

By: Hartnett

H.B. No. 2759

A BILL TO BE ENTITLED

AN ACT

relating to the nonsubstantive revision of provisions of the Texas Probate Code relating to durable powers of attorney, guardianships, and other related proceedings and alternatives, and the redesignation of certain other provisions of the Texas Probate Code, including conforming amendments and repeals.

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

ARTICLE 1. NONSUBSTANTIVE REVISION OF PROVISIONS RELATING TO DURABLE POWERS OF ATTORNEY, GUARDIANSHIPS, AND OTHER RELATED PROCEEDINGS AND ALTERNATIVES

SECTION 1.01. SUBTITLE P, TITLE 2, ESTATES CODE. Title 2, Estates Code, is amended by adding Subtitle P to read as follows:

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF ATTORNEY

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS

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10 DISABILITY OR INCAPACITY

11 Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO

12 COURT-APPOINTED GUARDIAN OF ESTATE

13 Sec. 751.053. EFFECT OF PRINCIPAL'S DIVORCE OR

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16 Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER;

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18 Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF

19 TERMINATION OF POWER OR OF DISABILITY

20 OR INCAPACITY; GOOD-FAITH RELIANCE

21 Sec. 751.056. NONLIABILITY OF THIRD PARTY ON

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23 Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING

24 Sec. 751.058. EFFECT OF REVOCATION OF DURABLE POWER OF

25 ATTORNEY ON THIRD PARTY

26 [Sections 751.059-751.100 reserved for expansion]

SUBCHAPTER C. DUTY TO INFORM AND ACCOUNT

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Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S

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[Sections 751.107-751.150 reserved for expansion]

SUBCHAPTER D. RECORDING DURABLE POWER OF ATTORNEY FOR CERTAIN REAL  
PROPERTY TRANSACTIONS

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS

REQUIRING EXECUTION AND DELIVERY OF  
INSTRUMENTS

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF  
ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. This subtitle may be cited as  
the Durable Power of Attorney Act. (Tex. Prob. Code, Sec. 481.)

Sec. 751.002. DEFINITION OF DURABLE POWER OF ATTORNEY. A  
"durable power of attorney" means a written instrument that:

(1) designates another person as attorney in fact or  
agent;

(2) is signed by an adult principal;

(3) contains:

(A) the words:

1 (i) "This power of attorney is not affected  
2 by subsequent disability or incapacity of the principal"; or

3 (ii) "This power of attorney becomes  
4 effective on the disability or incapacity of the principal"; or

5 (B) words similar to those of Paragraph (A) that  
6 show the principal's intent that the authority conferred on the  
7 attorney in fact or agent shall be exercised notwithstanding the  
8 principal's subsequent disability or incapacity; and

9 (4) is acknowledged by the principal before an officer  
10 authorized under the laws of this state or another state to:

11 (A) take acknowledgments to deeds of conveyance;  
12 and

13 (B) administer oaths. (Tex. Prob. Code, Sec.  
14 482.)

15 Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
16 This subtitle shall be applied and construed to effect the general  
17 purpose of this subtitle, which is to make uniform the law with  
18 respect to the subject of this subtitle among states enacting these  
19 provisions. (Tex. Prob. Code, Sec. 506.)

20 Sec. 751.004. DURATION OF DURABLE POWER OF ATTORNEY. A  
21 durable power of attorney does not lapse because of the passage of  
22 time unless the instrument creating the power of attorney  
23 specifically states a time limitation. (Tex. Prob. Code, Sec.  
24 483.)

25 Sec. 751.005. EXTENSION OF PRINCIPAL'S AUTHORITY TO OTHER  
26 PERSONS. If, in this subtitle, a principal is given an authority to  
27 act, that authority includes:

1           (1) any person designated by the principal;  
2           (2) a guardian of the estate of the principal; or  
3           (3) another personal representative of the principal.  
4   (Tex. Prob. Code, Sec. 489B(i).)

5           Sec. 751.006. RIGHTS CUMULATIVE. The rights set out under  
6 this subtitle are cumulative of any other rights or remedies the  
7 principal may have at common law or other applicable statutes and  
8 are not in derogation of those rights. (Tex. Prob. Code, Sec.  
9 489B(j).)

10 [Sections 751.007-751.050 reserved for expansion]

11 SUBCHAPTER B. EFFECT OF CERTAIN ACTS ON EXERCISE OF DURABLE POWER  
12 OF ATTORNEY

13           Sec. 751.051. EFFECT OF ACTS PERFORMED BY ATTORNEY IN FACT  
14 OR AGENT DURING PRINCIPAL'S DISABILITY OR INCAPACITY. Each act  
15 performed by an attorney in fact or agent under a durable power of  
16 attorney during a period of the principal's disability or  
17 incapacity has the same effect, and inures to the benefit of and  
18 binds the principal and the principal's successors in interest, as  
19 if the principal were not disabled or incapacitated. (Tex. Prob.  
20 Code, Sec. 484.)

21           Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO  
22 COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a  
23 durable power of attorney, a court of the principal's domicile  
24 appoints a permanent guardian of the estate of the principal, the  
25 powers of the attorney in fact or agent terminate on the  
26 qualification of the guardian of the estate. The attorney in fact  
27 or agent shall:

1           (1) deliver to the guardian of the estate all assets of  
2 the ward's estate that are in the possession of the attorney in fact  
3 or agent; and

4           (2) account to the guardian of the estate as the  
5 attorney in fact or agent would account to the principal if the  
6 principal had terminated the powers of the attorney in fact or  
7 agent.

8           (b) If, after execution of a durable power of attorney, a  
9 court of the principal's domicile appoints a temporary guardian of  
10 the estate of the principal, the court may suspend the powers of the  
11 attorney in fact or agent on the qualification of the temporary  
12 guardian of the estate until the date the term of the temporary  
13 guardian expires. This subsection may not be construed to prohibit  
14 the application for or issuance of a temporary restraining order  
15 under applicable law. (Tex. Prob. Code, Sec. 485.)

16       Sec. 751.053. EFFECT OF PRINCIPAL'S DIVORCE OR MARRIAGE  
17 ANNULMENT IF FORMER SPOUSE IS ATTORNEY IN FACT OR AGENT. Unless  
18 otherwise expressly provided by the durable power of attorney, if,  
19 after execution of a durable power of attorney, the principal is  
20 divorced from a person who has been appointed the principal's  
21 attorney in fact or agent or the principal's marriage to a person  
22 who has been appointed the principal's attorney in fact or agent is  
23 annulled, the powers of the attorney in fact or agent granted to the  
24 principal's former spouse terminate on the date the divorce or  
25 annulment of marriage is granted by a court. (Tex. Prob. Code, Sec.  
26 485A.)

27       Sec. 751.054. KNOWLEDGE OF TERMINATION OF POWER; GOOD-FAITH

1 ACTS. (a) The revocation by, the death of, or the qualification of  
2 a guardian of the estate of a principal who has executed a durable  
3 power of attorney does not revoke or terminate the agency as to the  
4 attorney in fact, agent, or other person who acts in good faith  
5 under or in reliance on the power without actual knowledge of the  
6 termination of the power by:

- 7 (1) the revocation;  
8 (2) the principal's death; or  
9 (3) the qualification of a guardian of the estate of  
10 the principal.

11 (b) The divorce of a principal from a person who has been  
12 appointed the principal's attorney in fact or agent before the date  
13 the divorce is granted, or the annulment of the marriage of a  
14 principal and a person who has been appointed the principal's  
15 attorney in fact or agent before the date the annulment is granted,  
16 does not revoke or terminate the agency as to a person other than  
17 the principal's former spouse if the person acts in good faith under  
18 or in reliance on the power of attorney.

19 (c) An action taken under this section, unless otherwise  
20 invalid or unenforceable, binds the principal's successors in  
21 interest. (Tex. Prob. Code, Sec. 486.)

22 Sec. 751.055. AFFIDAVIT REGARDING LACK OF KNOWLEDGE OF  
23 TERMINATION OF POWER OR OF DISABILITY OR INCAPACITY; GOOD-FAITH  
24 RELIANCE. (a) As to an act undertaken in good-faith reliance on a  
25 durable power of attorney, an affidavit executed by the attorney in  
26 fact or agent under the durable power of attorney stating that the  
27 attorney in fact or agent did not have, at the time the power was

1 exercised, actual knowledge of the termination of the power by  
2 revocation, the principal's death, the principal's divorce or the  
3 annulment of the principal's marriage if the attorney in fact or  
4 agent was the principal's spouse, or the qualification of a  
5 guardian of the estate of the principal, is conclusive proof as  
6 between the attorney in fact or agent and a person other than the  
7 principal or the principal's personal representative dealing with  
8 the attorney in fact or agent of the nonrevocation or  
9 nontermination of the power at that time.

