

By: Moody

H.B. No. 2178

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, management trusts, and certain other procedures and proceedings for persons who are incapacitated.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1021.001, Estates Code, is amended to read as follows:

Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.

(a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) the granting of letters of guardianship;

(2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;

(3) a claim brought by or against a guardianship estate;

(4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5) an action for trial of the right of property that is guardianship estate property;

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:

1 (A) an action brought by or on behalf of the
2 former ward against a former guardian of the ward for alleged
3 misconduct arising from the performance of the person's duties as
4 guardian;

5 (B) an action calling on the surety of a guardian
6 or former guardian to perform in place of the guardian or former
7 guardian, which may include the award of a judgment against the
8 guardian or former guardian in favor of the surety;

9 (C) an action against a former guardian of the
10 former ward that is brought by a surety that is called on to perform
11 in place of the former guardian;

12 (D) a claim for the payment of compensation,
13 expenses, and court costs, and any other matter authorized under
14 Chapter 1155; and

15 (E) a matter related to an authorization made or
16 duty performed by a guardian under Chapter 1204; and

17 (7) the appointment of a trustee for a trust created
18 under Section 1301.053 or 1301.054, the settling of an account of
19 the trustee, and all other matters relating to the trust.

20 (a-1) For purposes of this code, in a county in which there
21 is no statutory probate court, but in which there is a county court
22 at law exercising original probate jurisdiction, a matter related
23 to a guardianship proceeding includes:

24 (1) all matters and actions described in Subsection
25 (a);

26 (2) the interpretation and administration of a
27 testamentary trust in which a ward is an income or remainder

1 beneficiary; and

2 (3) the interpretation and administration of an inter
3 vivos trust in which a ward is an income or remainder beneficiary.

4 (b) For purposes of this code, in a county in which there is
5 a statutory probate court, a matter related to a guardianship
6 proceeding includes:

7 (1) all matters and actions described in Subsections
8 ~~[Subsection]~~ (a) and (a-1);

9 (2) a suit, action, or application filed against or on
10 behalf of a guardianship or a trustee of a trust created under
11 Section 1301.053 or 1301.054; and

12 (3) a cause of action in which a guardian in a
13 guardianship pending in the statutory probate court is a party.

14 SECTION 2. Section 1052.052(b), Estates Code, is amended to
15 read as follows:

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

19 (1) application for the granting of guardianship;

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

22 (3) bond and official oath or declaration;

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

24 (5) exhibit and account;

25 (6) report of renting;

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

27 (8) report of sale;

- 1 (9) application for authority to execute a lease for
2 mineral development, or for pooling or unitization of lands,
3 royalty, or other interest in minerals, or to lend or invest money;
4 (10) report of lending or investing money; and
5 (11) report of guardians of the persons.

6 SECTION 3. Section 1103.003, Estates Code, is amended to
7 read as follows:

8 Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP. If the
9 application filed under Section 1103.001 is heard before the
10 proposed ward's 18th birthday, a guardianship created under this
11 chapter may not take effect and the person appointed guardian may
12 not take the oath or make the declaration as required under Section
13 1105.051 or give a bond as required under Section 1105.101 until the
14 proposed ward's 18th birthday.

15 SECTION 4. Section 1105.001, Estates Code, is amended by
16 adding Subdivision (1-a) and amending Subdivision (2) to read as
17 follows:

18 (1-a) "Declaration" means a declaration taken by a
19 person appointed to serve as a guardian to qualify to serve.

20 (2) "Oath" means an oath [~~required by this chapter to~~
21 ~~be~~] taken by a person appointed to serve as a guardian to qualify to
22 serve.

23 SECTION 5. Section 1105.002, Estates Code, is amended to
24 read as follows:

25 Sec. 1105.002. MANNER OF QUALIFICATION OF GUARDIAN.

26 (a) Except as provided by Subsection (b), a guardian is considered
27 to have qualified when the guardian has:

1 (1) taken and filed the oath, or made and filed the
2 declaration, required under Section 1105.051;

3 (2) given the required bond;

4 (3) filed the bond with the clerk; and

5 (4) obtained the judge's approval of the bond.

6 (b) A guardian who is not required to give a bond is
7 considered to have qualified when the guardian has taken and filed
8 the [~~required~~] oath, or made and filed the declaration, as required
9 under Section 1105.051.

10 SECTION 6. Section 1105.003, Estates Code, is amended to
11 read as follows:

12 Sec. 1105.003. PERIOD FOR TAKING OATH OR MAKING DECLARATION
13 AND GIVING BOND. (a) Except as provided by Section 1103.003, an
14 oath may be taken and subscribed or a declaration may be made, and a
15 bond may be given and approved, at any time before:

16 (1) the 21st day after the date of the order granting
17 letters of guardianship; or

18 (2) the letters of guardianship are revoked for a
19 failure to qualify within the period allowed.

20 (b) A guardian of an estate must give a bond before being
21 issued letters of guardianship unless a bond is not required under
22 this title.

