

By: Thompson of Harris

H.B. No. 3184

Substitute the following for H.B. No. 3184:

By: Flores

C.S.H.B. No. 3184

A BILL TO BE ENTITLED

AN ACT

relating to guardianships and 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.

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 1104.103, Estates Code, is amended by
3 amending Subsections (a) and (b) and adding Subsection (a-1) to
4 read as follows:

5 (a) The surviving parent of an adult individual who is an
6 incapacitated person may, if the parent is the guardian of the
7 person or estate of the adult individual, by will or written
8 declaration appoint an eligible person to serve as guardian of the
9 person or estate, as applicable, of the adult individual:

10 (1) after the parent dies;

11 (2) in the event the parent resigns as guardian of the
12 person or estate; or

13 (3) in the event of the parent's incapacity.

14 (a-1) If the surviving parent is both the guardian of the
15 person and estate of the adult individual, the surviving parent may
16 by will or written declaration appoint different eligible persons
17 to serve as guardian of the person and guardian of the estate.

18 (b) After the surviving parent dies or resigns as guardian,
19 or if the court finds the surviving parent has become an
20 incapacitated person after being appointed the adult individual's
21 guardian, the court shall appoint the person or persons designated
22 in the will or declaration to serve as guardian of the person,
23 guardian of the estate, or both, in preference to any other person
24 otherwise entitled to serve as guardian under this title, unless
25 the court finds that the person designated to serve as guardian:

26 (1) is disqualified;

27 (2) is deceased;

- 1 (3) refuses to serve; or
2 (4) would not serve the adult individual's best
3 interests.

4 SECTION 11. Section 1105.002(a), Estates Code, is amended
5 to read as follows:

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

- 8 (1) taken and filed the oath, or made and filed the
9 declaration, required under Section 1105.051;
10 (2) given the required bond;
11 (3) ~~[filed the bond with the clerk; and~~
12 ~~[(4)]~~ obtained the judge's approval of the bond; and
13 (4) filed the bond with the clerk.

14 SECTION 12. Section 1106.001(a), Estates Code, is amended
15 to read as follows:

16 (a) When a person who is appointed guardian has qualified
17 under Section 1105.002, the clerk shall issue to the guardian a
18 certificate under the court's seal stating:

- 19 (1) the fact of the appointment and of the
20 qualification;
21 (2) the date of the appointment and of the
22 qualification; and
23 (3) the date the letters of guardianship expire.

24 SECTION 13. Section 1106.005, Estates Code, is amended to
25 read as follows:

26 Sec. 1106.005. EFFECT OF LETTERS ~~[OR~~
27 ~~CERTIFICATE]~~. (a) Letters of guardianship ~~[or a certificate]~~

1 issued as prescribed by [~~under~~] Section 1106.001 under the court's
2 seal by [~~of~~] the clerk of the court that granted the letters are
3 [~~is~~] sufficient evidence of:

4 (1) the appointment and qualification of the guardian;
5 and

6 (2) the date of qualification.

7 (b) The court order that appoints the guardian is evidence
8 of the authority granted to the guardian and of the scope of the
9 powers and duties that the guardian may exercise only after the date
10 letters of guardianship [~~or a certificate has~~] have been issued
11 under Section 1106.001.

12 SECTION 14. Subchapter B, Chapter 1151, Estates Code, is
13 amended by adding Section 1151.0525 to read as follows:

14 Sec. 1151.0525. ACCESS AND MANAGEMENT OF WARD'S FUNDS BY
15 GUARDIAN OF PERSON. (a) This section applies only to the guardian
16 of the person of a ward for whom the court has not appointed a
17 guardian of the estate.

18 (b) On application to and order from the court, the guardian
19 of the person of a ward may access, manage, and spend the ward's
20 funds in an amount not to exceed \$20,000 per year for the ward's
21 benefit. The court shall require the guardian to file a new bond or
22 a rider to an existing bond that meets the surety requirements for a
23 guardian of the estate's bond under Section 1105.160.

24 (c) A guardian of the person shall include any expenditures
25 made for the benefit of the ward if authorized by court order under
26 Subsection (b) in the annual report required by Section 1163.101.