10 (b) As to an act undertaken in good-faith reliance on a  
11 durable power of attorney, an affidavit executed by the attorney in  
12 fact or agent under the durable power of attorney stating that the  
13 principal is disabled or incapacitated, as defined by the power of  
14 attorney, is conclusive proof as between the attorney in fact or  
15 agent and a person other than the principal or the principal's  
16 personal representative dealing with the attorney in fact or agent  
17 of the principal's disability or incapacity at that time.

18 (c) If the exercise of the power of attorney requires  
19 execution and delivery of an instrument that is to be recorded, an  
20 affidavit executed under Subsection (a) or (b), authenticated for  
21 record, may also be recorded.

22 (d) This section and Section 751.056 do not affect a  
23 provision in a durable power of attorney for the termination of the  
24 power by:

- 25 (1) expiration of time; or  
26 (2) the occurrence of an event other than express  
27 revocation. (Tex. Prob. Code, Secs. 487(a), (b), (c), (d).)



1           Sec. 751.056. NONLIABILITY OF THIRD PARTY ON GOOD-FAITH  
2 RELIANCE. If a durable power of attorney is used, a third party who  
3 relies in good faith on the acts of an attorney in fact or agent  
4 performed within the scope of the power of attorney is not liable to  
5 the principal. (Tex. Prob. Code, Sec. 487(e).)

6           Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. (a) The  
7 filing of a voluntary or involuntary petition in bankruptcy in  
8 connection with the debts of a principal who has executed a durable  
9 power of attorney does not revoke or terminate the agency as to the  
10 principal's attorney in fact or agent.

11           (b) Any act the attorney in fact or agent may undertake with  
12 respect to the principal's property is subject to the limitations  
13 and requirements of the United States Bankruptcy Code (11 U.S.C.  
14 Section 101 et seq.) until a final determination is made in the  
15 bankruptcy proceeding. (Tex. Prob. Code, Sec. 487A.)

16           Sec. 751.058. EFFECT OF REVOCATION OF DURABLE POWER OF  
17 ATTORNEY ON THIRD PARTY. Unless otherwise provided by the durable  
18 power of attorney, a revocation of a durable power of attorney is  
19 not effective as to a third party relying on the power of attorney  
20 until the third party receives actual notice of the revocation.  
21 (Tex. Prob. Code, Sec. 488.)

22           [Sections 751.059-751.100 reserved for expansion]

23           SUBCHAPTER C. DUTY TO INFORM AND ACCOUNT

24           Sec. 751.101. FIDUCIARY DUTIES. An attorney in fact or  
25 agent is a fiduciary and has a duty to inform and to account for  
26 actions taken under the power of attorney. (Tex. Prob. Code, Sec.  
27 489B(a).)

1           Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The  
2 attorney in fact or agent shall timely inform the principal of each  
3 action taken under the power of attorney.

4           (b) Failure of an attorney in fact or agent to timely  
5 inform, as to third parties, does not invalidate any action of the  
6 attorney in fact or agent. (Tex. Prob. Code, Sec. 489B(b).)

7           Sec. 751.103. MAINTENANCE OF RECORDS. (a) The attorney in  
8 fact or agent shall maintain records of each action taken or  
9 decision made by the attorney in fact or agent.

10          (b) The attorney in fact or agent shall maintain all records  
11 until delivered to the principal, released by the principal, or  
12 discharged by a court. (Tex. Prob. Code, Secs. 489B(c), (f).)

13          Sec. 751.104. ACCOUNTING. (a) The principal may demand an  
14 accounting by the attorney in fact or agent.

15          (b) Unless otherwise directed by the principal, an  
16 accounting under Subsection (a) must include:

17               (1) the property belonging to the principal that has  
18 come to the attorney in fact's or agent's knowledge or into the  
19 attorney in fact's or agent's possession;

20               (2) each action taken or decision made by the attorney  
21 in fact or agent;

22               (3) a complete account of receipts, disbursements, and  
23 other actions of the attorney in fact or agent that includes the  
24 source and nature of each receipt, disbursement, or action, with  
25 receipts of principal and income shown separately;

26               (4) a listing of all property over which the attorney  
27 in fact or agent has exercised control that includes:

(A) an adequate description of each asset; and

(B) the asset's current value, if the value is known to the attorney in fact or agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the attorney in fact or agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the attorney in fact or agent shall also provide to the principal all documentation regarding the principal's property. (Tex. Prob. Code, Secs. 489B(d), (e).)

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the attorney in fact or agent to deliver the accounting or the assets; or

(2) terminate the power of attorney. (Tex. Prob. Code, Sec. 489B(g).)

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS. This subchapter does not limit the right of the principal to terminate the power of attorney or to make additional requirements

of or to give additional instructions to the attorney in fact or agent. (Tex. Prob. Code, Sec. 489B(h).)

[Sections 751.107-751.150 reserved for expansion]

SUBCHAPTER D. RECORDING DURABLE POWER OF ATTORNEY FOR CERTAIN REAL  
PROPERTY TRANSACTIONS

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS  
REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power  
of attorney for a real property transaction requiring the execution  
and delivery of an instrument that is to be recorded, including a  
release, assignment, satisfaction, mortgage, security agreement,  
deed of trust, encumbrance, deed of conveyance, oil, gas, or other  
mineral lease, memorandum of a lease, lien, or other claim or right  
to real property, must be recorded in the office of the county clerk  
of the county in which the property is located. (Tex. Prob. Code,  
Sec. 489.)

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS REGARDING STATUTORY DURABLE POWER  
OF ATTORNEY

Sec. 752.001. USE, MEANING, AND EFFECT OF STATUTORY  
DURABLE POWER OF ATTORNEY

Sec. 752.002. VALIDITY NOT AFFECTED

Sec. 752.003. PRESCRIBED FORM NOT EXCLUSIVE

Sec. 752.004. LEGAL SUFFICIENCY OF STATUTORY DURABLE  
POWER OF ATTORNEY

[Sections 752.005-752.050 reserved for expansion]

SUBCHAPTER B. FORM OF STATUTORY DURABLE POWER OF ATTORNEY

Sec. 752.051. FORM

[Sections 752.052-752.100 reserved for expansion]

SUBCHAPTER C. CONSTRUCTION OF POWERS RELATED TO STATUTORY DURABLE  
POWER OF ATTORNEY

Sec. 752.101. CONSTRUCTION IN GENERAL

Sec. 752.102. REAL PROPERTY TRANSACTIONS

Sec. 752.103. TANGIBLE PERSONAL PROPERTY TRANSACTIONS

Sec. 752.104. STOCK AND BOND TRANSACTIONS

Sec. 752.105. COMMODITY AND OPTION TRANSACTIONS

Sec. 752.106. BANKING AND OTHER FINANCIAL INSTITUTION

TRANSACTIONS

Sec. 752.107. BUSINESS OPERATION TRANSACTIONS

Sec. 752.108. INSURANCE AND ANNUITY TRANSACTIONS

Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY

TRANSACTIONS

Sec. 752.110. CLAIMS AND LITIGATION

Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE

Sec. 752.112. BENEFITS FROM CERTAIN GOVERNMENTAL

PROGRAMS OR CIVIL OR MILITARY SERVICE

Sec. 752.113. RETIREMENT PLAN TRANSACTIONS

Sec. 752.114. TAX MATTERS

Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS REGARDING STATUTORY DURABLE POWER  
OF ATTORNEY

Sec. 752.001. USE, MEANING, AND EFFECT OF STATUTORY DURABLE  
POWER OF ATTORNEY. (a) A person may use a statutory durable power  
of attorney to grant an attorney in fact or agent powers with

1 respect to a person's property and financial matters.

2 (b) A power of attorney in substantially the form prescribed  
3 by Section 752.051 has the meaning and effect prescribed by this  
4 subtitle. (Tex. Prob. Code, Sec. 490(a) (part).)