23 SECTION 7. The heading to Subchapter B, Chapter 1105,
24 Estates Code, is amended to read as follows:

25 SUBCHAPTER B. OATHS AND DECLARATIONS

26 SECTION 8. Section 1105.051, Estates Code, is amended to
27 read as follows:

1 Sec. 1105.051. OATH OR DECLARATION OF GUARDIAN. (a) A
2 guardian shall:

3 (1) take an oath to discharge faithfully the duties of
4 guardian for the person or estate, or both, of a ward; or

5 (2) make a declaration as prescribed by Subsection
6 (d).

7 (b) If the Health and Human [~~Department of Aging and~~
8 ~~Disability~~] Services Commission is appointed guardian, a
9 commission [~~department~~] representative shall take the oath or make
10 the declaration required by Subsection (a).

11 (c) An oath taken by a person named as guardian or temporary
12 guardian, as applicable, must be substantially as follows:

13 I, _____ (insert person's name), do solemnly swear that
14 I will discharge faithfully the duties of guardian of _____
15 (insert "the person," "the estate," or "the person and estate") of
16 _____ (insert ward's name), an incapacitated person,
17 according to law.

18 (d) A declaration made by a person named as guardian or
19 temporary guardian, as applicable, must be substantially as
20 follows:

21 My name is _____ (insert person's name), my date of birth is
22 _____ (insert person's date of birth), and my address is
23 _____ (insert person's address, including country). I declare
24 under penalty of perjury that the information in this declaration
25 is true and correct. I solemnly declare that I will discharge
26 faithfully the duties of _____ (insert "guardian" or
27 "temporary guardian," as applicable) of _____ (insert "the

1 person," "the estate," or "the person and estate") of _____
2 (insert ward's name), an incapacitated person, according to law.
3 Signed on _____ (insert date of signing).

4 SECTION 9. Section [1105.052](#), Estates Code, is amended to
5 read as follows:

6 Sec. 1105.052. ADMINISTRATION OF OATH OR MAKING OF
7 DECLARATION. The [An] oath prescribed by Section [1105.051](#) may be
8 taken before any person authorized to administer oaths under the
9 laws of this state. The declaration prescribed by Section [1105.051](#)
10 must be signed by the declarant.

11 SECTION 10. Section [1105.103\(f\)](#), Estates Code, is amended
12 to read as follows:

13 (f) If the guardian fails to give the bond required under
14 Subsection (d) and the judge has not extended the period for giving
15 the bond, the judge, without citation, shall remove the guardian
16 and appoint a competent person as guardian, who shall:

17 (1) administer the guardianship according to the
18 provisions of a will or law;

19 (2) take the oath or make the declaration required of a
20 guardian under Section [1105.051](#) before the person enters on the
21 administration of the guardianship; and

22 (3) give bond in the same manner and in the same amount
23 provided by this title for the issuance of original letters of
24 guardianship.

25 SECTION 11. Section [1151.351\(b\)](#), Estates Code, is amended
26 to read as follows:

27 (b) Unless limited by a court or otherwise restricted by

1 law, a ward is authorized to the following:

2 (1) to have a copy of the guardianship order and
3 letters of guardianship and contact information for the probate
4 court that issued the order and letters;

5 (2) to have a guardianship that encourages the
6 development or maintenance of maximum self-reliance and
7 independence in the ward with the eventual goal, if possible, of
8 self-sufficiency;

9 (3) to be treated with respect, consideration, and
10 recognition of the ward's dignity and individuality;

11 (4) to reside and receive support services in the most
12 integrated setting, including home-based or other community-based
13 settings, as required by Title II of the Americans with
14 Disabilities Act (42 U.S.C. Section 12131 et seq.);

15 (5) to consideration of the ward's current and
16 previously stated personal preferences, desires, medical and
17 psychiatric treatment preferences, religious beliefs, living
18 arrangements, and other preferences and opinions;

19 (6) to financial self-determination for all public
20 benefits after essential living expenses and health needs are met
21 and to have access to a monthly personal allowance;

22 (7) to receive timely and appropriate health care and
23 medical treatment that does not violate the ward's rights granted
24 by the constitution and laws of this state and the United States;

25 (8) to exercise full control of all aspects of life not
26 specifically granted by the court to the guardian;

27 (9) to control the ward's personal environment based

1 on the ward's preferences;

2 (10) to complain or raise concerns regarding the
3 guardian or guardianship to the court, including living
4 arrangements, retaliation by the guardian, conflicts of interest
5 between the guardian and service providers, or a violation of any
6 rights under this section;

7 (11) to receive notice in the ward's native language,
8 or preferred mode of communication, and in a manner accessible to
9 the ward, of a court proceeding to continue, modify, or terminate
10 the guardianship and the opportunity to appear before the court to
11 express the ward's preferences and concerns regarding whether the
12 guardianship should be continued, modified, or terminated;

13 (12) to have a court investigator or~~[r]~~ guardian ad
14 litem~~[, or attorney ad litem]~~ appointed by the court to investigate
15 a complaint received by the court from the ward or any person about
16 the guardianship;