27 (d) When there is no longer a need for the guardian of the

1 person to access, manage, or spend the ward's funds, the guardian of
2 the person shall file a sworn affidavit of fulfillment with the
3 court. After the filing of the affidavit, the court, on motion
4 filed with the court, may authorize the guardian to file a new bond
5 or a rider to an existing bond that meets the requirements for a
6 guardian of the person's bond under Section 1105.102, and may
7 discharge the guardian of the person and the guardian's sureties on
8 a bond required by Subsection (b).

9 SECTION 15. Section 1153.001(a), Estates Code, is amended
10 to read as follows:

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

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

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

20 SECTION 16. Sections 1153.003(b) and (c), Estates Code, are
21 amended to read as follows:

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

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

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

27 (c) The following shall be filed in the court from which the

1 letters of guardianship were issued:

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

5 (2) the guardian's affidavit stating:

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

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

10 SECTION 17. Section 1153.005(a), Estates Code, is amended
11 to read as follows:

12 (a) A guardian of an estate is not required to give a notice
13 required by Section 1153.001 or 1153.003 if another person also
14 appointed as guardian or a former guardian has given that notice.

15 SECTION 18. Section 1155.002(a), Estates Code, is amended
16 to read as follows:

17 (a) The court may authorize compensation for a guardian
18 serving as a guardian of the person alone from available funds of
19 the ward's estate or other funds available for that purpose. The
20 court may set the compensation in an amount not to exceed the
21 greater of \$3,000 per year or five percent of the ward's gross
22 income.

23 SECTION 19. Section 1156.052(c), Estates Code, is amended
24 to read as follows:

25 (c) A person who makes an application to the court under
26 this section shall send [~~mail~~] notice of the application by a
27 qualified delivery method [~~certified mail~~] to all interested

1 persons.

2 SECTION 20. Section 1162.003, Estates Code, is amended to
3 read as follows:

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

- 8 (1) all devisees under a will, trust, or other
9 beneficial instrument relating to the ward's estate;
10 (2) the ward's spouse;
11 (3) the ward's dependents; and
12 (4) any other person as directed by the court.

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

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

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

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

21 SECTION 22. Section 1202.054(b-2), Estates Code, is amended
22 to read as follows:

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

- 27 (1) acknowledging receipt of the informal letter; and

1 (2) advising the ward of the date on which the court
2 appointed the court investigator or guardian ad litem as required
3 under Subsection (b) and the contact information for the court
4 investigator or guardian ad litem.

5 SECTION 23. Sections 1203.052(a-1) and (b), Estates Code,
6 are amended to read as follows:

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

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

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

16 (b) In addition to the authority granted to the court under
17 Subsection (a), the court may, on the complaint of the guardianship
18 certification program of the Judicial Branch Certification
19 Commission, remove a guardian who would be ineligible for
20 appointment under Subchapter H, Chapter 1104, because of the
21 guardian's failure to maintain the certification required under
22 Subchapter F, Chapter 1104. The guardian shall be given notice~~[7]~~
23 by a qualified delivery method [~~certified mail, return receipt~~
24 ~~requested,~~] to appear and contest the request for removal under
25 this subsection at a time and place set in the notice.

26 SECTION 24. Section 1351.001(a), Estates Code, is amended
27 to read as follows:

1 (a) A parent or managing conservator of a minor who is not a
2 ward may apply to the court under this subchapter for an order to
3 sell an interest of the minor in property without being appointed
4 guardian if the net value of the interest does not exceed \$250,000
5 [~~\$100,000~~].

6 SECTION 25. Section [1351.052](#), Estates Code, is amended to
7 read as follows:

8 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN
9 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS
10 STATE. A guardian of the person of a ward or a guardian of the
11 person or estate of a ward appointed by a foreign court may apply to
12 the court under this subchapter for an order to sell an interest in
13 property in the ward's estate without being appointed guardian of
14 the ward's estate in this state if the net value of the interest
15 does not exceed \$250,000 [~~\$100,000~~].