5 Sec. 752.002. VALIDITY NOT AFFECTED. A power of attorney is  
6 valid with respect to meeting the requirements for a statutory  
7 durable power of attorney regardless of the fact that:

8 (1) one or more of the categories of optional powers  
9 listed in the form prescribed by Section 752.051 are struck; or

10 (2) the form includes specific limitations on, or  
11 additions to, the powers of the attorney in fact or agent. (Tex.  
12 Prob. Code, Sec. 490(a) (part).)

13 Sec. 752.003. PRESCRIBED FORM NOT EXCLUSIVE. The form  
14 prescribed by Section 752.051 is not exclusive, and other forms of  
15 power of attorney may be used. (Tex. Prob. Code, Sec. 490(a)  
16 (part).)

17 Sec. 752.004. LEGAL SUFFICIENCY OF STATUTORY DURABLE POWER  
18 OF ATTORNEY. A statutory durable power of attorney is legally  
19 sufficient under this subtitle if:

20 (1) the wording of the form complies substantially  
21 with the wording of the form prescribed by Section 752.051;

22 (2) the form is properly completed; and

23 (3) the signature of the principal is acknowledged.  
24 (Tex. Prob. Code, Sec. 490(b).)

25 [Sections 752.005-752.050 reserved for expansion]

26 SUBCHAPTER B. FORM OF STATUTORY DURABLE POWER OF ATTORNEY

27 Sec. 752.051. FORM. The following form is known as a

1 "statutory durable power of attorney":

2 STATUTORY DURABLE POWER OF ATTORNEY

3 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.  
4 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,  
5 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS,  
6 OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE  
7 ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU  
8 MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

9 I, \_\_\_\_\_ (insert your name and address), appoint  
10 \_\_\_\_\_ (insert the name and address of the person appointed) as  
11 my agent (attorney in fact) to act for me in any lawful way with  
12 respect to all of the following powers except for a power that I  
13 have crossed out below.

14 TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER  
15 WITHHELD.

16 Real property transactions;

17 Tangible personal property transactions;

18 Stock and bond transactions;

19 Commodity and option transactions;

20 Banking and other financial institution transactions;

21 Business operating transactions;

22 Insurance and annuity transactions;

23 Estate, trust, and other beneficiary transactions;

24 Claims and litigation;

25 Personal and family maintenance;

26 Benefits from social security, Medicare, Medicaid, or other  
27 governmental programs or civil or military service;

Retirement plan transactions;  
Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.



1 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE  
2 ALTERNATIVE NOT CHOSEN:

3 (A) This power of attorney is not affected by my subsequent  
4 disability or incapacity.

5 (B) This power of attorney becomes effective upon my  
6 disability or incapacity.

7 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY  
8 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

9 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT  
10 YOU CHOSE ALTERNATIVE (A).

11 If Alternative (B) is chosen and a definition of my  
12 disability or incapacity is not contained in this power of  
13 attorney, I shall be considered disabled or incapacitated for  
14 purposes of this power of attorney if a physician certifies in  
15 writing at a date later than the date this power of attorney is  
16 executed that, based on the physician's medical examination of me,  
17 I am mentally incapable of managing my financial affairs. I  
18 authorize the physician who examines me for this purpose to  
19 disclose my physical or mental condition to another person for  
20 purposes of this power of attorney. A third party who accepts this  
21 power of attorney is fully protected from any action taken under  
22 this power of attorney that is based on the determination made by a  
23 physician of my disability or incapacity.

24 I agree that any third party who receives a copy of this  
25 document may act under it. Revocation of the durable power of  
26 attorney is not effective as to a third party until the third party  
27 receives actual notice of the revocation. I agree to indemnify the

third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_

(name of principal)

\_\_\_\_\_  
(signature of notarial officer)

(Seal, if any, of notary) \_\_\_\_\_

(printed name)

My commission expires: \_\_\_\_\_

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. (Tex. Prob. Code, Sec. 490(a) (part).)

[Sections 752.052-752.100 reserved for expansion]

SUBCHAPTER C. CONSTRUCTION OF POWERS RELATED TO STATUTORY DURABLE  
POWER OF ATTORNEY

Sec. 752.101. CONSTRUCTION IN GENERAL. By executing a

1 statutory durable power of attorney that confers authority with  
2 respect to any class of transactions, the principal empowers the  
3 attorney in fact or agent for that class of transactions to:

4 (1) demand, receive, and obtain by litigation, action,  
5 or otherwise any money or other thing of value to which the  
6 principal is, may become, or may claim to be entitled;

7 (2) conserve, invest, disburse, or use any money or  
8 other thing of value received on behalf of the principal for the  
9 purposes intended;

10 (3) contract in any manner with any person, on terms  
11 agreeable to the attorney in fact or agent, to accomplish a purpose  
12 of a transaction and perform, rescind, reform, release, or modify  
13 that contract or another contract made by or on behalf of the  
14 principal;

15 (4) execute, acknowledge, seal, and deliver a deed,  
16 revocation, mortgage, lease, notice, check, release, or other  
17 instrument the attorney in fact or agent considers desirable to  
18 accomplish a purpose of a transaction;

19 (5) with respect to a claim existing in favor of or  
20 against the principal:

21 (A) prosecute, defend, submit to arbitration,  
22 settle, and propose or accept a compromise; or

23 (B) intervene in an action or litigation relating  
24 to the claim;

25 (6) seek on the principal's behalf the assistance of a  
26 court to carry out an act authorized by the power of attorney;

27 (7) engage, compensate, and discharge an attorney,

1 accountant, expert witness, or other assistant;

2           (8) keep appropriate records of each transaction,  
3 including an accounting of receipts and disbursements;

4           (9) prepare, execute, and file a record, report, or  
5 other document the attorney in fact or agent considers necessary or  
6 desirable to safeguard or promote the principal's interest under a  
7 statute or governmental regulation;

8           (10) reimburse the attorney in fact or agent for an  
9 expenditure made in exercising the powers granted by the durable  
10 power of attorney; and

11           (11) in general, perform any other lawful act that the  
12 principal may perform with respect to the transaction. (Tex. Prob.  
13 Code, Sec. 491.)

14       Sec. 752.102. REAL PROPERTY TRANSACTIONS. The language  
15 conferring authority with respect to real property transactions in  
16 a statutory durable power of attorney empowers the attorney in fact  
17 or agent, without further reference to a specific description of  
18 the real property, to:

19           (1) accept as a gift or as security for a loan or  
20 reject, demand, buy, lease, receive, or otherwise acquire an  
21 interest in real property or a right incident to real property;

22           (2) sell, exchange, convey with or without covenants,  
23 quitclaim, release, surrender, mortgage, encumber, partition or  
24 consent to partitioning, subdivide, apply for zoning, rezoning, or  
25 other governmental permits, plat or consent to platting, develop,  
26 grant options concerning, lease or sublet, or otherwise dispose of  
27 an estate or interest in real property or a right incident to real

1 property;

2 (3) release, assign, satisfy, and enforce by  
3 litigation, action, or otherwise a mortgage, deed of trust,  
4 encumbrance, lien, or other claim to real property that exists or is  
5 claimed to exist;

6 (4) perform any act of management or of conservation  
7 with respect to an interest in real property, or a right incident to  
8 real property, owned or claimed to be owned by the principal,  
9 including the authority to:

10 (A) insure against a casualty, liability, or  
11 loss;

12 (B) obtain or regain possession or protect the  
13 interest or right by litigation, action, or otherwise;

14 (C) pay, compromise, or contest taxes or  
15 assessments or apply for and receive refunds in connection with the  
16 taxes or assessments;

17 (D) purchase supplies, hire assistance or labor,  
18 or make repairs or alterations to the real property; and

19 (E) manage and supervise an interest in real  
20 property, including the mineral estate, by, for example:

21 (i) entering into a lease for oil, gas, and  
22 mineral purposes;

23 (ii) making contracts for development of  
24 the mineral estate; or

25 (iii) making pooling and unitization  
26 agreements;

27 (5) use, develop, alter, replace, remove, erect, or

1 install structures or other improvements on real property in which  
2 the principal has or claims to have an estate, interest, or right;

3 (6) participate in a reorganization with respect to  
4 real property or a legal entity that owns an interest in or right  
5 incident to real property, receive and hold shares of stock or  
6 obligations received in a plan or reorganization, and act with  
7 respect to the shares or obligations, including:

8 (A) selling or otherwise disposing of the shares  
9 or obligations;

10 (B) exercising or selling an option, conversion,  
11 or similar right with respect to the shares or obligations; and

12 (C) voting the shares or obligations in person or  
13 by proxy;

14 (7) change the form of title of an interest in or right  
15 incident to real property; and

16 (8) dedicate easements or other real property in which  
17 the principal has or claims to have an interest to public use, with  
18 or without consideration. (Tex. Prob. Code, Sec. 492.)

