Law

Sec. 883. (a) Except as provided by Subsection
c of this section, when a husband or wife is
judicially declared to be incapacitated:

1 the other spouse, in the capacity of
surviving partner of the marital partnership, acquires
full power to manage, control, and dispose of the
entire community estate as community administrator,
including the part of the community estate that the
incapacitated spouse legally has the power to manage
in the absence of the incapacity, without an
administration; and

2 (b) The spouse who is not incapacitated is
presumed to be suitable and qualified to serve as
community administrator. . . .

Revised Law

Sec. 1353.003. APPOINTMENT OF GUARDIAN OF THE ESTATE TO
ADMINISTER SEPARATE PROPERTY. (a) Except as provided by Section
1353.004, when a spouse who owns separate property is judicially
declared to be incapacitated, the court shall appoint the other
spouse or another person or entity, in the order of precedence
established under Subchapter C, Chapter 1104, as guardian of the
estate to administer only the separate property of the
incapacitated spouse.

(b) The qualification of a guardian of the estate of the
separate property of an incapacitated spouse under Subsection (a)
does not deprive the spouse who is not incapacitated of the right to
manage, control, and dispose of the entire community estate as
provided by this title. (Tex. Prob. Code, Secs. 883(a) (part), (b)
(part).)

Source Law

Sec. 883. (a) Except as provided by Subsection
(c) of this section, when a husband or wife is
judicially declared to be incapacitated:

2 (2) if the incapacitated spouse owns
separate property, the court shall appoint the other
spouse or another person or entity, in the order of precedence established under Section 677 of this code, as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) . . . The qualification of a guardian of the estate of the separate property of an incapacitated spouse as required under Subsection (a) of this section does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this chapter.

Reviser's Note

(1) Section 883(b), Texas Probate Code, refers to the qualification of a guardian of the estate of the separate property of an incapacitated spouse "as required under Subsection (a) of this section," meaning Section 883(a), Texas Probate Code. The relevant portion of Section 883(a), Texas Probate Code, relating to the appointment of a guardian of the estate to administer the separate property of the incapacitated spouse is revised as Subsection (a) of this section, and the revised law is drafted accordingly.

(2) Section 883(b), Texas Probate Code, refers to "the competent spouse." The revised law substitutes "the spouse who is not incapacitated" for consistency of terminology within the chapter.

Revised Law

Sec. 1353.004. APPOINTMENT OF GUARDIAN OF THE ESTATE UNDER CERTAIN CIRCUMSTANCES. (a) This section applies only if:

(1) a spouse who is not incapacitated is removed as community administrator; or

(2) the court finds that the spouse who is not incapacitated:

(A) would be disqualified to serve as guardian under Subchapter H, Chapter 1104; or

(B) is not suitable to serve as the community administrator for any other reason.

(b) The court shall appoint a guardian of the estate for the incapacitated spouse if the court:
(1) has not appointed a guardian of the estate under Section 1353.003(a); or
(2) has appointed the spouse who is not incapacitated as the guardian of the estate under Section 1353.003(a).

(c) After considering the financial circumstances of the spouses and any other relevant factors, the court may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse not more than one-half of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code.

(d) The court shall authorize the guardian of the estate of the incapacitated spouse to administer:
(1) any separate property of the incapacitated spouse;
(2) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;
(3) any community property delivered to the guardian of the estate under Subsection (c); and
(4) any income earned on property described by this section.

(e) Community property administered by a guardian of the estate under Subsection (d) is considered the incapacitated spouse's community property, subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code. (Tex. Prob. Code, Secs. 883(c), (g) (part).)

Source Law

(c) If a spouse who is not incapacitated is removed as community administrator or if the court finds that the spouse who is not incapacitated would be disqualified to serve as guardian under Section 681 of this code or is not suitable to serve as community administrator for any other reason, the court:
(1) shall appoint a guardian of the estate for the incapacitated spouse if the court:
(A) has not appointed a guardian of the estate under Subsection (a)(2) of this section; or
(B) has appointed the spouse who is not incapacitated as guardian of the estate under Subsection (a)(2) of this section;
(2) after taking into consideration the
financial circumstances of the spouses and any other relevant factors, may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse a portion, not to exceed one-half, of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) shall authorize the guardian of the estate of the incapacitated spouse to administer:
   (A) any separate property of the incapacitated spouse;
   (B) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;
   (C) any community property delivered to the guardian of the estate under Subdivision (2) of this subsection; and
   (D) any income earned on property described in this subsection.

(g) If the court renders an order directing the guardian of the estate of the incapacitated spouse to administer certain community property as provided by Subsection (c) of this section, the community property administered by the guardian is considered the incapacitated spouse's community property, subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code.

Revised Law
Sec. 1353.005. ADMINISTRATION OF CERTAIN PROPERTY BY NON-INCAPACITATED SPOUSE. (a) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Section 1353.004, as appropriate, a spouse who is not incapacitated shall continue to administer:

(1) the person's own separate property;

(2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;

(3) either:

   (A) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; or

   (B) if the person is required to deliver a portion of that community property described by Paragraph (A) to the guardian of the estate of the person's incapacitated spouse under Section 1353.004(c), only the portion of the community
property remaining after delivery; and

(4) any income earned on property described by this section the person is authorized to administer.

(b) Community property administered under this section by a spouse who is not incapacitated is considered that spouse's community property, subject to that spouse's sole management, control, and disposition under Section 3.102, Family Code. (Tex. Prob. Code, Secs. 883(d), (g) (part).)

Source Law

(d) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Subsection (c) of this section, as appropriate, a spouse who is not incapacitated shall continue to administer:

(1) the person's own separate property;
(2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;
(3) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code, unless the person is required to deliver a portion of that community property to the guardian of the estate of the person's incapacitated spouse under Subsection (c)(2) of this section, in which event, the person shall continue to administer only the portion of the community property remaining after delivery; and
(4) any income earned on property described in this subsection the person is authorized to administer.

(g) ... If the court renders an order directing the spouse who is not incapacitated to administer certain community property as provided by Subsection (d) of this section, the community property administered by the spouse who is not incapacitated is considered that spouse's community property, subject to that spouse's sole management, control, and disposition under Section 3.102, Family Code.

Revised Law

Sec. 1353.006. EFFECT OF COURT ORDER ON CREDITORS' CLAIMS.

A court order that directs the administration of community property under Section 1353.004 or 1353.005 does not affect the enforceability of a creditor's claim existing on the date the court renders the order. (Tex. Prob. Code, Sec. 883(h).)

Source Law

[(g) If the court renders an order directing the guardian of the estate of the incapacitated spouse to administer certain community property as provided by Subsection (c) of this section ... . If the court
renders an order directing the spouse who is not incapacitated to administer certain community property as provided by Subsection (d) of this section.

(h) An order described by Subsection (g) of this section does not affect the enforceability of a creditor's claim existing on the date the court renders the order.

[Sections 1353.007-1353.050 reserved for expansion]

SUBCHAPTER B. DUTIES OF COMMUNITY ADMINISTRATORS AND GUARDIANS OF THE ESTATE

Revised Law

Sec. 1353.051. INVENTORY AND APPRAISEMENT BY COMMUNITY ADMINISTRATOR. (a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisement of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described by this subsection.

(b) An inventory and appraisement ordered under this section must be:

(1) prepared in the same form and manner that is required of a guardian under Section 1154.051; and

(2) filed not later than the 90th day after the date the order is issued. (Tex. Prob. Code, Secs. 883B(a), (c).)

Source Law

Sec. 883B. (a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisement of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and
(3) any income earned on property described in this subsection.

(c) An inventory and appraisement ordered under Subsection (a) of this section must:

1. be prepared in the same form and manner that is required of a guardian under Section 729 of this code; and
2. be filed not later than the 90th day after the date on which the order is issued.

Revised Law

Sec. 1353.052. ACCOUNT BY COMMUNITY ADMINISTRATOR. (a) At any time after the expiration of 15 months after the date a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an account of:

1. any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;
2. any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and
3. any income earned on property described by this subsection.

(b) An account ordered under Subsection (a) must be:

1. prepared in the same form and manner that is required of a guardian under Subchapter A, Chapter 1163, except that the community administrator is not required to file the account annually with the county clerk; and
2. filed not later than the 60th day after the date the order is issued.

