

AN ACT

relating to the delivery of certain notices or other communications in connection with guardianship proceedings.

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

SECTION 1. Chapter 1002, Estates Code, is amended by adding Section 1002.0265 to read as follows:

Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of delivery receipt;

(2) certified or registered mail, return receipt requested, with return receipt; or

(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

SECTION 2. Section 1023.004(c), Estates Code, is amended to read as follows:

(c) If a court made a motion to transfer a guardianship, the guardian shall be given notice by a qualified delivery method [~~certified mail~~] to appear and show cause why the guardianship should not be transferred.

SECTION 3. The heading to Section 1051.052, Estates Code, is amended to read as follows:

1           Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY  
2 METHOD.

3           SECTION 4. Section 1051.052, Estates Code, is amended by  
4 amending Subsections (b), (c), (d), (e), and (f) and adding  
5 Subsection (h) to read as follows:

6           (b) Except as provided by Subsection (c), the county clerk  
7 shall issue a citation or notice required or permitted to be served  
8 by a qualified delivery method [~~registered or certified mail~~] and  
9 shall serve the citation or notice by sending [~~mailing~~] the  
10 original citation or notice by a qualified delivery method  
11 [~~registered or certified mail~~].

12           (c) A guardian shall issue a notice required to be given by  
13 the guardian by a qualified delivery method [~~registered or~~  
14 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the  
15 original notice by a qualified delivery method [~~registered or~~  
16 ~~certified mail~~].

17           (d) The county clerk or guardian, as applicable, shall send  
18 [~~mail~~] a citation or notice under Subsection (b) or (c) with an  
19 instruction to deliver the citation or notice to the addressee only  
20 and with return receipt or other proof of delivery requiring  
21 recipient signature requested. The clerk or guardian, as  
22 applicable, shall address the envelope containing the citation or  
23 notice to:

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

26                   (2) the person to be cited or notified, if the citation  
27 or notice to the attorney is returned undelivered or the person to

1 be cited or notified has no attorney of record in the proceeding.

2 (e) Service by a qualified delivery method [~~mail~~] must be  
3 made at least 20 days before the return day of the citation or  
4 notice, excluding the date of service. The date of service [~~by~~  
5 ~~mail~~] is the date of mailing, the date of deposit with the private  
6 delivery service, or the date of delivery by courier, as  
7 applicable.

8 (f) A copy of a citation or notice served under Subsection  
9 (a), (b), or (c) and a certificate of the person serving the  
10 citation or notice showing that the citation or notice was sent  
11 [~~mailed~~] and the date of the mailing, the date of deposit with a  
12 private delivery service, or the date of delivery by courier, as  
13 applicable, shall be filed and recorded. A returned receipt or  
14 other proof of delivery receipt for a citation or notice served  
15 under Subsection (b) or (c) shall be attached to the certificate.

16 (h) The applicant or movant in a guardianship proceeding  
17 shall pay the cost of delivery of a citation or notice under this  
18 section, to be taxed as costs in the proceeding.

19 SECTION 5. Sections 1051.055(a) and (b), Estates Code, are  
20 amended to read as follows:

21 (a) If a party is represented by an attorney of record in a  
22 guardianship proceeding, including a proposed ward who has been  
23 personally served with notice of the proceeding and is represented  
24 by an attorney ad litem, a citation or notice required to be served  
25 on the party shall be served instead on that attorney.

26 (b) A notice served on an attorney under this section may be  
27 served by[+]

1           ~~[(1)]~~ delivery to the attorney in person or by a  
2 qualified delivery method [~~+~~  
3           ~~[(2)]~~ ~~registered or certified mail, return receipt~~  
4 ~~requested, or~~  
5           ~~[(3)]~~ ~~any other form of mail that requires proof of~~  
6 ~~delivery~~].

7           SECTION 6. Section 1051.056, Estates Code, is amended to  
8 read as follows:

9           Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless  
10 this title expressly provides for another method of service, the  
11 county clerk who issues a citation or notice required to be served  
12 on a guardian or receiver shall serve the citation or notice by  
13 sending [~~mailing~~] the original citation or notice by a qualified  
14 delivery method [~~registered or certified mail~~] to:

- 15           (1) the guardian's or receiver's attorney of record;  
16 or  
17           (2) the guardian or receiver, if the guardian or  
18 receiver does not have an attorney of record.