17 (13) to participate in social, religious, and
18 recreational activities, training, employment, education,
19 habilitation, and rehabilitation of the ward's choice in the most
20 integrated setting;

21 (14) to self-determination in the substantial
22 maintenance, disposition, and management of real and personal
23 property after essential living expenses and health needs are met,
24 including the right to receive notice and object about the
25 substantial maintenance, disposition, or management of clothing,
26 furniture, vehicles, and other personal effects;

27 (15) to personal privacy and confidentiality in

1 personal matters, subject to state and federal law;

2 (16) to unimpeded, private, and uncensored
3 communication and visitation with persons of the ward's choice,
4 except that if the guardian determines that certain communication
5 or visitation causes substantial harm to the ward:

6 (A) the guardian may limit, supervise, or
7 restrict communication or visitation, but only to the extent
8 necessary to protect the ward from substantial harm; and

9 (B) the ward may request a hearing to remove any
10 restrictions on communication or visitation imposed by the guardian
11 under Paragraph (A);

12 (17) to petition the court and retain counsel of the
13 ward's choice who holds a certificate required by Subchapter E,
14 Chapter 1054, to represent the ward's interest for capacity
15 restoration, modification of the guardianship, the appointment of a
16 different guardian, or for other appropriate relief under this
17 subchapter, including a transition to a supported decision-making
18 agreement, except as limited by Section 1054.006;

19 (18) to vote in a public election, marry, and retain a
20 license to operate a motor vehicle, unless restricted by the court;

21 (19) to personal visits from the guardian or the
22 guardian's designee at least once every three months, but more
23 often, if necessary, unless the court orders otherwise;

24 (20) to be informed of the name, address, phone
25 number, and purpose of Disability Rights Texas, an organization
26 whose mission is to protect the rights of, and advocate for, persons
27 with disabilities, and to communicate and meet with representatives

1 of that organization;

2 (21) to be informed of the name, address, phone
3 number, and purpose of an independent living center, an area agency
4 on aging, an aging and disability resource center, and the local
5 mental health and intellectual and developmental disability
6 center, and to communicate and meet with representatives from these
7 agencies and organizations;

8 (22) to be informed of the name, address, phone
9 number, and purpose of the Judicial Branch Certification Commission
10 and the procedure for filing a complaint against a certified
11 guardian;

12 (23) to contact the Department of Family and
13 Protective Services to report abuse, neglect, exploitation, or
14 violation of personal rights without fear of punishment,
15 interference, coercion, or retaliation;

16 (24) to have the guardian, on appointment and on
17 annual renewal of the guardianship, explain the rights delineated
18 in this subsection in the ward's native language, or preferred mode
19 of communication, and in a manner accessible to the ward; and

20 (25) to make decisions related to sexual assault
21 crisis services, including consenting to a forensic medical
22 examination and treatment, authorizing the collection of forensic
23 evidence, consenting to the release of evidence contained in an
24 evidence collection kit and disclosure of related confidential
25 information, and receiving counseling and other support services.

26 SECTION 12. Sections [1153.001](#)(a) and (c), Estates Code, are
27 amended to read as follows:

1 (a) Within one month after receiving letters of
2 guardianship, a guardian of an estate shall provide notice
3 requiring each person who has a claim against the estate to present
4 the claim within the period prescribed by law. The notice must be:

5 (1) published in a newspaper of general circulation
6 [~~printed~~] in the county in which the letters were issued; and

7 (2) sent to the comptroller by certified or registered
8 mail, if the ward remitted or should have remitted taxes
9 administered by the comptroller.

10 (c) If there is no [~~a~~] newspaper of general circulation [~~is~~
11 ~~not printed~~] in the county in which the letters of guardianship were
12 issued, the notice must be posted and the return made and filed as
13 otherwise required by this title.

14 SECTION 13. Section [1155.054](#)(d), Estates Code, is amended
15 to read as follows:

16 (d) If the court finds that a party in a guardianship
17 proceeding acted in bad faith or without just cause in prosecuting
18 or objecting to an application in the proceeding, the court may
19 order [~~require~~] the party to reimburse the ward's estate for all or
20 part of the attorney's fees awarded under this section and shall
21 issue judgment against the party and in favor of the estate for the
22 amount of attorney's fees ordered [~~required~~] to be reimbursed to
23 the estate.

24 SECTION 14. Section [1158.105](#)(a), Estates Code, is amended
25 to read as follows:

26 (a) A successful bid or contract for the sale of estate
27 personal property shall be reported to the court. The laws

1 regulating the approval [~~confirmation~~] or disapproval of a sale of
2 real estate apply to the sale [~~of personal property~~], except that a
3 conveyance is not required.