(c) After an initial account has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accounts at intervals of not less than 12 months. (Tex. Prob. Code, Secs. 883B(b), (d), (e).)
(b) At any time after the expiration of 15 months after the date that a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an accounting of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(d) An accounting ordered under Subsection (b) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 741 of this code, except that the requirement that an accounting be filed annually with the county clerk does not apply; and

(2) be filed not later than the 60th day after the date on which the order is issued.

(e) After an initial accounting has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accountings at intervals of not less than 12 months.

Revisor's Note

(1) Sections 883B(b), (d), and (e), Texas Probate Code, refer to a community administrator's "accounting" that, with certain exceptions, must "be prepared in the same form and manner that is required of a guardian under Section 741 of this code." Under Section 741, Texas Probate Code, revised in relevant part as Section 1163.002 of this code, a guardian of the estate is required to file with the court an annual account of the ward's estate. For accuracy, the revised law substitutes "account" for "accounting" throughout this chapter.

(2) Section 883B(e), Texas Probate Code, refers to "an initial accounting . . . filed by a community administrator under this section," meaning Section 883B, Texas Probate Code. The provision for an initial accounting by a community administrator is contained
in Section 883B(b), Texas Probate Code, revised as Subsection (a) of this section. Therefore, the revised law retains the reference to "this section."

Revised Law

Sec. 1353.053. DISCLOSURE OF CERTAIN LAWSUITS TO THE COURT BY COMMUNITY ADMINISTRATOR. A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 1353.002(a) shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

(Tex. Prob. Code, Sec. 884A.)

Source Law

Sec. 884A. A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 883 of this code shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

Revisor's Note

Section 884A, Texas Probate Code, refers to a spouse "who acquires the power to manage, control, and dispose of the entire community estate under Section 883 of this code." Under Section 883, Texas Probate Code, a spouse acquires the power to manage, control, and dispose of the entire community estate by becoming community administrator. The relevant portion of Section 883, Texas Probate Code, relating to a spouse becoming community administrator is revised as Section 1353.002(a) of this chapter, and the revised law is drafted accordingly.
Sec. 1353.054. DELIVERY OF COMMUNITY PROPERTY BY GUARDIAN OF THE ESTATE TO COMMUNITY ADMINISTRATOR. A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the ward's estate, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 1353.002(a). (Tex. Prob. Code, Sec. 884.)

Sec. 884. A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the estate of the ward, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 883 of this code.

Section 884, Texas Probate Code, refers to a spouse who "becomes community administrator under Section 883 of this code." The revised law substitutes a reference to Section 1353.002(a) of this chapter for the reference to Section 883 for the reason stated in the revisor's note to Section 1353.053 of this chapter.

Sec. 1353.101. GROUNDS FOR REMOVAL OF COMMUNITY ADMINISTRATOR. A court may remove a community administrator if:

(1) the community administrator fails to comply with a court order for:

(A) an inventory and appraisement under Section 1353.051; or

(B) an account or subsequent account under Section 1353.052;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or is

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about to misapply or embezzle, all or part of the property committed
to the community administrator's care;

(3) the community administrator is proved to have been
guilty of gross misconduct or gross mismanagement in the
performance of duties as community administrator; or

(4) the community administrator:

(A) becomes an incapacitated person;

(B) is sentenced to the penitentiary; or

(C) for any other reason becomes legally
incapacitated from properly performing the community
administrator's fiduciary duties. (Tex. Prob. Code, Sec. 883C(a)
(part).)

Source Law

Sec. 883C. (a) A court . . . may remove a
community administrator if:

(1) the community administrator fails to
comply with a court order for an inventory and
appraisement, accounting, or subsequent accounting
under Section 883B of this code;

(2) sufficient grounds appear to support
belief that the community administrator has misapplied
or embezzled, or that the community administrator is
about to misapply or embezzle, all or any part of the
property committed to the care of the community
administrator;

(3) the community administrator is proved
to have been guilty of gross misconduct or gross
mismanagement in the performance of duties as a
community administrator; or

(4) the community administrator becomes an
incapacitated person, is sentenced to the
penitentiary, or for any other reason becomes legally
incapacitated from properly performing the community
administrator's fiduciary duties.

Revisor's Note

Section 883C(a), Texas Probate Code, refers to "a
court order for an inventory and appraisement,
accounting, or subsequent accounting under Section
883B of this code." The relevant portions of Section
883B, Texas Probate Code, relating to an inventory and
appraisement are revised as Section 1353.051 of this
chapter, and the relevant portions relating to an
account or subsequent account are revised as Section
1353.052 of this chapter. The revised law is drafted
accordingly.

Revised Law
Sec. 1353.102. PROCEDURE FOR REMOVAL OF COMMUNITY ADMINISTRATOR. (a) A court may remove a community administrator on the court's own motion or on the motion of an interested person, after the community administrator has been cited by personal service to answer at a time and place specified in the notice.

(b) The removal order must:

(1) state the cause of removal; and

(2) direct the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees. (Tex. Prob. Code, Secs. 883C(a) (part), (b), (c).)

Source Law
Sec. 883C. (a) A court, on its own motion or on the motion of an interested person and after the community administrator has been cited by personal service to answer at a time and place specified in the notice, may remove a community administrator . . . .

(b) The order of removal must state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees.

Revised Law
Sec. 1353.103. TERMINATION OF COMMUNITY ADMINISTRATOR'S POWERS ON RECOVERY OF CAPACITY. The special powers of management, control, and disposition vested in the community administrator by this title terminate when a court of competent jurisdiction by
The special powers of management, control, and disposition vested in the community administrator by this chapter shall terminate when the decree of a court of competent jurisdiction finds that the mental capacity of the incapacitated spouse has been recovered.

[Sections 1353.104-1353.150 reserved for expansion]

SUBCHAPTER D. APPOINTMENT OF ATTORNEY AD LITEM

(a) The court shall appoint an attorney ad litem to represent the interests of an incapacitated spouse in a proceeding to remove a community administrator or other proceeding brought under this chapter.

(b) The attorney ad litem may demand from the community administrator an account or inventory and appraisement of the incapacitated spouse's part of the community estate being managed by the community administrator.

(c) A community administrator shall comply with a demand made under this section not later than the 60th day after the date on which the community administrator receives the demand.

(d) An account or inventory and appraisement returned under this section must be prepared in the form and manner required by the attorney ad litem. The attorney ad litem may require the community administrator to file the account or inventory and appraisement with the court.
administrator receives the demand.

(d) An accounting or inventory and appraisement returned under this section must be prepared in the form and manner required by the attorney ad litem, and the attorney ad litem may require the community administrator to file the accounting and inventory and appraisement with the court.

CHAPTER 1354. RECEIVERSHIP FOR ESTATES OF CERTAIN INCAPACITATED PERSONS

Sec. 1354.001. APPOINTMENT OF RECEIVER

Sec. 1354.002. BOND

Sec. 1354.003. POWERS AND DUTIES OF RECEIVER

Sec. 1354.004. EXPENDITURES BY RECEIVER

Sec. 1354.005. USE OF EXCESS ESTATE ASSETS

Sec. 1354.006. RECEIVER'S EXPENSES, ACCOUNT, AND COMPENSATION

Sec. 1354.007. CLOSING RECEIVERSHIP; NOTICE

Sec. 1354.008. DISCHARGE OF RECEIVER

Sec. 1354.009. RECORD

CHAPTER 1354. RECEIVERSHIP FOR ESTATES OF CERTAIN INCAPACITATED PERSONS

Revised Law

Sec. 1354.001. APPOINTMENT OF RECEIVER. (a) A judge of a probate court in the county in which an incapacitated person resides or in which the incapacitated person's endangered estate is located shall, with or without application, enter an order appointing a suitable person as receiver to take charge of the estate if:

(1) it appears that all or part of the estate of the incapacitated person is in danger of injury, loss, or waste and in need of a guardianship or other representative;

(2) there is no guardian of the estate who is qualified in this state; and

(3) a guardian is not needed.

(b) The court order must specify the duties and powers of the receiver the judge considers necessary for the protection, conservation, and preservation of the estate.