19 Sec. 752.103. TANGIBLE PERSONAL PROPERTY TRANSACTIONS. The  
20 language conferring general authority with respect to tangible  
21 personal property transactions in a statutory durable power of  
22 attorney empowers the attorney in fact or agent to:

23 (1) accept tangible personal property or an interest  
24 in tangible personal property as a gift or as security for a loan or  
25 reject, demand, buy, receive, or otherwise acquire ownership or  
26 possession of tangible personal property or an interest in tangible  
27 personal property;

1           (2) sell, exchange, convey with or without covenants,  
2 release, surrender, mortgage, encumber, pledge, create a security  
3 interest in, pawn, grant options concerning, lease or sublet to  
4 others, or otherwise dispose of tangible personal property or an  
5 interest in tangible personal property;

6           (3) release, assign, satisfy, or enforce by  
7 litigation, action, or otherwise a mortgage, security interest,  
8 encumbrance, lien, or other claim on behalf of the principal, with  
9 respect to tangible personal property or an interest in tangible  
10 personal property; and

11           (4) perform an act of management or conservation with  
12 respect to tangible personal property or an interest in tangible  
13 personal property on behalf of the principal, including:

14                 (A) insuring the property or interest against  
15 casualty, liability, or loss;

16                 (B) obtaining or regaining possession or  
17 protecting the property or interest by litigation, action, or  
18 otherwise;

19                 (C) paying, compromising, or contesting taxes or  
20 assessments or applying for and receiving refunds in connection  
21 with taxes or assessments;

22                 (D) moving the property;

23                 (E) storing the property for hire or on a  
24 gratuitous bailment; and

25                 (F) using, altering, and making repairs or  
26 alterations to the property. (Tex. Prob. Code, Sec. 493.)

27           Sec. 752.104. STOCK AND BOND TRANSACTIONS. The language

1 conferring authority with respect to stock and bond transactions in  
2 a statutory durable power of attorney empowers the attorney in fact  
3 or agent to:

4 (1) buy, sell, and exchange:

5 (A) stocks;

6 (B) bonds;

7 (C) mutual funds; and

8 (D) all other types of securities and financial  
9 instruments other than commodity futures contracts and call and put  
10 options on stocks and stock indexes;

11 (2) receive certificates and other evidences of  
12 ownership with respect to securities;

13 (3) exercise voting rights with respect to securities  
14 in person or by proxy;

15 (4) enter into voting trusts; and

16 (5) consent to limitations on the right to vote. (Tex.  
17 Prob. Code, Sec. 494.)

18 Sec. 752.105. COMMODITY AND OPTION TRANSACTIONS. The  
19 language conferring authority with respect to commodity and option  
20 transactions in a statutory durable power of attorney empowers the  
21 attorney in fact or agent to:

22 (1) buy, sell, exchange, assign, settle, and exercise  
23 commodity futures contracts and call and put options on stocks and  
24 stock indexes traded on a regulated options exchange; and

25 (2) establish, continue, modify, or terminate option  
26 accounts with a broker. (Tex. Prob. Code, Sec. 495.)

27 Sec. 752.106. BANKING AND OTHER FINANCIAL INSTITUTION



1 TRANSACTIONS. The language conferring authority with respect to  
2 banking and other financial institution transactions in a statutory  
3 durable power of attorney empowers the attorney in fact or agent to:

4 (1) continue, modify, or terminate an account or other  
5 banking arrangement made by or on behalf of the principal;

6 (2) establish, modify, or terminate an account or  
7 other banking arrangement with a bank, trust company, savings and  
8 loan association, credit union, thrift company, brokerage firm, or  
9 other financial institution selected by the attorney in fact or  
10 agent;

11 (3) rent a safe deposit box or space in a vault;

12 (4) contract to procure other services available from  
13 a financial institution as the attorney in fact or agent considers  
14 desirable;

15 (5) withdraw by check, order, or otherwise money or  
16 property of the principal deposited with or left in the custody of a  
17 financial institution;

18 (6) receive bank statements, vouchers, notices, or  
19 similar documents from a financial institution and act with respect  
20 to those documents;

21 (7) enter a safe deposit box or vault and withdraw from  
22 or add to its contents;

23 (8) borrow money at an interest rate agreeable to the  
24 attorney in fact or agent and pledge as security the principal's  
25 property as necessary to borrow, pay, renew, or extend the time of  
26 payment of a debt of the principal;

27 (9) make, assign, draw, endorse, discount, guarantee,

1 and negotiate promissory notes, bills of exchange, checks, drafts,  
2 or other negotiable or nonnegotiable paper of the principal, or  
3 payable to the principal or the principal's order to receive the  
4 cash or other proceeds of those transactions, to accept a draft  
5 drawn by a person on the principal, and to pay the principal when  
6 due;

7 (10) receive for the principal and act on a sight  
8 draft, warehouse receipt, or other negotiable or nonnegotiable  
9 instrument;

10 (11) apply for and receive letters of credit, credit  
11 cards, and traveler's checks from a financial institution and give  
12 an indemnity or other agreement in connection with letters of  
13 credit; and

14 (12) consent to an extension of the time of payment  
15 with respect to commercial paper or a financial transaction with a  
16 financial institution. (Tex. Prob. Code, Sec. 496.)

17 Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. The  
18 language conferring authority with respect to business operating  
19 transactions in a statutory durable power of attorney empowers the  
20 attorney in fact or agent to:

21 (1) operate, buy, sell, enlarge, reduce, or terminate  
22 a business interest;

23 (2) do the following, to the extent that an attorney in  
24 fact or agent is permitted by law to act for a principal and subject  
25 to the terms of a partnership agreement:

26 (A) perform a duty, discharge a liability, or  
27 exercise a right, power, privilege, or option that the principal

1 has, may have, or claims to have under the partnership agreement,  
2 whether or not the principal is a general or limited partner;

3 (B) enforce the terms of the partnership  
4 agreement by litigation, action, or otherwise; and

5 (C) defend, submit to arbitration, settle, or  
6 compromise litigation or an action to which the principal is a party  
7 because of membership in the partnership;

8 (3) exercise in person or by proxy, or enforce by  
9 litigation, action, or otherwise, a right, power, privilege, or  
10 option the principal has or claims to have as the holder of a bond,  
11 share, or other similar instrument and defend, submit to  
12 arbitration, settle, or compromise a legal proceeding to which the  
13 principal is a party because of a bond, share, or similar  
14 instrument;

15 (4) with respect to a business owned solely by the  
16 principal:

17 (A) continue, modify, renegotiate, extend, and  
18 terminate a contract made before execution of the power of attorney  
19 with an individual, legal entity, firm, association, or corporation  
20 by or on behalf of the principal with respect to the business;

21 (B) determine:

22 (i) the location of the business's  
23 operation;

24 (ii) the nature and extent of the business;

25 (iii) the methods of manufacturing,  
26 selling, merchandising, financing, accounting, and advertising  
27 employed in the business's operation;

1 (iv) the amount and types of insurance  
2 carried; and

3 (v) the method of engaging, compensating,  
4 and dealing with the business's accountants, attorneys, and other  
5 agents and employees;

6 (C) change the name or form of organization under  
7 which the business is operated and enter into a partnership  
8 agreement with other persons or organize a corporation to take over  
9 all or part of the operation of the business; and

10 (D) demand and receive money due or claimed by  
11 the principal or on the principal's behalf in the operation of the  
12 business and control and disburse the money in the operation of the  
13 business;

14 (5) put additional capital into a business in which  
15 the principal has an interest;

16 (6) join in a plan of reorganization, consolidation,  
17 or merger of the business;

18 (7) sell or liquidate a business or part of the  
19 business at the time and on the terms that the attorney in fact or  
20 agent considers desirable;

21 (8) establish the value of a business under a buy-out  
22 agreement to which the principal is a party;

23 (9) do the following:

24 (A) prepare, sign, file, and deliver reports,  
25 compilations of information, returns, or other papers with respect  
26 to a business:

27 (i) that are required by a governmental

1 agency, department, or instrumentality; or

2 (ii) that the attorney in fact or agent  
3 considers desirable; and

4 (B) make related payments; and

5 (10) pay, compromise, or contest taxes or assessments  
6 and perform any other act that the attorney in fact or agent  
7 considers desirable to protect the principal from illegal or  
8 unnecessary taxation, fines, penalties, or assessments with  
9 respect to a business, including attempts to recover, in any manner  
10 permitted by law, money paid before or after the execution of the  
11 power of attorney. (Tex. Prob. Code, Sec. 497.)