4 SECTION 15. The heading to Subchapter I, Chapter 1158,
5 Estates Code, is amended to read as follows:

6 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC AUCTION [~~SALE~~]

7 SECTION 16. Section 1158.401(a), Estates Code, is amended
8 to read as follows:

9 (a) A public sale of real estate of an estate shall be made
10 at public auction. Except as otherwise provided by Section
11 1158.403(c) [~~this title~~], the guardian of the estate shall
12 advertise a public auction [~~sale~~] of real estate of the estate by a
13 notice published in the county in which the estate is pending, as
14 provided by this title for publication of notices or citations. The
15 notice must [~~include a reference to~~]:

- 16 (1) include a reference to the order of sale;
17 (2) include the time, place, and required terms of
18 sale; and
19 (3) briefly describe [~~a brief description of~~] the real
20 estate to be sold.

21 SECTION 17. Section 1158.402, Estates Code, is amended to
22 read as follows:

23 Sec. 1158.402. COMPLETION [~~METHOD~~] OF AUCTION [~~SALE~~]. A
24 public auction [~~sale~~] of real estate of an estate shall be completed
25 on the bid of [~~made at public auction to~~] the highest bidder.

26 SECTION 18. Section 1158.403, Estates Code, is amended to
27 read as follows:

1 Sec. 1158.403. TIME AND PLACE OF AUCTION [~~SALE~~]. (a)
2 Except as provided by Subsection (c), a public auction [~~sale~~] of
3 real estate of an estate shall be held [~~made~~] at:

4 (1) the courthouse door in the county in which the real
5 estate is located, or if the real estate is located in more than one
6 county, the courthouse door in any county in which the real estate
7 is located [~~guardianship proceedings are pending~~]; or

8 (2) another place in a [~~that~~] county described by
9 Subdivision (1) at which auctions [~~sales~~] of real estate are
10 specifically authorized to be held as designated by the
11 commissioners court of the county under Section 51.002(a), Property
12 Code [~~made~~].

13 (b) Except as otherwise provided by this subsection, the
14 auction [~~The sale~~] must occur between 10 a.m. and 4 p.m. on the
15 first Tuesday of the month after publication of notice has been
16 completed. If the first Tuesday of the month occurs on January 1 or
17 July 4, the auction must occur between 10 a.m. and 4 p.m. on the
18 first Wednesday of the month.

19 (c) If the court considers it advisable, the court may order
20 the auction [~~sale~~] to be held [~~made~~] in the county in which the
21 proceedings are pending [~~real estate is located~~], in which event
22 notice shall be published both in that county and in the county in
23 which the real estate is located [~~proceedings are pending~~].

24 SECTION 19. Section 1158.404, Estates Code, is amended to
25 read as follows:

26 Sec. 1158.404. CONTINUANCE OF AUCTION [~~SALE~~]. (a) A public
27 auction [~~sale~~] of real estate of an estate that is not completed on

1 the day advertised may be continued from day to day by an oral
2 public announcement of the continuance made at the conclusion of
3 the auction [~~sale~~] each day.

4 (b) A continued auction [~~sale~~] must occur within the hours
5 prescribed by Section 1158.403(b).

6 (c) The continuance of an auction [~~a sale~~] under this
7 section shall be shown in the report [~~of the sale~~] made to the court
8 under Section 1158.551.

9 SECTION 20. Section 1158.405, Estates Code, is amended to
10 read as follows:

11 Sec. 1158.405. FAILURE OF BIDDER TO COMPLY. (a) If a
12 person who successfully bids on real estate of the guardianship
13 estate offered [~~for sale~~] at public auction fails to comply with the
14 terms of the bid [~~sale~~], the property [~~real estate~~] shall be
15 readvertised and auctioned [~~sold~~] without any further order.

16 (b) The person defaulting on a bid as described by
17 Subsection (a) is liable for payment to the guardian of the estate,
18 for the estate's benefit, of:

- 19 (1) 10 percent of the amount of the bid; and
20 (2) the amount of any deficiency in price on the second
21 auction [~~sale~~].

22 (c) The guardian shall recover the amounts under Subsection
23 (b) by suit in any court in the county in which the auction [~~sale~~]
24 was held [~~made~~] that has jurisdiction over the amount claimed.

25 SECTION 21. The heading to Subchapter J, Chapter 1158,
26 Estates Code, is amended to read as follows:

27 SUBCHAPTER J. SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE

1 SECTION 22. Section 1158.451, Estates Code, is amended to
2 read as follows:

3 Sec. 1158.451. TERMS [~~MANNER~~] OF SALE. The guardian of the
4 estate may enter into a contract for the [A] private sale of real
5 estate of the estate [~~shall be~~] made in the manner the court directs
6 in the order of sale. Unless the court directs otherwise,
7 additional advertising, notice, or citation concerning the sale is
8 not required.

9 SECTION 23. Section 1158.502, Estates Code, is amended to
10 read as follows:

11 Sec. 1158.502. PROCEDURE. The procedure for the sale of an
12 easement or right-of-way authorized under Section 1158.501 is the
13 same as the procedure provided by law for a private sale of real
14 property of a ward by contract [~~at private sale~~].