(c) The clerk shall enter an order issued under this section
in the judge's guardianship docket. (Tex. Prob. Code, Sec. 885(a) (part).)

**Source Law**

Sec. 885. (a) When the estate of a minor or other incapacitated person or any portion of the estate of the minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a guardianship or other representative and there is no guardian of the estate who is qualified in this state and a guardian is not needed, the county judge of the county in which the minor or other incapacitated person resides or in which the endangered estate is located shall enter an order, with or without application, appointing a suitable person as receiver to take charge of the estate. . . . The court order shall specify the duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall enter an order made under this section in the judge's guardianship docket. . . .

**Revisor's Note**

(1) Section 885(a), Texas Probate Code, provides that "the county judge of the county" in which an incapacitated person resides or in which the incapacitated person's endangered estate is located shall appoint a receiver in certain situations. Section 3(f), Texas Probate Code, defines "county judge," "probate judge," and "judge" identically as interchangeable terms, with each term meaning the presiding judge of a court having original jurisdiction over probate proceedings. That section, revised as Section 22.019 of this code and enacted by Chapter 680, Acts of the 81st Legislature, Regular Session, 2009, applies to the revised law. Section 22.019 omits the terms "county judge" and "probate judge." See the revisor's note to Section 22.019. Section 606, Texas Probate Code, redesignated as Section 606 of this code, requires guardianships, mental health matters, and all other matters covered by Chapter XIII, Texas Probate Code, which is revised as this title and includes receiverships for incapacitated persons, to be heard in a statutory
probate court or another court exercising the jurisdiction of a probate court. Therefore, depending on the types of courts that exist in a county, the court exercising probate jurisdiction that would have jurisdiction of a receivership proceeding may be a county court, statutory county court, or statutory probate court. Furthermore, a contested proceeding may be transferred to a district court and heard as if originally filed in that court. Each of these types of courts is considered a probate court in accordance with Section 601(8), Texas Probate Code, revised in this code as Section 1002.008(a). Because it is clear from the application of Section 606 that a judge acting under Section 885 may be a judge of a county court, statutory county court, statutory probate court, or district court, it is misleading to refer to the county judge of the county. For that reason, the revised law substitutes "[a] judge of a probate court in the county" for "the county judge of the county."


(2) Section 885(a), Texas Probate Code, refers to "a minor or other incapacitated person." The revised law omits the references to "a minor" as unnecessary because Section 601(14), Texas Probate Code, revised in this title as Section 1002.017, defines "incapacitated person" to include a minor.

Revised Law

Sec. 1354.002. BOND. (a) A court order issued under
Section 1354.001 shall require a receiver appointed under that
section to give a bond, as in ordinary receiverships, in an amount
the judge considers necessary to protect the estate.

(b) The person appointed as receiver shall:

(1) make and submit a bond for the judge's approval;

and

(2) file the bond, when approved, with the clerk.

(Tex. Prob. Code, Sec. 885(a) (part).)

Source Law

(a) . . . The court order shall require a
receiver appointed under this section to give bond as
necessary to protect the estate. . . . The person who
is appointed as receiver shall make and submit a bond
for the judge's approval and shall file the bond, when
approved, with the clerk. . . .

Revised Law

Sec. 1354.003. POWERS AND DUTIES OF RECEIVER. The person
appointed as receiver shall take charge of the endangered estate as
provided by the powers and duties vested in the person by the order
of appointment and subsequent orders of the judge. (Tex. Prob.
Code, Sec. 885(a) (part).)

Source Law

(a) . . . The person who is appointed receiver
shall proceed to take charge of the endangered estate
pursuant to the powers and duties vested in the person
by the order of appointment and subsequent orders made
by the judge.

Revised Law

Sec. 1354.004. EXPENDITURES BY RECEIVER. (a) If, while the
receivership is pending, the needs of the incapacitated person
require the use of the income or corpus of the estate for the
education, clothing, or subsistence of the person, the judge shall,
with or without application, enter an order in the judge's
guardianship docket that appropriates an amount of income or corpus
sufficient for that purpose.

(b) The receiver shall use the amount appropriated by the
court to pay a claim for the education, clothing, or subsistence of
the incapacitated person that is presented to the judge for
approval and ordered by the judge to be paid. (Tex. Prob. Code, Sec. 885(b).)

Source Law

(b) During the pendency of the receivership, when the needs of the minor or other incapacitated person require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or other incapacitated person, the judge, with or without application, shall enter an order in the judge's guardianship docket that appropriates an amount of income or corpus that is sufficient for that purpose. The receiver shall use the amount appropriated by the court to pay a claim for the education, clothing, or subsistence of the minor or other incapacitated person that is presented to the judge for approval and ordered by the judge to be paid.

Revised Law

Sec. 1354.005. USE OF EXCESS ESTATE ASSETS. (a) A receiver who, while the receivership is pending, has possession of an amount of money belonging to the incapacitated person in excess of the amount needed for current necessities and expenses may, under direction of the judge, invest, lend, or contribute all or part of the excess money in the manner, for the security, and on the terms provided by this title for investments, loans, or contributions by guardians.

(b) The receiver shall report to the judge all transactions made under this section in the same manner that a report is required of a guardian under this title. (Tex. Prob. Code, Sec. 885(c).)

Source Law

(c) During the pendency of the receivership, when the receiver has on hand an amount of money that belongs to the minor or other incapacitated person that is in excess of the amount needed for current necessities and expenses, the receiver, under direction of the judge, may invest, lend, or contribute the excess money or any portion of the money in the manner, for the security, and on the terms and conditions provided by this chapter for investments, loans, or contributions by guardians. The receiver shall report to the judge all transactions made under this subsection in the same manner that a report is required of a guardian under this chapter.

Revisor's Note

(1) Section 885(c), Texas Probate Code, refers to a receiver who has "on hand" certain money. The revised law substitutes "possession" for "on hand"
because the terms are synonymous in context and "possession" is more consistent with modern usage. Similar changes have been made throughout this chapter.

(2) Section 885(c), Texas Probate Code, refers to investing, lending, or contributing certain money on the "terms and conditions" under which a guardian may invest, loan, or contribute excess money. The revised law omits the reference to "conditions" because, in context, "conditions" is included within the meaning of "terms."

Revised Law

Sec. 1354.006. RECEIVER'S EXPENSES, ACCOUNT, AND COMPENSATION. (a) All necessary expenses incurred by a receiver in administering the estate may be reported monthly to the judge in the form of a sworn statement of account that includes a report of:

(1) the receiver's acts;
(2) the condition of the estate;
(3) the status of the threatened danger to the estate; and
(4) the progress made toward abatement of the danger.

(b) If the judge is satisfied that the statement is correct and reasonable in all respects, the judge shall promptly enter an order approving the expenses and authorizing reimbursement of the receiver from the estate funds in the receiver's possession.

(c) A receiver shall be compensated for services provided in the receiver's official capacity in the same manner and amount provided by this title for similar services provided by a guardian of an estate. (Tex. Prob. Code, Sec. 885(d).)

Source Law

(d) All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account that includes a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of the danger. If the judge is satisfied that the statement is correct and reasonable
in all respects, the judge shall promptly enter an
order approving the expenses and authorizing the
receiver to be reimbursed from the funds of the estate
in the receiver's hands. A receiver shall be
compensated for services rendered in the receiver's
official capacity in the same manner and amount as
provided by this chapter for similar services rendered
by guardians of estates.

Revised Law
Sec. 1354.007. CLOSING RECEIVERSHIP; NOTICE. (a) When the
threatened danger has abated and the estate is no longer liable to
injury, loss, or waste because there is no guardian or other
representative of the estate, the receiver shall:
(1) report to the judge; and
(2) file with the clerk a full and final sworn account
of:
(A) all property of the estate received by the
receiver;
(B) all property of the estate in the receiver's
possession while the receivership was pending;
(C) all sums paid out;
(D) all acts performed by the receiver with
respect to the estate; and
(E) all property of the estate remaining in the
receiver's possession on the date of the report.
(b) On the filing of the report, the clerk shall:
(1) issue and cause to be posted a notice to all
persons interested in the welfare of the incapacitated person; and
(2) give personal notice to the person who has custody
of the incapacitated person to appear before the judge at a time and
place specified in the notice and contest the report and account if
the person desires. (Tex. Prob. Code, Sec. 885(e).)