12 Sec. 752.108. INSURANCE AND ANNUITY TRANSACTIONS. (a) The  
13 language conferring authority with respect to insurance and annuity  
14 transactions in a statutory durable power of attorney empowers the  
15 attorney in fact or agent to:

16 (1) continue, pay the premium or assessment on,  
17 modify, rescind, release, or terminate a contract procured by or on  
18 behalf of the principal that insures or provides an annuity to  
19 either the principal or another person, whether or not the  
20 principal is a beneficiary under the contract;

21 (2) procure new, different, or additional insurance  
22 contracts and annuities for the principal or the principal's  
23 spouse, children, and other dependents and select the amount, type  
24 of insurance or annuity, and method of payment;

25 (3) pay the premium or assessment on, or modify,  
26 rescind, release, or terminate, an insurance contract or annuity  
27 procured by the attorney in fact or agent;

1           (4) designate the beneficiary of the insurance  
2 contract, except as provided by Subsection (b);

3           (5) apply for and receive a loan on the security of the  
4 insurance contract or annuity;

5           (6) surrender and receive the cash surrender value;

6           (7) exercise an election;

7           (8) change the manner of paying premiums;

8           (9) change or convert the type of insurance contract  
9 or annuity with respect to which the principal has or claims to have  
10 a power described by this section;

11           (10) change the beneficiary of an insurance contract  
12 or annuity, except that the attorney in fact or agent may be  
13 designated a beneficiary only to the extent authorized by  
14 Subsection (b);

15           (11) apply for and procure government aid to guarantee  
16 or pay premiums of an insurance contract on the life of the  
17 principal;

18           (12) collect, sell, assign, borrow on, or pledge the  
19 principal's interest in an insurance contract or annuity; and

20           (13) pay from proceeds or otherwise, compromise or  
21 contest, or apply for refunds in connection with a tax or assessment  
22 imposed by a taxing authority with respect to an insurance contract  
23 or annuity or the proceeds of the contract or annuity or liability  
24 accruing because of the tax or assessment.

25           (b) An attorney in fact or agent may be named a beneficiary  
26 of an insurance contract or an extension, renewal, or substitute  
27 for the contract only to the extent the attorney in fact or agent

1 was named as a beneficiary under a contract procured by the  
2 principal before executing the power of attorney. (Tex. Prob.  
3 Code, Sec. 498.)

4       Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY  
5 TRANSACTIONS. The language conferring authority with respect to  
6 estate, trust, and other beneficiary transactions in a statutory  
7 durable power of attorney empowers the attorney in fact or agent to  
8 act for the principal in all matters that affect a trust, probate  
9 estate, guardianship, conservatorship, escrow, custodianship, or  
10 other fund from which the principal is, may become, or claims to be  
11 entitled, as a beneficiary, to a share or payment, including to:

12           (1) accept, reject, disclaim, receive, receipt for,  
13 sell, assign, release, pledge, exchange, or consent to a reduction  
14 in or modification of a share in or payment from the fund;

15           (2) demand or obtain by litigation, action, or  
16 otherwise money or any other thing of value to which the principal  
17 is, may become, or claims to be entitled because of the fund;

18           (3) initiate, participate in, or oppose a legal or  
19 judicial proceeding to:

20               (A) ascertain the meaning, validity, or effect of  
21 a deed, will, declaration of trust, or other instrument or  
22 transaction affecting the interest of the principal; or

23               (B) remove, substitute, or surcharge a  
24 fiduciary;

25           (4) conserve, invest, disburse, or use anything  
26 received for an authorized purpose; and

27           (5) transfer all or part of the principal's interest in

1 real property, stocks, bonds, accounts with financial  
2 institutions, insurance, and other property to the trustee of a  
3 revocable trust created by the principal as settlor. (Tex. Prob.  
4 Code, Sec. 499.)

5 Sec. 752.110. CLAIMS AND LITIGATION. The language  
6 conferring general authority with respect to claims and litigation  
7 in a statutory durable power of attorney empowers the attorney in  
8 fact or agent to:

9 (1) assert and prosecute before a court or  
10 administrative agency a claim, a claim for relief, a counterclaim,  
11 or an offset, or defend against an individual, a legal entity, or a  
12 government, including an action to:

13 (A) recover property or other thing of value;  
14 (B) recover damages sustained by the principal;  
15 (C) eliminate or modify tax liability; or  
16 (D) seek an injunction, specific performance, or  
17 other relief;

18 (2) bring an action to determine an adverse claim,  
19 intervene in an action or litigation, and act as an amicus curiae;

20 (3) in connection with an action or litigation:

21 (A) procure an attachment, garnishment, libel,  
22 order of arrest, or other preliminary, provisional, or intermediate  
23 relief and use an available procedure to effect or satisfy a  
24 judgment, order, or decree; and

25 (B) perform any lawful act the principal could  
26 perform, including:

27 (i) acceptance of tender;



1 (ii) offer of judgment;  
2 (iii) admission of facts;  
3 (iv) submission of a controversy on an  
4 agreed statement of facts;

5 (v) consent to examination before trial;  
6 and

7 (vi) binding of the principal in  
8 litigation;

9 (4) submit to arbitration, settle, and propose or  
10 accept a compromise with respect to a claim or litigation;

11 (5) waive the issuance and service of process on the  
12 principal, accept service of process, appear for the principal,  
13 designate persons on whom process directed to the principal may be  
14 served, execute and file or deliver stipulations on the principal's  
15 behalf, verify pleadings, seek appellate review, procure and give  
16 surety and indemnity bonds, contract and pay for the preparation  
17 and printing of records and briefs, or receive and execute and file  
18 or deliver a consent, waiver, release, confession of judgment,  
19 satisfaction of judgment, notice, agreement, or other instrument in  
20 connection with the prosecution, settlement, or defense of a claim  
21 or litigation;

22 (6) act for the principal regarding voluntary or  
23 involuntary bankruptcy or insolvency proceedings concerning:

24 (A) the principal; or

25 (B) another person, with respect to a  
26 reorganization proceeding or a receivership or application for the  
27 appointment of a receiver or trustee that affects the principal's

1 interest in property or other thing of value; and

2 (7) pay a judgment against the principal or a  
3 settlement made in connection with a claim or litigation and  
4 receive and conserve money or other thing of value paid in  
5 settlement of or as proceeds of a claim or litigation. (Tex. Prob.  
6 Code, Sec. 500.)

7 Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The  
8 language conferring authority with respect to personal and family  
9 maintenance in a statutory durable power of attorney empowers the  
10 attorney in fact or agent to:

11 (1) perform the acts necessary to maintain the  
12 customary standard of living of the principal, the principal's  
13 spouse and children, and other individuals customarily or legally  
14 entitled to be supported by the principal, including:

15 (A) providing living quarters by purchase,  
16 lease, or other contract; or

17 (B) paying the operating costs, including  
18 interest, amortization payments, repairs, and taxes on premises  
19 owned by the principal and occupied by those individuals;

20 (2) provide for the individuals described by  
21 Subdivision (1):

22 (A) normal domestic help;

23 (B) usual vacations and travel expenses; and

24 (C) money for shelter, clothing, food,  
25 appropriate education, and other living costs;

26 (3) pay necessary medical, dental, and surgical care,  
27 hospitalization, and custodial care for the individuals described

1 by Subdivision (1);

2 (4) continue any provision made by the principal for  
3 the individuals described by Subdivision (1) for automobiles or  
4 other means of transportation, including registering, licensing,  
5 insuring, and replacing the automobiles or other means of  
6 transportation;

7 (5) maintain or open charge accounts for the  
8 convenience of the individuals described by Subdivision (1) and  
9 open new accounts the attorney in fact or agent considers desirable  
10 to accomplish a lawful purpose; and

11 (6) continue:

12 (A) payments incidental to the membership or  
13 affiliation of the principal in a church, club, society, order, or  
14 other organization; or

15 (B) contributions to those organizations. (Tex.  
16 Prob. Code, Sec. 501.)