15 SECTION 24. The heading to Subchapter L, Chapter 1158,
16 Estates Code, is amended to read as follows:

17 SUBCHAPTER L. APPROVAL [~~CONFIRMATION~~] OF SALE OF REAL PROPERTY AND
18 TRANSFER OF TITLE

19 SECTION 25. Section 1158.551, Estates Code, is amended to
20 read as follows:

21 Sec. 1158.551. REPORT. A successful bid or private
22 contract for the sale of estate real property shall be reported to
23 the court ordering the sale not later than the 30th day after the
24 date the bid [~~sale~~] is made or the property is placed under
25 contract. The report must:

26 (1) be in writing, sworn to, and filed with the clerk;

27 (2) include:

- 1 (A) the date of the order of sale;
- 2 (B) a description of the property being sold;
- 3 (C) the time and place of the auction or date the
4 property is placed under contract [~~sale~~];
- 5 (D) the purchaser's name;
- 6 (E) the amount of the successful bid or the
7 purchase price for [~~which~~] each parcel of property or interest in
8 the parcel of property auctioned or placed under contract [~~was~~
9 ~~sold~~];
- 10 (F) the terms of the sale;
- 11 (G) whether the proposed sale of the property was
12 made at public auction or by contract [~~privately~~]; and
- 13 (H) whether the purchaser is ready to comply with
14 the order of sale; and

15 (3) be noted on the guardianship docket.

16 SECTION 26. Section 1158.552, Estates Code, is amended to
17 read as follows:

18 Sec. 1158.552. ACTION OF COURT ON REPORT [~~OF SALE~~]. After
19 the expiration of five days from the date a report [~~of sale~~] is
20 filed under Section 1158.551, the court shall:

21 (1) consider [~~inquire into~~] the manner in which the
22 auction described in the report was held or the contract described
23 in the report [~~sale~~] was entered into [~~made~~];

24 (2) consider [~~hear~~] evidence in support of or against
25 the report; and

26 (3) determine the sufficiency or insufficiency of the
27 guardian's general bond, if any has been required and given.

1 SECTION 27. Section 1158.553, Estates Code, is amended to
2 read as follows:

3 Sec. 1158.553. APPROVAL [~~CONFIRMATION~~] OF SALE WHEN BOND
4 NOT REQUIRED. If the guardian of the estate of a ward is not
5 required by Subtitle D to give a general bond, the court may approve
6 [~~confirm~~] the sale of estate real property in the manner provided by
7 Section 1158.556(a) if the court finds that the sale is
8 satisfactory and made in accordance with law.

9 SECTION 28. Sections 1158.554(a), (b), and (c), Estates
10 Code, are amended to read as follows:

11 (a) If the guardian of an estate is required by Subtitle D to
12 give a general bond, before the court approves [~~confirms~~] any sale
13 of real estate, the court shall determine whether the bond is
14 sufficient to protect the estate after the sale proceeds are
15 received.

16 (b) If the court finds that the general bond is sufficient,
17 the court may approve [~~confirm~~] the sale as provided by Section
18 1158.556(a).

19 (c) If the court finds that the general bond is
20 insufficient, the court may not approve [~~confirm~~] the sale until
21 the general bond is increased to the amount required by the court,
22 or an additional bond is given, and approved by the court.

23 SECTION 29. Section 1158.556, Estates Code, is amended to
24 read as follows:

25 Sec. 1158.556. APPROVAL [~~CONFIRMATION~~] OR DISAPPROVAL
26 ORDER. (a) If the court is satisfied that the proposed sale of real
27 property [~~a sale~~] reported under Section 1158.551 is [~~was~~] for a

1 fair price, ~~was~~ properly made, and ~~was~~ in conformity with law,
2 and the court has approved any increased or additional bond that the
3 court found necessary to protect the estate, the court shall enter
4 an order:

5 (1) approving ~~confirming~~ the sale;

6 (2) showing conformity with ~~the provisions of~~ this
7 chapter ~~relating to the sale~~;

8 (3) detailing the terms of the sale; and

9 (4) authorizing the guardian of the estate to convey
10 the property on the purchaser's compliance with the terms of the
11 sale.

12 (b) If the court is not satisfied that the proposed sale of
13 real property is ~~was~~ for a fair price, ~~was~~ properly made, and
14 ~~was~~ in conformity with law, the court shall enter ~~issue~~ an order
15 setting aside the bid or contract ~~sale~~ and ordering a new sale to
16 be made, if necessary.

17 (c) The court's action in approving ~~confirming~~ or
18 disapproving a report under Section 1158.551 ~~of a sale~~ has the
19 effect of a final judgment. Any person interested in the
20 guardianship estate or in the sale is entitled to have an order
21 entered under this section reviewed as in other final judgments in
22 probate proceedings.

23 SECTION 30. Section 1158.557, Estates Code, is amended to
24 read as follows:

25 Sec. 1158.557. DEED. Real estate of an estate that is sold
26 shall be conveyed by a proper deed that refers to and identifies the
27 court order approving ~~confirming~~ the sale. The deed:

1 (1) vests in the purchaser all right and title of the
2 estate to, and all interest of the estate in, the property; and

3 (2) is prima facie evidence that the sale has met all
4 applicable requirements of the law.