Source Law
(e) When the threatened danger has abated and
the estate is no longer liable to injury, loss, or
waste because there is no guardian or other
representative of the estate, the receiver shall
report to the judge, file with the clerk a full and
final sworn account of all property of the estate the
receiver received, had on hand when the receivership
was pending, all sums paid out, all acts performed by
the receiver with respect to the estate, and all
property of the estate that remains in the receiver's
hands on the date of the report. On the filing of the report, the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of the minor or other incapacitated person and shall give personal notice to the person who has custody of the minor or other incapacitated person to appear before the judge at a time and place specified in the notice and contest the report and account if the person desires.

Revised Law

Sec. 1354.008. DISCHARGE OF RECEIVER. (a) If, on hearing the receiver's report and account, the judge is satisfied that the danger of injury, loss, or waste to the estate has abated and that the report and account are correct, the judge shall:

(1) enter an order finding that the danger of injury, loss, or waste to the estate has abated; and

(2) direct the receiver to deliver the estate to:

(A) the person from whom the receiver took possession as receiver;

(B) the person who has custody of the incapacitated person; or

(C) another person the judge finds is entitled to possession of the estate.

(b) A person who receives the estate under Subsection (a) shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person.

(c) The judge's order shall discharge the receivership and the sureties on the receiver's bond.

(d) If the judge is not satisfied that the danger has abated, or is not satisfied with the receiver's report and account, the judge shall enter an order continuing the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account. (Tex. Prob. Code, Sec. 885(f).)

Source Law

(f) If on hearing the receiver's report and account the judge is satisfied that the danger of injury, loss, or waste to the estate has abated and that the report and account are correct, the judge shall enter an order finding that the danger of injury, loss, or waste to the estate has abated and shall direct the receiver to deliver the estate to the person
from whom the receiver took possession as receiver, to
the person who has custody of the minor or other
incapacitated person, or to another person as the
judge may find is entitled to possession of the estate.
A person who receives the estate under this subsection
shall execute and file with the clerk an appropriate
receipt for the estate that is delivered to the person.
The judge's order shall discharge the receivership and
the sureties on the bond of the receiver. If the judge
is not satisfied that the danger has abated, or if the
judge is not satisfied with the receiver's report and
account, the judge shall enter an order that continues
the receivership in effect until the judge is
satisfied that the danger has abated or is satisfied
with the report and account.

Revised Law
Sec. 1354.009. RECORD. An order, bond, report, account, or
notice in a receivership proceeding must be recorded in the judge's
guardianship docket. (Tex. Prob. Code, Sec. 885(g).)

Source Law
(g) An order or a bond, report, account, or
notice in a receivership proceeding must be recorded
in the judge's guardianship docket.

CHAPTER 1355. PAYMENT OF CERTAIN CLAIMS WITHOUT GUARDIANSHIP

SUBCHAPTER A. PAYMENT OF CLAIMS TO CERTAIN INCAPACITATED
PERSONS AND FORMER WARDS

Sec. 1355.001. PAYMENT OF CLAIMS TO RESIDENT CREDITOR

Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT CREDITOR

[Sections 1355.003-1355.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION OF MONEY

Sec. 1355.051. INVESTMENT OF MONEY BY CLERK

Sec. 1355.052. ANNUAL REPORT

[Sections 1355.053-1355.100 reserved for expansion]

SUBCHAPTER C. WITHDRAWAL OF MONEY

Sec. 1355.101. APPLICABILITY OF SUBCHAPTER

Sec. 1355.102. CUSTODIAN OF RESIDENT CREDITOR

Sec. 1355.103. WITHDRAWAL OF MONEY BY CUSTODIAN; BOND

Sec. 1355.104. CUSTODIAN'S REPORT

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CREDITOR'S HEIR OR REPRESENTATIVE

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CHAPTER 1355. PAYMENT OF CERTAIN CLAIMS WITHOUT GUARDIANSHIP

SUBCHAPTER A. PAYMENT OF CLAIMS TO CERTAIN INCAPACITATED PERSONS AND FORMER WARDS

Revised Law

Sec. 1355.001. PAYMENT OF CLAIMS TO RESIDENT CREDITOR. (a)
In this section, "resident creditor" means a person who:

(1) is a resident of this state; and
(2) is entitled to money in an amount that is $100,000 or less, the right to which is liquidated and is uncontested in any pending lawsuit.

(b) This section applies only to a resident creditor who:

(1) is an incapacitated person or the former ward of a guardianship terminated under Chapter 1204; and
(2) does not have a legal guardian of the creditor's estate.

(c) A debtor who owes money to a resident creditor to whom this section applies may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor. When making a payment under this subsection, a debtor shall give to the clerk:

(1) the creditor's name;
(2) the creditor's social security identification number;
(3) the nature of the creditor's disability;
(4) the creditor's post office address; and
(5) if the creditor is a minor, the creditor's age.

(d) The receipt for the money signed by the county clerk is binding on the resident creditor as of the date of receipt and to
the extent of the payment.

(e) The county clerk shall:

(1) by letter mailed to the address given under Subsection (c)(4), apprise the resident creditor that the deposit was made; and

(2) on receipt of the payment, bring the payment to the court's attention. (Tex. Prob. Code, Sec. 887(a) (part).)

Source Law

Sec. 887. (a) When a resident person who is a minor or other incapacitated person, or the former ward of a guardianship terminated under Subpart C, Part 4, of this code, who are referred to in this section as "creditor," are without a legal guardian of the person's estate, and the person is entitled to money in an amount that is $100,000 or less, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor, giving the creditor's name, the creditor's social security identification number, the nature of the creditor's disability, and, if the creditor is a minor, the minor's age, and the creditor's post-office address. The receipt for the money signed by the clerk is binding on the creditor as of the date of receipt and to the extent of the payment. The clerk, by letter mailed to the address given by the debtor, shall apprise the creditor of the fact that the deposit was made. On receipt of the payment by the clerk, the clerk shall call the receipt of the payment to the court's attention and . . . .

Revisor's Note

Section 887(a), Texas Probate Code, refers to "a minor or other incapacitated person." Throughout this chapter, the revised law omits the references to "a minor" in this context as unnecessary because Section 601(14), Texas Probate Code, revised in this title as Section 1002.017, defines "incapacitated person" to include a minor.

Revised Law

Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT CREDITOR.

(a) In this section, "creditor" means a person who is entitled to money in an amount that is not more than $100,000 owing as a result of transactions in this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state.
(b) This section applies only to a creditor who is a nonresident minor, a nonresident person who is adjudged by a court of competent jurisdiction to be incapacitated, or the former ward of a guardianship terminated under Chapter 1204 who has no legal guardian qualified in this state.

(c) A debtor in this state who owes money to a creditor to whom this section applies may pay the money:

(1) to the creditor's guardian qualified in the domiciliary jurisdiction; or

(2) to the county clerk of:

(A) any county in this state in which real property owned by the creditor is located; or

(B) if the creditor is not known to own real property in this state, the county in which the debtor resides.

(d) A payment made under this section is for the creditor's account and for the creditor's use and benefit.

(e) A receipt for payment signed by the county clerk is binding on the creditor as of the date and to the extent of payment if the receipt states:

(1) the creditor's name; and

(2) the creditor's post office address, if the address is known.

(f) A county clerk who receives a payment under Subsection (c) shall handle the money in the same manner as provided for a payment to the account of a resident creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and 1355.104. Those sections apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the creditor to whom this section applies.

(Tex. Prob. Code, Sec. 887(e).)
not more than $100,000 owing as a result of
transactions within this state, the right to which is
liquidated and is uncontested in any pending lawsuit
in this state, the debtor in this state may pay the
money to the guardian of the creditor who is duly
qualified in the domiciliary jurisdiction or to the
county clerk of any county in this state in which real
property owned by the nonresident person is located.
If the person is not known to own any real property in
any county in this state the debtor has the right to
pay the money to the county clerk of the county of this
state in which the debtor resides. In either case, the
debtor's payment to the clerk is for the use and
benefit and for the account of the nonresident
creditor. The receipt for the payment signed by the
clerk that recites the name of the creditor and the
post office address of the creditor, if known, is
binding on the creditor as of the date and to the
extent of the payment. The clerk shall handle the
money paid to the clerk by the debtor in the same
manner as provided for cases of payments to the
accounts of residents of this state under Subsections
(a)-(d) of this section. All applicable provisions of
Subsections (a)-(d) of this section apply to the
handling and disposition of money or any increase,
dividend, or income paid to the clerk for the use,
benefit, and account of the nonresident creditor.