17 Sec. 752.112. BENEFITS FROM CERTAIN GOVERNMENTAL PROGRAMS  
18 OR CIVIL OR MILITARY SERVICE. The language conferring authority  
19 with respect to benefits from social security, Medicare, Medicaid,  
20 or other governmental programs or civil or military service in a  
21 statutory durable power of attorney empowers the attorney in fact  
22 or agent to:

23 (1) execute a voucher in the principal's name for an  
24 allowance or reimbursement payable by the United States, a foreign  
25 government, or a state or subdivision of a state to the principal,  
26 including an allowance or reimbursement for:

27 (A) transportation of the individuals described

1 by Section 752.111(1); and

2 (B) shipment of the household effects of those  
3 individuals;

4 (2) take possession and order the removal and shipment  
5 of the principal's property from a post, warehouse, depot, dock, or  
6 other governmental or private place of storage or safekeeping and  
7 execute and deliver a release, voucher, receipt, bill of lading,  
8 shipping ticket, certificate, or other instrument for that purpose;

9 (3) prepare, file, and prosecute a claim of the  
10 principal for a benefit or assistance, financial or otherwise, to  
11 which the principal claims to be entitled under a statute or  
12 governmental regulation;

13 (4) prosecute, defend, submit to arbitration, settle,  
14 and propose or accept a compromise with respect to any benefits the  
15 principal may be entitled to receive; and

16 (5) receive the financial proceeds of a claim of the  
17 type described by this section and conserve, invest, disburse, or  
18 use anything received for a lawful purpose. (Tex. Prob. Code, Sec.  
19 502.)

20 Sec. 752.113. RETIREMENT PLAN TRANSACTIONS. (a) In this  
21 section, "retirement plan" means:

22 (1) an employee pension benefit plan as defined by  
23 Section 3, Employee Retirement Income Security Act of 1974 (29  
24 U.S.C. Section 1002), without regard to the provisions of Section  
25 (2)(B) of that section;

26 (2) a plan that does not meet the definition of an  
27 employee benefit plan under the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does  
2 not cover common law employees;

3 (3) a plan that is similar to an employee benefit plan  
4 under the Employee Retirement Income Security Act of 1974 (29  
5 U.S.C. Section 1001 et seq.), regardless of whether the plan is  
6 covered by Title 1 of that Act, including a plan that provides death  
7 benefits to the beneficiary of employees; and

8 (4) an individual retirement account or annuity, a  
9 self-employed pension plan, or a similar plan or account.

10 (b) The language conferring authority with respect to  
11 retirement plan transactions in a statutory durable power of  
12 attorney empowers the attorney in fact or agent to perform any  
13 lawful act the principal may perform with respect to a transaction  
14 relating to a retirement plan, including to:

15 (1) apply for service or disability retirement  
16 benefits;

17 (2) select payment options under any retirement plan  
18 in which the principal participates, including plans for  
19 self-employed individuals;

20 (3) designate or change the designation of a  
21 beneficiary or benefits payable by a retirement plan, except as  
22 provided by Subsection (c);

23 (4) make voluntary contributions to retirement plans  
24 if authorized by the plan;

25 (5) exercise the investment powers available under any  
26 self-directed retirement plan;

27 (6) make rollovers of plan benefits into other

1 retirement plans;

2 (7) borrow from, sell assets to, and purchase assets  
3 from retirement plans if authorized by the plan;

4 (8) waive the principal's right to be a beneficiary of  
5 a joint or survivor annuity if the principal is a spouse who is not  
6 employed;

7 (9) receive, endorse, and cash payments from a  
8 retirement plan;

9 (10) waive the principal's right to receive all or a  
10 portion of benefits payable by a retirement plan; and

11 (11) request and receive information relating to the  
12 principal from retirement plan records.

13 (c) An attorney in fact or agent may be named a beneficiary  
14 under a retirement plan only to the extent the attorney in fact or  
15 agent was a named beneficiary under the retirement plan before the  
16 durable power of attorney was executed. (Tex. Prob. Code, Sec.  
17 503.)

18 Sec. 752.114. TAX MATTERS. The language conferring  
19 authority with respect to tax matters in a statutory durable power  
20 of attorney empowers the attorney in fact or agent to:

21 (1) prepare, sign, and file:

22 (A) federal, state, local, and foreign income,  
23 gift, payroll, Federal Insurance Contributions Act (26 U.S.C.  
24 Chapter 21), and other tax returns;

25 (B) claims for refunds;

26 (C) requests for extensions of time;

27 (D) petitions regarding tax matters; and

(E) any other tax-related documents, including:

(i) receipts;

(ii) offers;

(iii) waivers;

(iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);

(v) closing agreements; and

(vi) any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters, for all periods, before the Internal Revenue Service and any other taxing authority. (Tex. Prob. Code, Sec. 504.)

Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS. The powers described by Sections 752.102-752.114 may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:

(1) the property is located in this state; or

(2) the powers are exercised or the durable power of attorney is executed in this state. (Tex. Prob. Code, Sec. 505.)

SECTION 1.02. TITLE 3, ESTATES CODE. The Estates Code is amended by adding Title 3 to read as follows:

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1001. PURPOSE AND CONSTRUCTION

CHAPTER 1002. DEFINITIONS

[Chapters 1003-1030 reserved for expansion]

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

[Chapters 1031-1050 reserved]

SUBTITLE C. PROCEDURAL MATTERS

CHAPTER 1051. NOTICES AND PROCESS IN GUARDIANSHIP PROCEEDINGS IN GENERAL

CHAPTER 1052. FILING AND RECORDKEEPING

CHAPTER 1053. OTHER COURT DUTIES AND PROCEDURES

CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

CHAPTER 1055. TRIAL AND HEARING MATTERS

CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

CHAPTER 1057. CHANGE AND RESIGNATION OF RESIDENT AGENT OF GUARDIAN FOR SERVICE OF PROCESS

[Chapters 1058-1100 reserved for expansion]

SUBTITLE D. CREATION OF GUARDIANSHIP

CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

CHAPTER 1103. PROCEDURE TO APPOINT GUARDIAN FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS AS ADULTS



1 CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN  
2 CHAPTER 1105. QUALIFICATION OF GUARDIANS  
3 CHAPTER 1106. LETTERS OF GUARDIANSHIP  
4 [Chapters 1107-1150 reserved for expansion]  
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CHAPTER 1001. PURPOSE AND CONSTRUCTION

Sec. 1001.001. POLICY; PURPOSE OF GUARDIANSHIP. (a) A court may appoint a guardian with either full or limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the incapacitated person.

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the

guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person. (Tex. Prob. Code, Sec. 602 (part).)

Sec. 1001.002. LAWS APPLICABLE TO GUARDIANSHIPS. To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to guardianships. (Tex. Prob. Code, Sec. 603(a).)

Sec. 1001.003. REFERENCES IN LAW MEANING INCAPACITATED PERSON. In this code or any other law, a reference to any of the following means an incapacitated person:

- (1) a person who is mentally, physically, or legally incompetent;
- (2) a person who is judicially declared incompetent;
- (3) an incompetent or an incompetent person;
- (4) a person of unsound mind; or
- (5) a habitual drunkard. (Tex. Prob. Code, Sec. 603(b).)

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26 CHAPTER 1002. DEFINITIONS

27 Sec. 1002.001. APPLICABILITY OF DEFINITIONS. The

1 definition for a term provided by this chapter applies in this  
2 title. (Tex. Prob. Code, Sec. 601 (part).)

3       Sec. 1002.002. ATTORNEY AD LITEM. "Attorney ad litem"  
4 means an attorney appointed by a court to represent and advocate on  
5 behalf of a proposed ward, an incapacitated person, or an unborn  
6 person in a guardianship proceeding. (Tex. Prob. Code, Sec.  
7 601(1).)