16 SECTION 26. Section [1352.052](#)(a), Estates Code, is amended
17 to read as follows:

18 (a) If the net value of a minor's interest in a residence
19 homestead does not exceed \$250,000 [~~\$100,000~~], a parent, subject to
20 Subsection (b), or managing conservator of the minor may apply to
21 the court under this subchapter for an order authorizing the parent
22 or managing conservator to receive on the minor's behalf, without
23 being appointed guardian, an extension of credit that is secured
24 wholly or partly by a lien on the homestead.

25 SECTION 27. Section [1352.102](#), Estates Code, is amended to
26 read as follows:

27 Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST

1 WITHOUT GUARDIANSHIP OF THE ESTATE. If the net value of a minor
2 ward's interest in a residence homestead does not exceed \$250,000
3 [~~\$100,000~~], the guardian of the person of the ward may apply to the
4 court under this subchapter for an order authorizing the guardian
5 to receive on the ward's behalf an extension of credit that is
6 secured wholly or partly by a lien on the homestead.

7 SECTION 28. Section 1353.004, Estates Code, is amended by
8 adding Subsection (c-1) to read as follows:

9 (c-1) If the court finds that the ward's spouse fails to
10 comply with an order described by Subsection (c), the court may,
11 after notice and a hearing, order any third party or entity in
12 possession to deliver to the incapacitated spouse's guardian of the
13 estate the community property described by Subsection (c).

14 SECTION 29. Section 1355.001(a), Estates Code, is amended
15 to read as follows:

16 (a) In this section, "resident creditor" means a person who:

17 (1) is a resident of this state; and

18 (2) is entitled to money in an amount that is \$250,000
19 [~~\$100,000~~] or less, the right to which is liquidated and is
20 uncontested in any pending lawsuit.

21 SECTION 30. Sections 1355.002(a) and (b), Estates Code, are
22 amended to read as follows:

23 (a) In this section, "creditor" means a person who is
24 entitled to money in an amount that is not more than \$250,000
25 [~~\$100,000~~] owing as a result of transactions in this state, the
26 right to which is liquidated and is uncontested in any pending
27 lawsuit in this state.

1 (b) This section applies only to a nonresident creditor who
2 is:

3 (1) a nonresident minor [~~and has a nonresident~~
4 ~~guardian of the estate appointed by a foreign court~~];

5 (2) a nonresident person who is adjudged by a foreign
6 court to be incapacitated [~~and has a nonresident guardian of the~~
7 ~~estate appointed by that court~~]; or

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

11 SECTION 31. Section 1104.103(c), Estates Code, is repealed.

12 SECTION 32. (a) The changes in law made by this Act to the
13 following provisions of the Estates Code apply only to an action
14 filed or a guardianship proceeding commenced on or after the
15 effective date of this Act:

16 (1) Sections 1023.004(c), 1051.153(b), 1057.002(b),
17 1153.001(a), 1153.005(a), 1156.052(c), 1162.006(b),
18 1202.054(b-2), and 1353.004;

19 (2) Sections 1051.052(b), (c), (d), (e), (f), and (h);

20 (3) Sections 1051.055(a) and (b);

21 (4) Sections 1051.056 and 1162.003;

22 (5) Sections 1051.104(a) and (b);

23 (6) Sections 1153.003(b) and (c); and

24 (7) Sections 1203.052(a-1) and (b).

25 (b) Sections 1105.002(a), 1106.001(a), 1106.005, and
26 1155.002(a), Estates Code, as amended by this Act, and Section
27 1151.0525, Estates Code, as added by this Act, apply to a

1 guardianship created before, on, or after the effective date of
2 this Act.

3 (c) Sections 1351.001(a), 1351.052, 1352.052(a), and
4 1352.102, Estates Code, as amended by this Act, apply only to an
5 application for a court order filed on or after the effective date
6 of this Act. An application for a court order filed before the
7 effective date of this Act is governed by the law in effect on the
8 date the application was filed, and the former law is continued in
9 effect for that purpose.

10 (d) Sections 1355.001(a) and 1355.002(a) and (b), Estates
11 Code, as amended by this Act, apply only to a payment made by a
12 debtor on or after the effective date of this Act. A payment made by
13 a debtor before the effective date of this Act is governed by the
14 law in effect on the date the payment was made, and the former law is
15 continued in effect for that purpose.

16 SECTION 33. This Act takes effect September 1, 2023.