Revisor's Note
Section 887(e), Texas Probate Code, refers to a
"duly qualified" guardian of a creditor. The revised
law omits "duly" in this context as unnecessary. The
requirement that the guardian be qualified is
sufficient to convey that the guardian must have met
the requirements to qualify and act as a guardian.

[Sections 1355.003-1355.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION OF MONEY

Revised Law
Sec. 1355.051. INVESTMENT OF MONEY BY CLERK. (a) On
receipt of a payment under Section 1355.001, the county clerk shall
invest the money as authorized under this title under court order in
the name and for the account of the minor or other person entitled
to the money.

(b) The county clerk shall credit any increase, dividend, or
income from an investment made under this chapter to the account of
the minor or other person entitled to the investment. (Tex. Prob.
Code, Sec. 887(a) (part).)

Source Law
(a) . . . [On receipt of the payment by the
clerk, the clerk . . . shall invest the money as authorized under this chapter pursuant to court order in the name and for the account of the minor or other person entitled to the money. Any increase, dividend, or income from an investment made under this section shall be credited to the account of the minor or other person entitled to the investment. . . .

Revisor's Note

(1) Section 887(a), Texas Probate Code, provides that "[o]n receipt of the payment by the clerk," the clerk shall invest the money. For clarity and the convenience of the reader, the revised law specifies that the section applies to the receipt of a payment under Section 1355.001 of this chapter. It is clear from the context that the provision applies to a payment made for the benefit of a resident creditor under Section 887(a), Texas Probate Code, the relevant portion of which is revised as Section 1355.001 of this chapter.

(2) Section 887(a), Texas Probate Code, provides for the date on which money becomes subject to the provisions of the chapter. The revised law omits that provision as executed. The omitted law reads:

(a) . . . Any money that is deposited under the terms of this section that has not been paid out shall be subject to the provisions of this chapter not later than October 1, 1993.

Revised Law

Sec. 1355.052. ANNUAL REPORT. Not later than March 1 of each year, the court clerk shall make a written report to the court of the status of an investment made by the county clerk under Section 1355.051. The report must contain:

(1) the amount of the original investment or the value of the investment at the last annual report, whichever is later;

(2) any increase, dividend, or income from the investment since the last annual report;

(3) the total amount of the investment and all increases, dividends, or income at the date of the report; and

(4) the name of the depository or the type of
investment. (Tex. Prob. Code, Sec. 887(b).)

Source Law

(b) Not later than March 1 of each calendar year, the clerk of the court shall make a written report to the court of the status of an investment made by the clerk under this section. The report must contain:

(1) the amount of the original investment or the amount of the investment at the last annual report, whichever is later;
(2) any increase, dividend, or income from such investment since the last annual report;
(3) the total amount of the investment and all increases, dividends, or income at the date of the report; and
(4) the name of the depository or the type of investment.

Revisor's Note

(1) Section 887(b), Texas Probate Code, refers to an investment made by the clerk under "this section." The revised law substitutes "Section 1355.051" for "this section" because the only provision in Section 887 expressly requiring the clerk to invest money is revised in Section 1355.051 of this chapter.

(2) Section 887(b), Texas Probate Code, requires an annual report to contain the amount of the original investment or the "amount" of the investment at the last annual report. The revised law substitutes "value" for "amount" with respect to the last annual report because "value" is more accurate in reflecting that the original investment may increase or decrease in value over time.

[Sections 1355.053-1355.100 reserved for expansion]

SUBCHAPTER C. WITHDRAWAL OF MONEY

Revised Law

Sec. 1355.101. APPLICABILITY OF SUBCHAPTER. Except as provided by Section 1355.105, this subchapter applies only to a resident creditor to whom Section 1355.001 applies. (New.)

Revisor's Note

It is clear from the context of Sections 887(c)
and (d), Texas Probate Code, revised in this subchapter, that the creditor for whom a custodian is appointed is the creditor previously referenced in Section 887(a), Texas Probate Code, the relevant portion of which is revised as Section 1355.001 of this chapter. Therefore, the revised law adds this applicability section for the reader's convenience.

Revised Law
Sec. 1355.102. CUSTODIAN OF RESIDENT CREDITOR. (a) The following may serve as custodian of a resident creditor under this section:
(1) a parent of the creditor;
(2) the unestranged spouse of the creditor; or
(3) if there is no spouse and both of the creditor's parents are dead or nonresidents of this state, the person who:
   (A) resides in this state; and
   (B) has actual custody of the creditor.
(b) An unestranged spouse residing in this state shall be given priority over a creditor's parent to serve as custodian under this subchapter. (Tex. Prob. Code, Sec. 887(c) (part).)

Source Law
(c) The father or mother, or unestranged spouse, of the creditor, with priority being given to the spouse who resides in this state or if there is no spouse and both father and mother are dead or are nonresidents of this state, then the person who resides in this state who has actual custody of the creditor, as custodian and . . . .

Revised Law
Sec. 1355.103. WITHDRAWAL OF MONEY BY CUSTODIAN; BOND. (a) A resident creditor's custodian may withdraw the money from the court clerk for the creditor's use and benefit if the custodian files with the clerk:
(1) a written application; and
(2) a bond approved by the county judge.
(b) A custodian's bond must be:
(1) twice the amount of the money to be withdrawn by
the custodian;

(2) payable to the judge or the judge's successors in office; and

(3) conditioned that the custodian will:

(A) use the money for the resident creditor's benefit under the court's direction; and

(B) when legally required, faithfully account to the resident creditor and the creditor's heirs or legal representatives for the money and any increase to the money on:

(i) the removal of the creditor's disability;

(ii) the creditor's death; or

(iii) the appointment of a guardian for the creditor.

(c) A custodian may not receive a fee or commission for taking care of, handling, or spending money withdrawn by the custodian. (Tex. Prob. Code, Sec. 887(c) (part).)

Source Law

(c) . . . [as custodian and] on filing with the clerk written application and bond approved by the county judge of the county, may withdraw the money from the clerk for the use and benefit of the creditor, the bond to be in double the amount of the money and to be payable to the judge or the judge's successors in office and to be conditioned that the custodian will use the money for the creditor's benefit under directions of the court and that the custodian, when legally called on to do so, will faithfully account to the creditor and the creditor's heirs or legal representatives for the money and any increase to the money on the removal of the disability to which the creditor is subject, or on the creditor's death, or the appointment of a guardian for the creditor. A fee or commission may not be allowed to the custodian for taking care of, handling, or expending the money withdrawn by the custodian.

Revised Law

Sec. 1355.104. CUSTODIAN'S REPORT. (a) The custodian shall file with the county clerk a sworn report of the custodian's accounting when the custodian has:

(1) spent the money in accordance with the court's directions; or

(2) otherwise complied with the terms of the custodian.
custodian's bond by accounting for the money and any increase in the
money.

(b) The filing of a custodian's report, when approved by the
court, operates as a discharge of the person as custodian and of the
person's sureties from all further liability under the bond.

(c) The court shall satisfy itself that the custodian's
report is true and correct and may require proof as in other cases.

(Tex. Prob. Code, Sec. 887(d).)

Source Law

(d) When the custodian has expended the money in
accordance with directions of the court or has
otherwise complied with the terms of the custodian's
bond by accounting for the money and any increase in
the money, the custodian shall file with the county
clerk of the county the custodian's sworn report of the
custodian's accounting. The filing of the custodian's
report, when approved by the court, operates as a
discharge of the person as custodian and of the
person's sureties from all further liability under the
bond. The court shall satisfy itself that the report
is true and correct and may require proof as in other
cases.

Revised Law

Section 1355.105. WITHDRAWAL OF MONEY BY CREDITOR OR
CREDITOR'S HEIR OR REPRESENTATIVE. (a) On presentation to the
court clerk of an order of a county or probate court of the county in
which the money is held, money that is not withdrawn by an
authorized person as provided by this chapter may be withdrawn by:

(1) the creditor, after termination of the creditor's
disability;

(2) a subsequent personal representative of the
creditor; or

(3) the creditor's heirs.

(b) A withdrawal under Subsection (a) may be made at any
time and without a special bond for that purpose.

(c) The order presented under Subsection (a) must direct the
court clerk to deliver the money to the creditor, the creditor's
personal representative, or the creditor's heirs named in the
order.

(d) Before the court may issue an order under this section,
the person's identity and credentials must be proved to the court's satisfaction. (Tex. Prob. Code, Sec. 887(f).)

Source Law

(f) If a person who is authorized to withdraw the money does not withdraw the money from the clerk as provided for in this section, the creditor, after termination of the creditor's disability, or the subsequent personal representative of the creditor or the creditor's heirs may withdraw, at any time and without special bond for the purpose, the money on simply exhibiting to the clerk an order of the county or probate court of the county where the money is held by the clerk that directs the clerk to deliver the money to the creditor, to the creditor's personal representative, or to the creditor's heirs named in the order. Before the court issues an order under this subsection, the person's identity and the person's credentials must be proved to the court's satisfaction.

[Sections 1355.106-1355.150 reserved for expansion]

SUBCHAPTER D. USE OF MONEY BY ELEEMOSYNARY INSTITUTION FOR BENEFIT OF RESIDENT

Revised Law

Sec. 1355.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to money of a resident of an eleemosynary institution of this state that is on deposit in a court registry and does not exceed $10,000. (Tex. Prob. Code, Sec. 887(g) (part).)

Source Law

(g) [When it is made to appear to the judge of a county court, district court, or other court of this state, by an affidavit executed by the superintendent, business manager, or field representative of any eleemosynary institution of this state, that] . . . there is on deposit in the court registry a certain sum of money that belongs to the inmate that does not exceed $10,000, . . . .

Revisor's Note

Section 887(g), Texas Probate Code, refers to an "inmate" of an eleemosynary institution. Throughout this subchapter, the revised law uses the term "resident" to refer to a person who lives in an eleemosynary institution because that term is more consistent with the terminology used in Title 7, Health and Safety Code.
Sec. 1355.152. PAYMENT OF MONEY TO INSTITUTION. (a) The judge of a county court, district court, or other court of this state may by order direct the court clerk to pay money to an eleemosynary institution of this state for the use and benefit of a resident of the institution if the court receives satisfactory proof by affidavit or otherwise that the resident:

(1) is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity renders the person incapable of caring for himself or herself and of managing the person's property and financial affairs; and

(2) has no known legal guardian appointed for the resident's estate.

(b) The affidavit under Subsection (a) may be executed by the superintendent, business manager, or field representative of the institution of which the person is a resident.

(c) The institution to which the payment is made under Subsection (a) may not be required to give bond or security for receiving the money from the court registry.

(d) The receipt from the institution for a payment, or the canceled check or warrant by which the payment was made:

(1) is sufficient evidence of the disposition of the payment; and

(2) relieves the court clerk from further responsibility for the disposition. (Tex. Prob. Code, Sec. 887(g) (part).)

(g) When it is made to appear to the judge of a county court, district court, or other court of this state, by an affidavit executed by the superintendent, business manager, or field representative of any eleemosynary institution of this state, that a certain inmate in the institution is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the person incapable of caring for himself and of managing the person's own property and financial affairs, there is no known legal guardian appointed for the estate of the inmate, and . . . the court may
order the disposition of the funds as provided by this subsection. The court, on satisfactory proof by affidavit or otherwise that the inmate is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the inmate incapable of caring for the inmate's self and of managing the inmate's own property and financial affairs and is without a legally appointed guardian of the inmate's estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The state institution to which the payment is made may not be required to give bond or security for receiving the fund from the court registry, and the receipt from the state institution for the payment, or the canceled check or warrant by which the payment was made, shall be sufficient evidence of the disposition of the payment. The clerk of the court is relieved of further responsibility for the disposition.

Revised Law
Sec. 1355.153. DEPOSIT OF MONEY IN TRUST. (a) On receipt of money under this subchapter, an eleemosynary institution shall deposit all of the money received to the resident's trust account. (b) Money deposited in a trust account may be used only:

(1) by or for the personal use of the owner of the trust account, under the rules or custom of the institution in the expenditure of money by a resident; or

(2) by the responsible officer of the institution, for the resident's use and benefit. (Tex. Prob. Code, Sec. 887(g) (part).)

Source Law
(g) . . . On receipt of the money, the institution shall deposit all of the amount of money received to the trust account of the inmate. The money deposited by the institution in the trust account is to be used by or for the personal use of the owner of the trust account under the rules or custom of the institution in the expenditure of the funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. . . .

Revised Law
Sec. 1355.154. DEATH OF RESIDENT OR DEPLETION OF MONEY. (a) After the expenditure of all money in a resident's trust account, or after the resident's death, the responsible officer of the eleemosynary institution shall furnish a statement of expenditures of the money to the resident's nearest relative who is entitled to receive the statement.

(b) A copy of the statement described by Subsection (a)
shall be filed with the court that first granted the order to
dispose of the money in accordance with this title.

(c) The balance of a trust account of a resident of an
eleemosynary institution who dies may be applied to:

(1) the resident's burial expenses; or

(2) the care, support, and treatment account of the
resident at the institution. (Tex. Prob. Code, Sec. 887(g)
(part).)

Source Law

(g) . . . If the inmate dies leaving a balance
in the inmate's trust account, the balance may be
applied to the burial expenses of the inmate or applied
to the care, support, and treatment account of the
inmate at the eleemosynary institution. After the
expenditure of all funds in the trust account or after
the death of the inmate, the responsible officer shall
furnish a statement of expenditures of the funds to the
nearest relative who is entitled to receive the
statement. A copy of the statement shall be filed with
the court that first granted the order to dispose of
the funds in accordance with the provisions of this
chapter.

Revisor's Note

(End of Subchapter)

The revised law omits as unnecessary part of
Section 887(g), Texas Probate Code, relating to the
cumulative effect of that subsection. An accepted
general principle of statutory construction requires a
statute to be given cumulative effect with other
statutes unless it provides otherwise or unless the
statutes are in conflict. The general principle
applies to this provision. The omitted law reads:

(g) . . . This subsection is
cumulative of all other laws affecting the
rights of a person who has a mental
disability, an incapacitated person, or a
person who has a mental illness and
affecting money that belongs to the person
as an inmate of a state eleemosynary
institution. . . .

CHAPTER 1356. COURT APPROVAL OF CERTAIN ARTS AND
ENTERTAINMENT, ADVERTISEMENT, AND SPORTS CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 1356.003-1356.050 reserved for expansion]

SUBCHAPTER B. COURT ACTION REGARDING CERTAIN CONTRACTS

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CHAPTER 1356. COURT APPROVAL OF CERTAIN ARTS AND ENTERTAINMENT, ADVERTISEMENT, AND SPORTS CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1356.001. DEFINITIONS. In this chapter:

(1) "Advertise" means to solicit or induce the purchase of consumer goods or services through electronic or print media, including:

(A) radio;

(B) television;

(C) computer; or

(D) direct mail.

(2) "Advertisement contract" means a contract under which a person is employed or agrees to advertise consumer goods or services.

(3) "Artist" means:

(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;

(B) a musician or musical director;

(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;

(D) a writer;

(E) a cinematographer;
(F) a composer, lyricist, or arranger of musical compositions;
(G) a dancer or choreographer of musical productions;
(H) a model; or
(I) any other individual who provides similar professional services in a motion picture, theatrical, radio, television, or other entertainment production.

(4) "Arts and entertainment contract" means a contract under which:
(A) an artist is employed or agrees to provide services in a motion picture, theatrical, radio, television, or other entertainment production; or
(B) a person agrees to purchase, secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic tangible or intangible property or any rights in that property for use in the field of entertainment, including:
   (i) a motion picture;
   (ii) television;
   (iii) the production of phonograph records;
   or
   (iv) theater.