8       Sec. 1002.003. AUTHORIZED CORPORATE SURETY. "Authorized  
9 corporate surety" means a domestic or foreign corporation  
10 authorized to engage in business in this state to issue surety,  
11 guaranty, or indemnity bonds that guarantee the fidelity of a  
12 guardian. (Tex. Prob. Code, Sec. 601(2).)

13       Sec. 1002.004. CHILD. "Child" includes a biological child  
14 and an adopted child, regardless of whether the child was adopted by  
15 a parent under a statutory procedure or by acts of estoppel. (Tex.  
16 Prob. Code, Sec. 601(3).)

17       Sec. 1002.005. CLAIM. "Claim" includes:

18               (1) a liability against the estate of an incapacitated  
19 person; and

20               (2) a debt due to the estate of an incapacitated  
21 person. (Tex. Prob. Code, Sec. 601(4).)

22       Sec. 1002.006. COMMUNITY ADMINISTRATOR. "Community  
23 administrator" means a spouse who, on the judicial declaration of  
24 incapacity of the other spouse, is authorized to manage, control,  
25 and dispose of the entire community estate, including the part of  
26 the community estate the incapacitated spouse legally has the power  
27 to manage in the absence of the incapacity. (Tex. Prob. Code, Sec.

1 601(5).)

2           Sec. 1002.007. CORPORATE FIDUCIARY. "Corporate fiduciary"  
3 means a financial institution, as defined by Section 201.101,  
4 Finance Code, that:

5           (1) is existing or engaged in business under the laws  
6 of this state, another state, or the United States;

7           (2) has trust powers; and

8           (3) is authorized by law to act under the order or  
9 appointment of a court of record, without giving bond, as guardian,  
10 receiver, trustee, executor, administrator, or, although the  
11 financial institution does not have general depository powers,  
12 depository for any money paid into the court, or to become sole  
13 guarantor or surety in or on any bond required to be given under the  
14 laws of this state. (Tex. Prob. Code, Sec. 601(6).)

15           Sec. 1002.008. COURT; PROBATE COURT; STATUTORY PROBATE  
16 COURT. (a) "Court" or "probate court" means:

17           (1) a county court exercising its probate  
18 jurisdiction;

19           (2) a court created by statute and authorized to  
20 exercise original probate jurisdiction; or

21           (3) a district court exercising original probate  
22 jurisdiction in a contested matter.

23           (b) "Statutory probate court" means a court created by  
24 statute and designated as a statutory probate court under Chapter  
25 25, Government Code. The term does not include a county court at  
26 law exercising probate jurisdiction unless the court is designated  
27 a statutory probate court under Chapter 25, Government Code. (Tex.

1 Prob. Code, Secs. 601(8), (29).)

2 Sec. 1002.009. COURT INVESTIGATOR. "Court investigator"  
3 means a person appointed by the judge of a statutory probate court  
4 under Section 25.0025, Government Code. (Tex. Prob. Code, Sec.  
5 601(7).)

6 Sec. 1002.010. ESTATE; GUARDIANSHIP ESTATE. "Estate" or  
7 "guardianship estate" means a ward's or deceased ward's property,  
8 as that property:

9 (1) exists originally and changes in form by sale,  
10 reinvestment, or otherwise;

11 (2) is augmented by any accretions and other additions  
12 to the property, including any property to be distributed to the  
13 deceased ward's representative by the trustee of a trust that  
14 terminates on the ward's death, or substitutions for the property;  
15 and

16 (3) is diminished by any decreases in or distributions  
17 from the property. (Tex. Prob. Code, Sec. 601(9).)

18 Sec. 1002.011. EXEMPT PROPERTY. "Exempt property" means  
19 the property in a deceased ward's estate that is exempt from  
20 execution or forced sale by the constitution or laws of this state,  
21 and any allowance paid instead of that property. (Tex. Prob. Code,  
22 Sec. 601(10).)

23 Sec. 1002.012. GUARDIAN. (a) "Guardian" means a person  
24 appointed as a:

25 (1) guardian under Subchapter D, Chapter 1101;

26 (2) successor guardian; or

27 (3) temporary guardian.



(b) Except as expressly provided otherwise, "guardian" includes:

(1) the guardian of the estate of an incapacitated person; and

(2) the guardian of the person of an incapacitated person. (Tex. Prob. Code, Sec. 601(11).)

Sec. 1002.013. GUARDIAN AD LITEM. "Guardian ad litem" means a person appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding. (Tex. Prob. Code, Sec. 601(12).)

Sec. 1002.014. GUARDIANSHIP CERTIFICATION BOARD. "Guardianship Certification Board" means the Guardianship Certification Board established under Chapter 111, Government Code. (Tex. Prob. Code, Sec. 601(12-a).)

Sec. 1002.015. GUARDIANSHIP MATTER; GUARDIANSHIP PROCEEDING; PROCEEDINGS IN GUARDIANSHIP; PROCEEDINGS FOR GUARDIANSHIP. The terms "guardianship matter," "guardianship proceeding," "proceedings in guardianship," and "proceedings for guardianship" are synonymous and include a matter or proceeding relating to a guardianship or any other matter addressed by this title. (Tex. Prob. Code, Sec. 601(25).)

Sec. 1002.016. GUARDIANSHIP PROGRAM. "Guardianship program" has the meaning assigned by Section 111.001, Government Code. (Tex. Prob. Code, Sec. 601(13).)

Sec. 1002.017. INCAPACITATED PERSON. "Incapacitated person" means:

(1) a minor;

(2) an adult who, because of a physical or mental condition, is substantially unable to:

(A) provide food, clothing, or shelter for himself or herself;

(B) care for the person's own physical health; or

(C) manage the person's own financial affairs; or

(3) a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.

(Tex. Prob. Code, Sec. 601(14).)

Sec. 1002.018. INTERESTED PERSON; PERSON INTERESTED.

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or

(2) a person interested in the welfare of an incapacitated person. (Tex. Prob. Code, Sec. 601(15).)

Sec. 1002.019. MINOR. "Minor" means a person younger than 18 years of age who:

(1) has never been married; and

(2) has not had the disabilities of minority removed for general purposes. (Tex. Prob. Code, Sec. 601(16).)

Sec. 1002.020. MORTGAGE; LIEN. "Mortgage" and "lien" include:

(1) a deed of trust;

(2) a vendor's lien;

(3) a mechanic's, materialman's, or laborer's lien;

(4) a judgment, attachment, or garnishment lien;

1           (5) a federal or state tax lien;  
2           (6) a chattel mortgage; and  
3           (7) a pledge by hypothecation. (Tex. Prob. Code, Sec.  
4 601(18).)

5           Sec. 1002.021. NEXT OF KIN. "Next of kin" includes:

6           (1) an adopted child;  
7           (2) an adopted child's descendants; and  
8           (3) the adoptive parent of an adopted child. (Tex.  
9 Prob. Code, Sec. 601(19).)

10          Sec. 1002.022. PARENT. "Parent" means the mother of a  
11 child, a man presumed to be the biological father of a child, a man  
12 who has been adjudicated to be the biological father of a child by a  
13 court of competent jurisdiction, or an adoptive mother or father of  
14 a child, but does not include a parent as to whom the parent-child  
15 relationship has been terminated. (Tex. Prob. Code, Sec. 601(20).)

16          Sec. 1002.023. PERSON. (a) "Person" includes a natural  
17 person, a corporation, and a guardianship program.

18          (b) The definition of "person" assigned by Section 311.005,  
19 Government Code, does not apply to any provision in this title.  
20 (Tex. Prob. Code, Sec. 601(21); New.)

21          Sec. 1002.024. PERSONAL PROPERTY. "Personal property"  
22 includes an interest in:

23           (1) goods;  
24           (2) money;  
25           (3) a chose in action;  
26           (4) an evidence of debt; and  
27           (5) a real chattel. (Tex. Prob. Code, Sec. 601(22).)

1           Sec. 1002.025. PRIVATE PROFESSIONAL GUARDIAN. "Private  
2 professional guardian" has the meaning assigned by Section 111.001,  
3 Government Code. (Tex. Prob. Code, Sec. 601(24).)

4           Sec. 1002.026. PROPOSED WARD. "Proposed ward" means a  
5 person alleged in a guardianship proceeding to be incapacitated.  
6 (Tex. Prob. Code, Sec. 601(27).)

