

By: Swanson

H.B. No. 785

A BILL TO BE ENTITLED

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) certified or registered mail; or

(2) 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.

SECTION 2. The heading to Section 1051.052, Estates Code,
is amended to read as follows:

Sec. 1051.052. SERVICE BY QUALIFIED DELIVERY METHOD
~~MAIL~~.

SECTION 3. Sections 1051.052(b), (c), (d), and (f), Estates
Code, are amended to read as follows:

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

1 (c) A guardian shall issue a notice required to be given by
2 the guardian by a qualified delivery method [~~registered or~~
3 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the
4 original notice by a qualified delivery method [~~registered or~~
5 ~~certified mail~~].

6 (d) The county clerk or guardian, as applicable, shall send
7 [~~mail~~] a citation or notice under Subsection (b) or (c) with an
8 instruction to deliver the citation or notice to the addressee only
9 and with return receipt or other proof of delivery requiring
10 recipient signature requested. The clerk or guardian, as
11 applicable, shall address the envelope containing the citation or
12 notice to:

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

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

18 (f) A copy of a citation or notice served under Subsection
19 (a), (b), or (c) and a certificate of the person serving the
20 citation or notice showing that the citation or notice was sent
21 [~~mailed~~] and the date [~~of~~] the citation or notice was sent [~~mailing~~]
22 shall be filed and recorded. A returned receipt or other proof of
23 delivery receipt for a citation or notice served under Subsection
24 (b) or (c) shall be attached to the certificate.

25 SECTION 4. Section 1051.055(b), Estates Code, is amended to
26 read as follows:

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

1 served by:

2 (1) delivery to the attorney in person;

3 (2) qualified delivery method [~~registered or~~
4 ~~certified mail~~], return receipt or other proof of delivery
5 requiring recipient signature requested; or

6 (3) any other form of mail that requires proof of
7 delivery.

8 SECTION 5. Section 1051.056, Estates Code, is amended to
9 read as follows:

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

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

17 or

18 (2) the guardian or receiver, if the guardian or
19 receiver does not have an attorney of record.

20 SECTION 6. Section 1051.104(a), Estates Code, is amended to
21 read as follows:

22 (a) The person filing an application for guardianship shall
23 send [~~mail~~] a copy of the application and a notice containing the
24 information required in the citation issued under Section 1051.102
25 by a qualified delivery method [~~registered or certified mail~~],
26 return receipt or other proof of delivery requiring recipient
27 signature requested, or by any other form of mail that provides

1 proof of delivery, to the following persons, if their whereabouts
2 are known or can be reasonably ascertained:

3 (1) each adult child of the proposed ward;

4 (2) each adult sibling of the proposed ward;

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

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

9 (5) a person whom the applicant knows to hold a power
10 of attorney signed by the proposed ward;

11 (6) a person designated to serve as guardian of the
12 proposed ward by a written declaration under Subchapter E, Chapter
13 1104, if the applicant knows of the existence of the declaration;

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

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

21 (9) each adult named in the application as an "other
22 living relative" of the proposed ward within the third degree by
23 consanguinity, as required by Section 1101.001(b)(11) or (13), if
24 the proposed ward's spouse and each of the proposed ward's parents,
25 adult siblings, and adult children are deceased or there is no
26 spouse, parent, adult sibling, or adult child.

27 SECTION 7. Section 1051.153(b), Estates Code, is amended to

1 read as follows:

2 (b) Proof of service consists of:

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

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

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

9 (A) the certificate of the county clerk making
10 the service, or the affidavit of the guardian or other person making
11 the service that states that the citation or notice was sent
12 [~~mailed~~] and the date the notice was sent [~~of the mailing~~]; and

13 (B) the return or other receipt attached to the
14 certificate, if the delivery [~~mailing~~] was by a qualified delivery
15 method [~~registered or certified mail and a receipt has been~~
16 ~~returned~~]; and

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

18 (A) a statement that:

19 (i) is made by the Office of Court
20 Administration of the Texas Judicial System or an employee of the
21 office;

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

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

- 1 (B) an affidavit that:
- 2 (i) is made by the publisher of the
- 3 newspaper in which the citation or notice was published or an
- 4 employee of the publisher;
- 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
- 8 printed on the newspaper in which the citation or notice was
- 9 published.

10 SECTION 8. Section 1153.001(a), Estates Code, is amended to

11 read as follows:

12 (a) Within one month after receiving letters of

13 guardianship, a guardian of an estate shall provide notice

14 requiring each person who has a claim against the estate to present

15 the claim within the period prescribed by law. The notice must be:

16 (1) published in a newspaper of general circulation in

17 the county in which the letters were issued; and

18 (2) sent to the comptroller by a qualified delivery

19 method [~~certified or registered mail~~], if the ward remitted or

20 should have remitted taxes administered by the comptroller.

21 SECTION 9. Section 1153.003(b), Estates Code, is amended to

22 read as follows:

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

24 (1) sent by a qualified delivery method [~~certified or~~

25 ~~registered mail~~], return receipt or other proof of delivery

26 requiring recipient signature requested; and

27 (2) addressed to the record holder of the claim at the

1 record holder's last known post office address.

2 SECTION 10. Sections 1203.052(a-1) and (b), Estates Code,
3 are amended to read as follows:

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

6 (1) court's own motion, after the guardian has been
7 notified, by a qualified delivery method [~~certified mail~~], return
8 receipt or other proof of delivery requiring recipient signature
9 requested, to answer at a time and place set in the notice; or

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

13 (b) In addition to the authority granted to the court under
14 Subsection (a), the court may, on the complaint of the guardianship
15 certification program of the Judicial Branch Certification
16 Commission, remove a guardian who would be ineligible for
17 appointment under Subchapter H, Chapter 1104, because of the
18 guardian's failure to maintain the certification required under
19 Subchapter F, Chapter 1104. The guardian shall be given notice, by
20 a qualified delivery method [~~certified mail~~], return receipt or
21 other proof of delivery requiring recipient signature requested, to
22 appear and contest the request for removal under this subsection at
23 a time and place set in the notice.

24 SECTION 11. The changes in law made by this Act apply only
25 to an action filed or a guardianship proceeding commenced on or
26 after the effective date of this Act.

27 SECTION 12. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2023.