19           SECTION 7. Sections 1051.104(a) and (b), Estates Code, are  
20 amended to read as follows:

21           (a) The person filing an application for guardianship shall  
22 send [~~mail~~] a copy of the application and a notice containing the  
23 information required in the citation issued under Section 1051.102  
24 by a qualified delivery method [~~registered or certified mail,~~  
25 ~~return receipt requested, or by any other form of mail that provides~~  
26 ~~proof of delivery,~~] to the following persons, if their whereabouts  
27 are known or can be reasonably ascertained:

- 1 (1) each adult child of the proposed ward;
- 2 (2) each adult sibling of the proposed ward;
- 3 (3) the administrator of a nursing home facility or  
4 similar facility in which the proposed ward resides;
- 5 (4) the operator of a residential facility in which  
6 the proposed ward resides;
- 7 (5) a person whom the applicant knows to hold a power  
8 of attorney signed by the proposed ward;
- 9 (6) a person designated to serve as guardian of the  
10 proposed ward by a written declaration under Subchapter E, Chapter  
11 1104, if the applicant knows of the existence of the declaration;
- 12 (7) a person designated to serve as guardian of the  
13 proposed ward in the probated will of the last surviving parent of  
14 the proposed ward;
- 15 (8) a person designated to serve as guardian of the  
16 proposed ward by a written declaration of the proposed ward's last  
17 surviving parent, if the declarant is deceased and the applicant  
18 knows of the existence of the declaration; and
- 19 (9) each adult named in the application as an "other  
20 living relative" of the proposed ward within the third degree by  
21 consanguinity, as required by Section 1101.001(b)(11) or (13), if  
22 the proposed ward's spouse and each of the proposed ward's parents,  
23 adult siblings, and adult children are deceased or there is no  
24 spouse, parent, adult sibling, or adult child.

25 (b) The applicant shall file with the court:

- 26 (1) a copy of any notice required by Subsection (a) and  
27 the return receipts or other proofs of delivery of the notice; and

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

3                   (A) that the notice was sent [~~mailed~~] as required  
4 by Subsection (a); and

5                   (B) the name of each person to whom the notice was  
6 sent [~~mailed~~], if the person's name is not shown on the return  
7 receipt or other proof of delivery.

8           SECTION 8. Section 1051.153(b), Estates Code, is amended to  
9 read as follows:

10           (b) Proof of service consists of:

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

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

15                   (3) if the service is made by mail or by a qualified  
16 delivery method:

17                           (A) the certificate of the county clerk making  
18 the service, or the affidavit of the guardian or other person making  
19 the service that states that the citation or notice was mailed or  
20 sent by a qualified delivery method and the date of the mailing, the  
21 date of deposit with the private delivery service, or the date of  
22 delivery by courier, as applicable; and

23                           (B) the return receipt or other proof of delivery  
24 receipt attached to the certificate or affidavit, as applicable, if  
25 the service [~~mailing~~] was made by a qualified delivery method  
26 [~~registered or certified mail and a receipt has been returned~~]; and

27                   (4) if the service is made by publication:

1 (A) a statement that:

2 (i) is made by the Office of Court  
3 Administration of the Texas Judicial System or an employee of the  
4 office;

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

7 (iii) states the date of publication on the  
8 public information Internet website maintained as required by  
9 Section 72.034, Government Code [~~, as added by Chapter 606 (S.B.~~  
10 ~~891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

11 (B) an affidavit that:

12 (i) is made by the publisher of the  
13 newspaper in which the citation or notice was published or an  
14 employee of the publisher;

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

17 (iii) states the date of publication  
18 printed on the newspaper in which the citation or notice was  
19 published.

20 SECTION 9. Section 1057.002(b), Estates Code, is amended to  
21 read as follows:

22 (b) The resident agent shall send, by a qualified delivery  
23 method [~~certified mail, return receipt requested~~], a copy of a  
24 resignation statement filed under Subsection (a) to:

25 (1) the guardian at the address most recently known by  
26 the resident agent; and

27 (2) each party in the case or the party's attorney or

1 other designated representative of record.

2 SECTION 10. Section 1153.001(a), Estates Code, is amended  
3 to read as follows:

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

8 (1) published in a newspaper of general circulation in  
9 the county in which the letters were issued; and

10 (2) sent to the comptroller by a qualified delivery  
11 method [~~certified or registered mail~~], if the ward remitted or  
12 should have remitted taxes administered by the comptroller.