5 SECTION 31. Section 1158.558(a), Estates Code, is amended
6 to read as follows:

7 (a) After the court has approved [~~confirmed~~] a sale and the
8 [~~one~~] purchaser has complied with the terms of the sale, the
9 guardian of the estate shall promptly execute and deliver to the
10 purchaser a proper deed conveying the property.

11 SECTION 32. Section 1163.005(a), Estates Code, is amended
12 to read as follows:

13 (a) The guardian of the estate shall attach to an account
14 the guardian's affidavit stating:

15 (1) that the account contains a correct and complete
16 statement of the matters to which the account relates;

17 (2) that the guardian has paid the bond premium for the
18 next accounting period;

19 (3) that the guardian has filed all tax returns of the
20 ward due during the accounting period;

21 (4) that the guardian has paid all taxes the ward owed
22 during the accounting period, the amount of the taxes, the date the
23 guardian paid the taxes, and the name of the governmental entity to
24 which the guardian paid the taxes; and

25 (5) if the guardian is a private professional
26 guardian, a guardianship program, or the Health and Human Services
27 Commission [~~Department of Aging and Disability Services~~], whether

1 the guardian or an individual certified under Subchapter C, Chapter
2 155 [~~111~~], Government Code, who is providing guardianship services
3 to the ward and who is swearing to the account on the guardian's
4 behalf, is or has been the subject of an investigation conducted by
5 the Judicial Branch [~~Guardianship~~] Certification Commission
6 [~~Board~~] during the accounting period.

7 SECTION 33. Section 1163.101(c), Estates Code, is amended
8 to read as follows:

9 (c) The guardian of the person shall file a sworn affidavit
10 that contains:

11 (1) the guardian's current name, address, and
12 telephone number;

13 (2) the ward's date of birth and current name, address,
14 telephone number, and age;

15 (3) a description of the type of home in which the ward
16 resides, which shall be described as:

17 (A) the ward's own home;

18 (B) a nursing home;

19 (C) a guardian's home;

20 (D) a foster home;

21 (E) a boarding home;

22 (F) a relative's home, in which case the
23 description must specify the relative's relationship to the ward;

24 (G) a hospital or medical facility; or

25 (H) another type of residence;

26 (4) statements indicating:

27 (A) the length of time the ward has resided in the

1 present home;

2 (B) the reason for a change in the ward's
3 residence, if a change in the ward's residence has occurred in the
4 past year;

5 (C) the date the guardian most recently saw the
6 ward;

7 (D) how frequently the guardian has seen the ward
8 in the past year;

9 (E) whether the guardian has possession or
10 control of the ward's estate;

11 (F) whether the ward's mental health has
12 improved, deteriorated, or remained unchanged during the past year,
13 including a description of the change if a change has occurred;

14 (G) whether the ward's physical health has
15 improved, deteriorated, or remained unchanged during the past year,
16 including a description of the change if a change has occurred;

17 (H) whether the ward has regular medical care;
18 and

19 (I) the ward's treatment or evaluation by any of
20 the following persons during the past year, including the person's
21 name and a description of the treatment:

22 (i) a physician;

23 (ii) a psychiatrist, psychologist, or other
24 mental health care provider;

25 (iii) a dentist;

26 (iv) a social or other caseworker; or

27 (v) any other individual who provided

1 treatment;

2 (5) a description of the ward's activities during the
3 past year, including recreational, educational, social, and
4 occupational activities, or a statement that no activities were
5 available or that the ward was unable or refused to participate in
6 activities;

7 (6) the guardian's evaluation of:

8 (A) the ward's living arrangements as excellent,
9 average, or below average, including an explanation if the
10 conditions are below average;

11 (B) whether the ward is content or unhappy with
12 the ward's living arrangements; and

13 (C) unmet needs of the ward;

14 (7) a statement indicating whether the guardian's
15 power should be increased, decreased, or unaltered, including an
16 explanation if a change is recommended;

17 (8) a statement indicating that the guardian has paid
18 the bond premium for the next reporting period;

19 (9) if the guardian is a private professional
20 guardian, a guardianship program, or the Health and Human Services
21 Commission [~~Department of Aging and Disability Services~~], whether
22 the guardian or an individual certified under Subchapter C, Chapter
23 155, Government Code, who is providing guardianship services to the
24 ward and who is filing the affidavit on the guardian's behalf, is or
25 has been the subject of an investigation conducted by the Judicial
26 Branch [~~Guardianship~~] Certification Commission [~~Board~~] during the
27 preceding year; and

1 (10) any additional information the guardian desires
2 to share with the court regarding the ward, including:

3 (A) whether the guardian has filed for emergency
4 detention of the ward under Subchapter A, Chapter 573, Health and
5 Safety Code; and

6 (B) if applicable, the number of times the
7 guardian has filed for emergency detention and the dates of the
8 applications for emergency detention.

9 SECTION 34. Sections 1251.101(a), (b), and (d), Estates
10 Code, are amended to read as follows:

11 (a) When the temporary guardian files the oath or
12 declaration prescribed by Section 1105.051 and the bond required
13 under this title, the court order appointing the temporary guardian
14 takes effect without the necessity for issuance of letters of
15 guardianship.

16 (b) The clerk shall note compliance with the oath or
17 declaration and bond requirements by the appointed temporary
18 guardian on a certificate attached to the order.

19 (d) The clerk may not issue certified copies of the order
20 until the oath or declaration and bond requirements are satisfied.

21 SECTION 35. Subchapter B, Chapter 1301, Estates Code, is
22 amended by adding Section 1301.0511 to read as follows:

23 Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR
24 CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) On the
25 filing of an application for creation of a management trust and
26 except as provided by Subsection (d), notice shall be issued and
27 served in the manner provided by Subchapter C, Chapter 1051, for the

1 issuance and service of notice on the filing of an application for
2 guardianship.

3 (b) It is not necessary to serve a citation on a person who
4 files an application for the creation of a management trust under
5 this subchapter or for that person to waive the issuance and
6 personal service of citation.

7 (c) If the person for whom an application for creation of a
8 management trust is filed is a ward, the sheriff or other officer,
9 in addition to serving the persons described by Section 1051.103,
10 shall personally serve each guardian of the ward with citation to
11 appear and answer the application.

12 (d) Notice under this section is not required if a
13 proceeding for the appointment of a guardian is pending for the
14 person for whom an application for creation of a management trust is
15 filed.

16 SECTION 36. Section 1301.101(a), Estates Code, is amended
17 to read as follows:

18 (a) Except as provided by Subsection (c), a management trust
19 created for a ward or incapacitated person must provide that:

20 (1) the ward or incapacitated person is the sole
21 beneficiary of the trust;

22 (2) the trustee may disburse an amount of the trust's
23 principal or income as the trustee determines is necessary to spend
24 for the health, education, maintenance, or support of the person
25 for whom the trust is created;

26 (3) the trust income that the trustee does not
27 disburse under Subdivision (2) must be added to the trust

1 principal;

2 (4) a trustee that is a corporate fiduciary serves
3 without giving a bond; ~~and~~

4 (5) subject to the court's approval and Subsection
5 (b), a trustee is entitled to receive reasonable compensation for
6 services the trustee provides to the person for whom the trust is
7 created as the person's trustee; and

8 (6) the trust terminates:

9 (A) except as provided by Paragraph (B), if the
10 person for whom the trust is created is a minor:

11 (i) on the earlier of:

12 (a) the person's death; or

13 (b) the person's 18th birthday; or

14 (ii) on the date provided by court order,
15 which may not be later than the person's 25th birthday;

16 (B) if the person for whom the trust is created is
17 a minor and is also incapacitated for a reason other than being a
18 minor:

19 (i) on the person's death; or

20 (ii) when the person regains capacity; or

21 (C) if the person for whom the trust is created is
22 not a minor:

23 (i) according to the terms of the trust;

24 (ii) on the date the court determines that
25 continuing the trust is no longer in the person's best interests,
26 subject to Section 1301.202(c); or

27 (iii) on the person's death.

1 SECTION 37. Section 1301.154(b), Estates Code, is amended
2 to read as follows:

3 (b) The trustee of a management trust created for a ward
4 shall provide a copy of the annual account to each ~~the~~ guardian of
5 the ward ~~ward's estate or person~~.

6 SECTION 38. Section 1301.203, Estates Code, is amended by
7 amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) Except as provided by Subsection (a-1), if ~~if~~ the
10 person for whom a management trust is created is a minor, the trust
11 terminates on:

- 12 (1) the earlier of:
- 13 (A) the person's death; or
- 14 (B) the person's 18th birthday; or
- 15 (2) the date provided by court order, which may not be
16 later than the person's 25th birthday.

17 (a-1) If the person for whom a management trust is created
18 is a minor and is also incapacitated for a reason other than being a
19 minor, the trust terminates:

- 20 (1) on the person's death; or
- 21 (2) when the person regains capacity.

22 SECTION 39. Sections 1355.002(b), (c), (d), (e), and (f),
23 Estates Code, are amended to read as follows:

24 (b) This section applies only to a nonresident creditor who
25 is:

- 26 (1) a nonresident minor and has a nonresident guardian
27 of the estate appointed by a foreign court;

1 (2) ~~[r]~~ a nonresident person who is adjudged by a
2 foreign court [~~of competent jurisdiction~~] to be incapacitated and
3 has a nonresident guardian of the estate appointed by that
4 court;~~[r]~~ or

5 (3) the nonresident former ward of a guardianship
6 terminated under Chapter 1204 who has no legal guardian qualified
7 in this state.

8 (c) A debtor in this state who owes money to a nonresident
9 creditor to whom this section applies may pay the money:

10 (1) to the creditor's guardian of the estate qualified
11 in the domiciliary jurisdiction; or

12 (2) to the county clerk of:

13 (A) any county in this state in which real
14 property owned by the creditor is located; or

15 (B) if the creditor is not known to own real
16 property in this state, the county in which the debtor resides.