(5) "Consumer goods" means goods used or bought for use primarily for personal, family, or household purposes.

(6) "Net earnings," with respect to a minor, means the total amount to be received for the services of the minor under a contract less:
(A) the amount required by law to be paid as taxes to any government or governmental agency;
(B) a reasonable amount to be spent for the support, care, maintenance, education, and training of the minor;
(C) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and
(D) attorney's fees for services provided in
connection with the contract or any other business of the minor.

(7) "Sports contract" means a contract under which an athlete is employed or agrees to participate, compete, or engage in a sports or athletic activity at a professional or amateur sports event or athletic event. (Tex. Prob. Code, Secs. 901, 904(a).)

Source Law
Sec. 901. In this subpart:
(1) "Advertise" means to solicit or induce, through print or electronic media, including radio, television, computer, or direct mail, to purchase consumer goods or services.
(2) "Advertisement contract" means a contract under which a person is employed or agrees to advertise consumer goods or services.
(3) "Artist" means:
(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;
(B) a musician or musical director;
(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;
(D) a writer;
(E) a cinematographer;
(F) a composer, lyricist, or arranger of musical compositions;
(G) a dancer or choreographer of musical productions;
(H) a model; or
(I) any other individual who renders analogous professional services in a motion picture, theatrical, radio, television, or other entertainment production.
(4) "Arts and entertainment contract" means a contract under which:
(A) an artist is employed or agrees to render services in a motion picture, theatrical, radio, television, or other entertainment production; or
(B) a person agrees to purchase, secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic tangible or intangible property or any rights in that property for use in the field of entertainment, including a motion picture, television, the production of phonograph records, or theater.
(5) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
(6) "Sports contract" means a contract under which an athlete is employed or agrees to participate, compete, or engage in a sports or athletic activity at a professional or amateur sports event or athletic event.

Sec. 904. (a) In this section, "net earnings" means the total amount to be received for the services of the minor under the contract less:
(1) the sum required by law to be paid as taxes to any government or governmental agency;
(2) a reasonable sum to be expended for the support, care, maintenance, education, and training of
the minor;

(3) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and

(4) attorney's fees for services rendered in connection with the contract or any other business of the minor.

Revisor's Note

Section 904(a), Texas Probate Code, defines "net earnings" for purposes of that section. The term, however, also appears in Section 903(c), Texas Probate Code (revised in this chapter as Section 1356.051(c)), which refers to a contract under which part of the "net earnings under the contract will be set aside as provided by Section 904 of this code." It is clear from the context that the definition in Section 904 applies to both sections, and the revised law accordingly includes the definition in this section to achieve that result.

Revised Law

Sec. 1356.002. DURATION OF CONTRACT OF A MINOR. This chapter may not be construed to authorize a contract that binds a minor after the seventh anniversary of the date of the contract. (Tex. Prob. Code, Sec. 902.)

Source Law

Sec. 902. This subpart may not be construed to authorize the making of a contract that binds a minor beyond the seventh anniversary of the date of the contract.

[Sections 1356.003-1356.050 reserved for expansion]

SUBCHAPTER B. COURT ACTION REGARDING CERTAIN CONTRACTS

Revised Law

Sec. 1356.051. APPROVAL OF CERTAIN CONTRACTS OF A MINOR. (a) On the petition of the guardian of the estate of a minor, a court may issue an order approving for purposes of this chapter an arts and entertainment contract, advertisement contract, or sports contract that is entered into by the minor.

(b) Approval of a contract under this section extends to the contract as a whole and each term and provision of the contract,
including any optional or conditional contract provision relating
to the extension or termination of the contract's term.

(c) A court may withhold approval of a contract in which
part of the minor's net earnings will be set aside as provided by
Section 1356.054 until the guardian of the minor's estate executes
and files with the court written consent to the issuance of the
order. (Tex. Prob. Code, Secs. 903(a) (part), (b), (c).)

Source Law

Sec. 903. (a) A court, on petition of the
guardian of the estate of the minor, may enter an order
approving for purposes of this subpart an arts and
entertainment contract, advertisement contract, or
sports contract that is entered into by a minor. . . .
(b) The approval of a contract under this
section extends to the contract as a whole and any of
the terms and provisions of the contract, including
any optional or conditional provision in the contract
relating to the extension or termination of its term.
(c) A court may withhold approval of a contract
under which part of the minor's net earnings under the
contract will be set aside as provided by Section 904
of this code until the guardian of the minor's estate
executes and files with the court written consent to
the making of the order.

Revisor's Note

Section 903(c), Texas Probate Code, refers to
setting aside a part of a minor's net earnings "as
provided by Section 904." The portions of Section 904
that relate to net earnings under a contract being set
aside are revised in Section 1356.054 of this chapter.
The revised law therefore substitutes "Section
1356.054" for "Section 904."

Revised Law

Sec. 1356.052. NOTICE REQUIRED. Before the court may
approve a contract under Section 1356.051, the guardian of the
minor's estate must provide the other party to the contract notice
of the petition and an opportunity to request a hearing in the
manner provided by the court. (Tex. Prob. Code, Sec. 903(a)
(part).)

Source Law

(a) . . . The court may approve the contract
only after the guardian of the minor's estate provides
to the other party to the contract notice of the

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petition and an opportunity to request a hearing in the manner provided by the court.

Revised Law

Sec. 1356.053. NECESSARY PARTIES TO PROCEEDING. Each parent of a minor for whom a proceeding is brought under Section 1356.051 is a necessary party to the proceeding. (Tex. Prob. Code, Sec. 903(e).)

Source Law

Sec. 903(e), Texas Probate Code, refers to a proceeding "brought under this section," meaning Section 903, Texas Probate Code. The relevant part of Section 903 that relates to proceedings to approve certain contracts of a minor is revised in this chapter as Section 1356.051. The revised law is drafted accordingly.

Revised Law

Sec. 1356.054. SET-ASIDE AND PRESERVATION OF PORTION OF NET EARNINGS. (a) Notwithstanding any other law, in an order issued under Section 1356.051, the court may require that a portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 1301.053 or 1301.054 or a similar trust created under the laws of another state.

(b) The amount to be set aside under this section must be reasonable as determined by the court. (Tex. Prob. Code, Sec. 904(b).)

Source Law

Sec. 903(e), Texas Probate Code, refers to a proceeding "brought under this section," meaning Section 903, Texas Probate Code. The relevant part of Section 903 that relates to proceedings to approve certain contracts of a minor is revised in this chapter as Section 1356.051. The revised law is drafted accordingly.

Revised Law

Sec. 1356.054. SET-ASIDE AND PRESERVATION OF PORTION OF NET EARNINGS. (a) Notwithstanding any other law, in an order issued under Section 1356.051, the court may require that a portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 1301.053 or 1301.054 or a similar trust created under the laws of another state.

(b) The amount to be set aside under this section must be reasonable as determined by the court. (Tex. Prob. Code, Sec. 904(b).)
Revisor's Note

Section 904(b), Texas Probate Code, refers to a court order approving a contract "under Section 903." The portions of Section 903 that relate to court approval of certain contracts of a minor are revised in this chapter as Section 1356.051. The revised law is drafted accordingly.

Revised Law

Sec. 1356.055. VALID CONTRACT NOT VOIDABLE. A contract approved under Section 1356.051 that is otherwise valid is not voidable solely on the ground that it was entered into by a person during the age of minority. (Tex. Prob. Code, Sec. 903(d).)

Source Law

(d) An otherwise valid contract approved under this section may not be voidable solely on the ground that it was entered into by a person during the age of minority.

Revisor's Note

Section 903(d), Texas Probate Code, refers to the approval of a contract "under this section," meaning Section 903, Texas Probate Code. The relevant part of Section 903 that relates to proceedings to approve certain contracts of a minor is revised in this chapter as Section 1356.051. The revised law is drafted accordingly.

Revised Law

Sec. 1356.056. GUARDIAN AD LITEM. The court may appoint a guardian ad litem for a minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract if the court finds that the appointment would be in the best interest of the minor. (Tex. Prob. Code, Sec. 905.)