13 SECTION 11. Sections 1153.003(b) and (c), Estates Code, are  
14 amended to read as follows:

15 (b) Notice provided under this section must be:

16 (1) sent by a qualified delivery method [~~certified or~~  
17 ~~registered mail, return receipt requested~~]; and

18 (2) addressed to the record holder of the claim at the  
19 record holder's last known post office address.

20 (c) The following shall be filed in the court from which the  
21 letters of guardianship were issued:

22 (1) a copy of each notice required by Subsection  
23 (a)(1) with the return receipt or other proof of delivery, if  
24 available; and

25 (2) the guardian's affidavit stating:

26 (A) that the notice was sent [~~mailed~~] as required  
27 by law; and

1 (B) the name of the person to whom the notice was  
2 sent [~~mailed~~], if that name is not shown on the notice or receipt.

3 SECTION 12. Section 1156.052(c), Estates Code, is amended  
4 to read as follows:

5 (c) A person who makes an application to the court under  
6 this section shall send [~~mail~~] notice of the application by a  
7 qualified delivery method [~~certified mail~~] to all interested  
8 persons.

9 SECTION 13. Section 1162.003, Estates Code, is amended to  
10 read as follows:

11 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF  
12 ESTATE OR OTHER TRANSFER PLAN. A person who makes an application  
13 to the court under Section 1162.001 shall send [~~mail~~] notice of the  
14 application by a qualified delivery method [~~certified mail~~] to:

- 15 (1) all devisees under a will, trust, or other  
16 beneficial instrument relating to the ward's estate;  
17 (2) the ward's spouse;  
18 (3) the ward's dependents; and  
19 (4) any other person as directed by the court.

20 SECTION 14. Section 1162.006(b), Estates Code, is amended  
21 to read as follows:

22 (b) Notice required by Subsection (a) must be sent  
23 [~~delivered~~] by a qualified delivery method [+

24 [~~(1) registered or certified mail to a person~~  
25 ~~described by Subsection (a)(1), and~~

26 [~~(2) certified mail to a person described by~~  
27 ~~Subsection (a)(2), (3), (4), or (5)]].~~

1 SECTION 15. Section 1202.054(b-2), Estates Code, is amended  
2 to read as follows:

3 (b-2) Not later than the 30th day after the date the court  
4 receives an informal letter from a ward under Subsection (a), the  
5 court shall send the ward a letter by a qualified delivery method  
6 ~~[certified mail]~~:

- 7 (1) acknowledging receipt of the informal letter; and  
8 (2) advising the ward of the date on which the court  
9 appointed the court investigator or guardian ad litem as required  
10 under Subsection (b) and the contact information for the court  
11 investigator or guardian ad litem.

12 SECTION 16. Sections 1203.052(a-1) and (b), Estates Code,  
13 are amended to read as follows:

14 (a-1) The court may remove a guardian for a reason listed in  
15 Subsection (a) on the:

16 (1) court's own motion, after the guardian has been  
17 notified~~[7]~~ by a qualified delivery method ~~[certified mail, return~~  
18 ~~receipt requested,7]~~ to answer at a time and place set in the notice;  
19 or

20 (2) complaint of an interested person, after the  
21 guardian has been cited by personal service to answer at a time and  
22 place set in the notice.

23 (b) In addition to the authority granted to the court under  
24 Subsection (a), the court may, on the complaint of the guardianship  
25 certification program of the Judicial Branch Certification  
26 Commission, remove a guardian who would be ineligible for  
27 appointment under Subchapter H, Chapter 1104, because of the

1 guardian's failure to maintain the certification required under  
2 Subchapter F, Chapter 1104. The guardian shall be given notice[~~7~~]  
3 by a qualified delivery method [~~certified mail, return receipt~~  
4 ~~requested,~~] to appear and contest the request for removal under  
5 this subsection at a time and place set in the notice.

6 SECTION 17. The changes in law made by this Act apply only  
7 to an action filed or a guardianship proceeding commenced on or  
8 after the effective date of this Act.

9 SECTION 18. This Act takes effect September 1, 2023.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 785 was passed by the House on April 14, 2023, by the following vote: Yeas 141, Nays 2, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 785 was passed by the Senate on May 9, 2023, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor