

THE NUTS AND BOLTS OF GUARDIANSHIP IN
50 MINUTES

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INTRODUCTORY COMMENT

What follows are simply selected sections of the Texas Estates Code which relate to the creation, administration, and termination of a guardianship in the State of Texas. I have on many occasions spoken to law students about this topic and simply referred them to various sections of the Code which I felt were important for them to review should they be asked about the creation of a guardianship. In preparing this, I simply copied and pasted these various sections from what can be found online if one should search for the Texas Estates Code. Obviously, there are many, many more sections, and this is only intended to give a very brief overview. One would be exceedingly ill-advised to rely on what follows as "the law" without seeking out the other information to be had in all of the Estates Code, and one might even be misled by relying only on what I have provided.

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CHAPTER 1001. PURPOSE AND CONSTRUCTION

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.

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

CHAPTER 1002. DEFINITIONS

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, an unborn person, or another person described by Section 1054.007 in a guardianship proceeding.

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
incapacitated person.

Sec. 1002.013. GUARDIAN AD LITEM. "Guardian ad litem" means a person 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.

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.

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 appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.

Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term "guardianship proceeding" means a matter or proceeding related to a guardianship or any other matter covered by this title, including:

- (1) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child;
- (2) an application, petition, or motion regarding guardianship or an alternative to guardianship under this title;
- (3) a mental health action; and
- (4) an application, petition, or motion regarding a trust created under Chapter 1301.

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.

Sec. 1002.030. WARD. "Ward" means a person for whom a guardian has been appointed.

CHAPTER 1022. JURISDICTION

Sec. 1022.001. GENERAL PROBATE COURT JURISDICTION IN GUARDIANSHIP PROCEEDINGS; APPEALS. (a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section [1021.001](#) for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

CHAPTER 1051. NOTICES AND PROCESS IN GUARDIANSHIP PROCEEDINGS IN GENERAL

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.

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

Sec. 1051.103. SERVICE OF CITATION FOR APPLICATION FOR GUARDIANSHIP. (a) 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.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1051.252 that is required in the citation issued under Section 1051.102.

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 another relative within the third degree by consanguinity in the application as required by Section 1101.001(b)(11) or (13) if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(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.

CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

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.

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.

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.

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.

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.

CHAPTER 1055. TRIAL AND HEARING MATTERS

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.

CHAPTER 1101. GENERAL PROCEDURE TO APPOINT 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.

Text of subsection effective until September 01, 2014

(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;
- (9) 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 adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and 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 other living relatives who are related to the proposed ward within the third degree by consanguinity and 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.

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 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.

Sec. 1101.052. JURY TRIAL. A proposed ward is entitled to a jury trial on request.

Sec. 1101.101. FINDINGS AND PROOF REQUIRED. (a) Before appointing a guardian for a proposed ward, the court must:

- (1) find by clear and convincing evidence that:
 - (A) the proposed ward is an incapacitated person;
 - (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) the proposed ward's rights or property will be protected by the appointment of a guardian; and
- (2) find by a preponderance of the evidence that:
 - (A) the court has venue of the case;
 - (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) 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) the proposed ward:
 - (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) 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.

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.

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 filed.

(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 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).

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.

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;
- (5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election; and
- (6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

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.

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

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 appraisal 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.

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.

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.

Sec. 1102.003. INFORMATION LETTER. (a) An interested person who submits an information letter under Section 1102.002(1) about a person believed to be incapacitated must, to the best of the interested person's knowledge:

- (1) state 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) state 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.

(b) In addition to the requirements of Subsection (a), if an information letter under that subsection is submitted by an interested person who is a family member of the person believed to be incapacitated, the information letter must:

- (1) be signed and sworn to before a notary public by the interested person; or
- (2) include a written declaration signed by the interested person under penalty of perjury that the information contained in the information letter is true to the best of the person's knowledge.

CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN

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.

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.

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.

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.

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

Affiant

Affiant

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:

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.

Sec. 1104.352. UNSUITABILITY. A person may not be appointed guardian if the person is a person, institution, or corporation found by the court to be unsuitable.

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;

- (4) abandoning or endangering a child;
- (5) terroristic threat; or
- (6) continuous violence against the family of the ward or incapacitated person.

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.

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).

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.

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.

Sec. 1104.358. SUBJECT TO PROTECTIVE ORDER FOR FAMILY VIOLENCE. A person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, may not be appointed guardian of a proposed ward or ward who is protected by the protective order.

CHAPTER 1105. QUALIFICATION OF GUARDIANS

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.

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.

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).

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.

CHAPTER 1106. LETTERS OF GUARDIANSHIP

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.

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.

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.

CHAPTER 1151. RIGHTS, POWERS, AND DUTIES UNDER GUARDIANSHIP

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.

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;

(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; and

(6) the power to sign documents necessary or appropriate to facilitate employment of the ward if:

(A) the guardian was appointed with full authority over the person of the ward under Section [1101.151](#); or

(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section [1101.152](#).

(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.

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.

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 18 years of age may voluntarily admit the ward 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.

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.

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.

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.

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).

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.

Sec. 1151.151. DUTY OF CARE. (a) The guardian of the 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).

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.

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.

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:
- (1) 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.

CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 1154.051. INVENTORY AND APPRAISEMENT. (a) Not later than the 30th day after the date the guardian of the estate 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.

(b) The guardian shall:

(1) set out in the inventory the guardian's appraisal 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 appraisal made by the appraiser.

(c) The court for good cause shown may require the guardian to file the inventory and appraisal 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 appraisal of the estate referred to in this title.

Sec. 1154.052. LIST OF CLAIMS. The guardian of the estate shall make and attach to the inventory and appraisal 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.

CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

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.

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.

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.

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

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.

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.

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.

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.

CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY

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.

CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

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.

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.

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.

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.

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.

CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

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) lists all claims against the estate presented to the guardian during the period covered by the account; and

(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) 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) show any change in the ward's property that was not previously reported;
 - (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.

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; and
 - (I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:
 - (i) a physician;
 - (ii) a psychiatrist, psychologist, or other mental health care provider;
 - (iii) a dentist;
 - (iv) a social or other caseworker; or
 - (v) any other individual who provided treatment;

- (5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;
- (6) the guardian's evaluation of:
 - (A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;
 - (B) whether the ward is content or unhappy with the ward's living arrangements; and
 - (C) unmet needs of the ward;
- (7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;
- (8) a statement indicating that the guardian has paid the bond premium for the next reporting period;
- (9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and
- (10) any additional information the guardian desires to share with the court regarding the ward, including:
 - (A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and
 - (B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP. (a) Unless otherwise discharged as provided by law, a guardian remains 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.

CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

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
 - (C) marriage;
- (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 or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Chapter 1302, and the court determines that a guardianship of the ward's estate 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 ad litem reasonable compensation to be taxed as costs.

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.

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.

CHAPTER 1251. TEMPORARY GUARDIANSHIPS

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 order.

CHAPTER 1301. MANAGEMENT TRUSTS

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;
- (4) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or
- (5) a person who has only a physical disability.

Sec. 1301.053. CREATION OF TRUST. (a) On application by an appropriate person as provided by Section [1301.051](#) and

subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings may enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's best interests.

(b) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Sec. 1301.101. REQUIRED TERMS. (a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person 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 spend for the health, education, maintenance, or support of the person for whom the trust is created;

(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), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person's trustee.

(a-1) A management trust created for a person who has only a physical disability must provide that the trustee of the trust:

(1) serves without giving a bond; and

(2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's 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 under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) if the court is creating the trust for a person who has only a physical disability, or if the court determines that the omission or modification:

- (1) is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person; or
- (2) is in the best interests of the person for whom the trust is created.

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

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.