Source Law

Sec. 905. The court may appoint a guardian ad litem for a minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract if the court finds that appointment of the ad litem would be in the best interest of the minor.
[Subtitles J-X reserved for expansion]

SUBTITLE Y. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND VENUE

PART 1. GENERAL PROVISIONS

SUBPART A. PROCEEDINGS IN REM

[Reserved for expansion]

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART A. JURISDICTION

[Reserved for expansion]

SUBPART B. VENUE

[Reserved for expansion]

SUBPART C. DUTIES AND RECORDS OF CLERK

[Reserved for expansion]

SUBTITLE Z. TEXAS PROBATE CODE; ADDITIONAL GUARDIANSHIP PROVISIONS

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

[Reserved for expansion]

APPENDIX A

CONFORMING AMENDMENTS

SECTION 20.01. CONFORMING AMENDMENT. Section 21.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.001. PURPOSE OF CODE. (a) This code is [title and Subtitles A through M, Title 2, are] enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code, except Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3 [title and Subtitles A through M, Title 2], is to make the law encompassed by this code, except Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3 [title and Subtitles A through M, Title 2], more accessible and
understandable by:

(1) rearranging the statutes into a more logical order;
(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
(4) restating the law in modern American English to the greatest extent possible.

(c) The provisions of Subtitles X and [__, Y, [and Z of] Title 2, and Subtitles Y and Z, Title 3, [25] are transferred from the Texas Probate Code and redesignated as part of this code, but are not revised as part of the state's continuing statutory revision program.

SECTION 2.02. CONFORMING AMENDMENT. Section 21.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.002. CONSTRUCTION. (a) Except as provided by this section, Section 22.027, or Section 1002.023, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this code [title or Subtitle A, B, C, D, E, F, G, H, I, J, K, L, or M, Title 2].

(b) Chapter 311, Government Code (Code Construction Act), [That chapter] does not apply to the construction of a provision of Subtitle X or [__, Y, [or Z of] Title 2, or Subtitle Y or Z, Title 3 [25].

SECTION 2.03. CONFORMING AMENDMENT. Section 21.003(b), Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A reference in Subtitle X or [__, Y, [or Z,] Title 2, or Subtitle Y or Z, Title 3, [25] to a chapter, a part, a subpart, a section, or any portion of a section "of this code" is a reference
to the chapter, part, subpart, section, or portion of a section as redesignated in the Estates Code, except that:

(1) a reference in Subtitle X or [Z] Title 2, or Subtitle Y or Z, Title 3, [25] to Chapter I is a reference to Chapter I, Estates Code, and to the revision of sections derived from Chapter I, Texas Probate Code, and any reenactments and amendments to those sections; and

(2) a reference in Subtitle X or [Z] Title 2, or Subtitle Y or Z, Title 3, [25] to a chapter, part, subpart, section, or portion of a section that does not exist in the Estates Code is a reference to the revision or redesignation of the corresponding chapter, part, subpart, section, or portion of a section of the Texas Probate Code and any reenactments or amendments.

SECTION 2.04. CONFORMING AMENDMENT. Section 21.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. Notwithstanding Section 21.002(b) [21.002] of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitles X and [Z] Title 2, and Subtitles Y and Z, Title 3 [25]; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitles X and [Z] Title 2, and Subtitles Y and Z, Title 3.

SECTION 2.05. CONFORMING AMENDMENT. The heading to Title 2, Estates Code, as effective January 1, 2014, is amended to read as follows:

TITLE 2. ESTATES OF DECEDEENTS; DURABLE POWERS OF ATTORNEY

APPENDIX B

TRANSFERS, REDESIGNATIONS, AND REPEALERS; LEGISLATIVE INTENT;

EFFECTIVE DATE

SECTION 3.01. TRANSFER AND REDESIGNATION. (a) Section
1 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724,
2 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737,
3 738, 739, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751,
4 752, 753, 754, 755, 756, 757, 758, 759, 760, 760A, 760B, 761, 762,
5 763, 764, 765, 766, 768, 769, 770, 770A, 771, 772, 773, 774, 775,
6 776, 776A, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787,
7 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800,
8 801, 802, 803, 804, 805, 806, 807, 808, 809, 811, 812, 813, 814,
9 815, 816, 817, 818, 819, 820, 821, 823, 824, 824A, 825, 826, 827,
10 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 839, 840, 841,
11 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854,
12 855, 855A, 855B, 857, 858, 860, 861, 862, 863, 865, 865A, 866, 867,
15 883C, 883D, 884, 884A, 885, 887, 889, 889A, 890, 890A, 891, 892,
16 893, 894, 901, 902, 903, 904, 905, 910, 911, 912, 913, 914, 915, and
17 916, Texas Probate Code, are repealed.
18     (b) Subtitles M and Z, Title 2, and Title 25, Estates Code,
19     as effective January 1, 2014, are repealed.
20     (c) Sections 4 and 5, Chapter 680 (H.B. 2502), Acts of the
21     81st Legislature, Regular Session, 2009, which transferred and
22     redesignated Chapters XII and XIII, Texas Probate Code, are
23     repealed.
24 SECTION 3.03. LEGISLATIVE INTENT: TRANSFERS FROM TEXAS
25 PROBATE CODE. It is the intent of the legislature that, with
26 respect to any provision of the Texas Probate Code that is
27 transferred by this Act to the Estates Code and redesignated as a
28 provision of that code effective January 1, 2014, the transferred
29 provision include all amendments to that provision enacted by the
30 82nd and 83rd Legislatures and any reenactments of the provision by
31 those legislatures.
32 SECTION 4.01. LEGISLATIVE INTENT. This Act is enacted
33 under Section 43, Article III, Texas Constitution. This Act is
34 intended as a recodification only, and no substantive change in law

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is intended by this Act.

SECTION 4.02. SAVING PROVISION. (a) This section applies in addition to the saving provisions specified by Sections 311.031(c) and (d), Government Code (Code Construction Act).

(b) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 83rd Legislature. The amendment, revision, or reenactment made by the 83rd Legislature is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(c) If any provision of Subtitle P, Title 2, or Subtitle A, C, D, E, F, G, H, or I, Title 3, Estates Code, as added by this Act effective January 1, 2014, conflicts with a statute enacted by the 83rd Legislature, the statute controls.

SECTION 4.03. EFFECTIVE DATE. This Act takes effect January 1, 2014.

APPENDIX C

CHAPTER 311. CODE CONSTRUCTION ACT
(current as of end of 82nd Legislature, 1st Called Session, 2011)

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Sec. 311.002. APPLICATION. This chapter applies to:

(1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;

(3) each repeal of a statute by a code; and

(4) each rule adopted under a code.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.
Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

1. Title 1, Business & Commerce Code;
2. Chapter 5, Business & Commerce Code;
3. Section 9.304, Business & Commerce Code;
4. Section 15.06(a), Business & Commerce Code; and
5. Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

1. "Oath" includes affirmation.
2. "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
3. "Population" means the population shown by the most recent federal decennial census.
4. "Property" means real and personal property.
5. "Rule" includes regulation.
6. "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.
7. "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.
8. "Swear" includes affirm.
9. "United States" includes a department, bureau, or other agency of the United States of America.
10. "Week" means seven consecutive days.
11. "Written" includes any representation of words, letters, symbols, or figures.
12. "Year" means 12 consecutive months.
(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or
legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

1. "May" creates discretionary authority or grants permission or a power.
2. "Shall" imposes a duty.
3. "Must" creates or recognizes a condition precedent.
4. "Is entitled to" creates or recognizes a right.
5. "May not" imposes a prohibition and is synonymous with "shall not."
6. "Is not entitled to" negates a right.
7. "Is not required to" negates a duty or condition precedent.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

1. compliance with the constitutions of this state and the United States is intended;
2. the entire statute is intended to be effective;
3. a just and reasonable result is intended;
4. a result feasible of execution is intended; and
Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;
(2) circumstances under which the statute was enacted;
(3) legislative history;
(4) common law or former statutory provisions, including laws on the same or similar subjects;
(5) consequences of a particular construction;
(6) administrative construction of the statute; and
(7) title (caption), preamble, and emergency provision.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by
another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

1. the date on which the last presiding officer signed the bill;
2. the date on which the governor signed the bill; or
3. the date on which the bill became law by operation of law.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.
Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.
If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.
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