17 (d) A payment made under this section is for the nonresident
18 creditor's account and for the nonresident creditor's use and
19 benefit.

20 (e) A receipt for payment signed by the county clerk is
21 binding on the nonresident creditor as of the date and to the extent
22 of payment if the receipt states:

23 (1) the creditor's name; and

24 (2) the creditor's post office address, if the address
25 is known.

26 (f) A county clerk who receives a payment under Subsection
27 (c) for a nonresident creditor shall handle the money in the same

1 manner as provided for a payment to the account of a resident
2 creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102,
3 1355.103, and 1355.104. Those sections apply to the handling and
4 disposition of money or any increase, dividend, or income paid to
5 the clerk for the use, benefit, and account of the nonresident
6 creditor to whom this section applies.

7 SECTION 40. Section 1355.105, Estates Code, is amended to
8 read as follows:

9 Sec. 1355.105. WITHDRAWAL OF MONEY BY CREDITOR OR
10 CREDITOR'S HEIR, ~~[OR]~~ REPRESENTATIVE, OR GUARDIAN. (a) On
11 presentation to the court clerk of an order of a county or probate
12 court of the county in which the money is held, money that is not
13 withdrawn by an authorized person as provided by this chapter may be
14 withdrawn by:

15 (1) the creditor, after termination of the creditor's
16 disability;

17 (2) a subsequent personal representative of the
18 creditor; ~~[or]~~

19 (3) the creditor's heirs; or

20 (4) a nonresident guardian of the estate appointed by
21 a foreign court for a creditor who is:

22 (A) a nonresident minor; or

23 (B) a nonresident person who is adjudged to be
24 incapacitated.

25 (b) Except as provided by Subsection (b-1), a [A] withdrawal
26 under Subsection (a) may be made at any time and without a special
27 bond for that purpose.

1 (b-1) A court may require a nonresident guardian of the
2 estate of a creditor who is a nonresident minor or nonresident
3 incapacitated person as described by Subsection (a)(4) to provide
4 proof that the nonresident guardian of the estate gave an adequate
5 bond in the foreign jurisdiction if the court determines that it is
6 in the nonresident minor's or nonresident incapacitated person's
7 best interest.

8 (c) The order presented under Subsection (a) must direct the
9 court clerk to deliver the money to:

- 10 (1) the creditor;
11 (2) [~~r~~] the creditor's personal representative;
12 (3) [~~r-or~~] the creditor's heirs named in the order; or
13 (4) if the creditor is a nonresident minor or
14 nonresident person who is adjudged to be incapacitated, the
15 creditor's nonresident guardian of the estate.

16 (d) Before the court may issue an order under this section,
17 the person's identity and credentials must be proved to the court's
18 satisfaction. For purposes of this subsection, a nonresident
19 guardian of the estate described by Subsection (c)(4) must present
20 to the court exemplified copies of the order of a foreign court
21 appointing the guardian and current letters of guardianship issued
22 in the foreign jurisdiction.

23 SECTION 41. (a) Except as otherwise provided by this
24 section, the changes in law made by this Act apply to:

25 (1) a guardianship created before, on, or after the
26 effective date of this Act; and

27 (2) an application for a guardianship pending on, or

1 filed on or after, the effective date of this Act.

2 (b) The changes in law made by this Act to Section 1021.001,
3 Estates Code, apply only to an action filed on or after the
4 effective date of this Act. An action filed before the effective
5 date of this Act is governed by the law in effect on the date the
6 action was filed, and the former law is continued in effect for that
7 purpose.

8 (c) The changes in law made by this Act to Section 1251.101,
9 Estates Code, and Chapter 1105, Estates Code, apply only to the
10 qualification of a guardian that occurs on or after the effective
11 date of this Act. The qualification of a guardian that occurs
12 before the effective date of this Act is governed by the law in
13 effect on the date the guardian qualifies to serve, and the former
14 law is continued in effect for that purpose.

15 (d) Section 1301.0511, Estates Code, as added by this Act,
16 applies only to an application for creation of a management trust
17 filed on or after the effective date of this Act. An application
18 for creation of a management trust filed before the effective date
19 of this Act is governed by the law in effect on the date the
20 application was filed, and the former law is continued in effect for
21 that purpose.

22 (e) The changes in law made by this Act to Sections 1301.101
23 and 1301.203, Estates Code, apply only to an application for the
24 creation or modification of a management trust filed on or after the
25 effective date of this Act. An application for the creation or
26 modification of a management trust filed before the effective date
27 of this Act is governed by the law in effect on the date the

1 application was filed, and the former law is continued in effect for
2 that purpose.

3 (f) The changes in law made by this Act to Section 1355.105,
4 Estates Code, apply only to an application for an order for the
5 delivery of money that is filed on or after the effective date of
6 this Act. An application for an order for the delivery of money
7 that is filed before the effective date of this Act is governed by
8 the law in effect on the date the application was filed, and the
9 former law is continued in effect for that purpose.

10 SECTION 42. This Act takes effect September 1, 2021.