7           Sec. 1002.027. REAL PROPERTY. "Real property" includes  
8 estates and interests in land, whether corporeal or incorporeal or  
9 legal or equitable. The term does not include a real chattel.  
10 (Tex. Prob. Code, Sec. 601(28).)

11          Sec. 1002.028. REPRESENTATIVE; PERSONAL REPRESENTATIVE.  
12 "Representative" and "personal representative" include:

- 13               (1) a guardian; and  
14               (2) a successor guardian. (Tex. Prob. Code, Sec.  
15 601(23).)

16          Sec. 1002.029. SURETY. "Surety" includes a personal surety  
17 and a corporate surety. (Tex. Prob. Code, Sec. 601(30).)

18          Sec. 1002.030. WARD. "Ward" means a person for whom a  
19 guardian has been appointed. (Tex. Prob. Code, Sec. 601(31).)

20               [Chapters 1003-1030 reserved for expansion]

21               SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

22                       [Chapters 1031-1050 reserved]

23               SUBTITLE C. PROCEDURAL MATTERS

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8 NOTICE SERVED BY PERSONAL SERVICE

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11 Sec. 1051.153. PROOF OF SERVICE

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15 Sec. 1051.201. COURT-ORDERED ISSUANCE, SERVICE, AND

16 RETURN UNDER CERTAIN CIRCUMSTANCES

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19 Sec. 1051.251. WAIVER OF NOTICE OF HEARING

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21 PLEADING

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23 DEPOSITIONS IN CERTAIN MATTERS

24 CHAPTER 1051. NOTICES AND PROCESS IN GUARDIANSHIP PROCEEDINGS IN

25 GENERAL

26 SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

27 Sec. 1051.001. ISSUANCE OF NOTICE OR PROCESS IN GENERAL.

1 (a) Except as provided by Subsection (b), a person is not required  
2 to be cited or otherwise given notice in a guardianship matter  
3 except in a situation in which this title expressly provides for  
4 citation or the giving of notice.

5 (b) If this title does not expressly provide for citation or  
6 the issuance or return of notice in a guardianship matter, the court  
7 may require that notice be given. A court that requires that notice  
8 be given shall prescribe the form and manner of service of the  
9 notice and the return of service.

10 (c) Unless a court order is required by this title, the  
11 county clerk without a court order shall issue:

12 (1) necessary citations, writs, and other process in a  
13 guardianship matter; and

14 (2) all notices not required to be issued by a  
15 guardian. (Tex. Prob. Code, Secs. 632(a), (b).)

16 Sec. 1051.002. DIRECTION OF WRIT OR OTHER PROCESS. (a) A  
17 writ or other process other than a citation or notice must be  
18 directed "To any sheriff or constable within the State of Texas."

19 (b) Notwithstanding Subsection (a), a writ or other process  
20 other than a citation or notice may not be held defective because  
21 the process is directed to the sheriff or a constable of a named  
22 county if the process is properly served within that county by an  
23 officer authorized to serve the process. (Tex. Prob. Code, Sec.  
24 632(c) (part).)

25 Sec. 1051.003. CONTENTS OF CITATION OR NOTICE. (a) A  
26 citation or notice must:

27 (1) be directed to the person to be cited or notified;

(2) be dated;

(3) state the style and number of the proceeding;

(4) state the court in which the proceeding is pending;

(5) describe generally the nature of the proceeding or matter to which the citation or notice relates;

(6) direct the person being cited or notified to appear by filing a written contest or answer or to perform another required action; and

(7) state when and where the appearance or performance described by Subdivision (6) is required.

(b) A citation or notice issued by the county clerk must be styled "The State of Texas" and be signed by the clerk under the clerk's seal.

(c) A notice required to be given by a guardian must be in writing and be signed by the guardian in the guardian's official capacity.

(d) A citation or notice is not required to contain a precept directed to an officer, but may not be held defective because the citation or notice contains a precept directed to an officer authorized to serve the citation or notice. (Tex. Prob. Code, Sec. 632(c) (part).)

[Sections 1051.004-1051.050 reserved for expansion]

SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS TO BE SERVED

Sec. 1051.051. PERSONAL SERVICE. (a) Except as otherwise provided by Subsection (b), if personal service of citation or



1 notice is required, the citation or notice must be served on the  
2 attorney of record for the person to be cited or notified.  
3 Notwithstanding the requirement of personal service, service may be  
4 made on that attorney by any method specified by Section 1051.055  
5 for service on an attorney of record.

6 (b) If the person to be cited or notified does not have an  
7 attorney of record in the proceeding, or if an attempt to serve the  
8 person's attorney is unsuccessful:

9 (1) the sheriff or constable shall serve the citation  
10 or notice by delivering a copy of the citation or notice to the  
11 person to be cited or notified, in person, if the person to whom the  
12 citation or notice is directed is in this state; or

13 (2) a disinterested person competent to make an oath  
14 that the citation or notice was served may serve the citation or  
15 notice, if the person to be cited or notified is absent from or is  
16 not a resident of this state.

17 (c) The return day of the citation or notice served under  
18 Subsection (b) must be at least 10 days after the date of service,  
19 excluding the date of service.

20 (d) If the citation or notice attempted to be served as  
21 provided by Subsection (b) is returned with the notation that the  
22 person sought to be served, whether inside or outside this state,  
23 cannot be found, the county clerk shall issue a new citation or  
24 notice. Service of the new citation or notice must be made by  
25 publication. (Tex. Prob. Code, Sec. 632(f)(1) (part).)

26 Sec. 1051.052. SERVICE BY MAIL. (a) The county clerk, or  
27 the guardian if required by statute or court order, shall serve a

1 citation or notice required or permitted to be served by regular  
2 mail by mailing the original citation or notice to the person to be  
3 cited or notified.

4 (b) Except as provided by Subsection (c), the county clerk  
5 shall issue a citation or notice required or permitted to be served  
6 by registered or certified mail and shall serve the citation or  
7 notice by mailing the original citation or notice by registered or  
8 certified mail.

9 (c) A guardian shall issue a notice required to be given by  
10 the guardian by registered or certified mail and shall serve the  
11 notice by mailing the original notice by registered or certified  
12 mail.

13 (d) The county clerk or guardian, as applicable, shall mail  
14 a citation or notice under Subsection (b) or (c) with an instruction  
15 to deliver the citation or notice to the addressee only and with  
16 return receipt requested. The clerk or guardian, as applicable,  
17 shall address the envelope containing the citation or notice to:

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

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

23 (e) Service by mail must be made at least 20 days before the  
24 return day of the citation or notice, excluding the date of service.  
25 The date of service by mail is the date of mailing.

26 (f) A copy of a citation or notice served under Subsection  
27 (a), (b), or (c) and a certificate of the person serving the

1 citation or notice showing that the citation or notice was mailed  
2 and the date of the mailing shall be filed and recorded. A returned  
3 receipt for a citation or notice served under Subsection (b) or (c)  
4 shall be attached to the certificate.

5 (g) If a citation or notice served by mail is returned  
6 undelivered, a new citation or notice shall be issued. Service of  
7 the new citation or notice must be made by posting. (Tex. Prob.  
8 Code, Sec. 632(f)(4).)

9 Sec. 1051.053. SERVICE BY POSTING. (a) The county clerk  
10 shall deliver the original and a copy of a citation or notice  
11 required to be posted to the sheriff or a constable of the county in  
12 which the proceeding is pending. The sheriff or constable shall  
13 post the copy at the door of the county courthouse or the location  
14 in or near the courthouse where public notices are customarily  
15 posted.

16 (b) Citation or notice under this section must be posted for  
17 at least 10 days before the return day of the citation or notice,  
18 excluding the date of posting, except as provided by Section  
19 1051.152(b). The date of service of citation or notice by posting  
20 is the date of posting.

21 (c) A sheriff or constable who posts a copy of a citation or  
22 notice under this section shall return the original citation or  
23 notice to the county clerk and state the date and location of the  
24 posting in a written return of the copy of the citation or notice.

25 (d) The method of service prescribed by this section applies  
26 when a guardian is required or permitted to post a notice. The  
27 notice must be:

(1) issued in the name of the guardian;

(2) addressed and delivered to, and posted and returned by, the appropriate officer; and

(3) filed with the county clerk. (Tex. Prob. Code, Sec. 632(f)(2).)

Sec. 1051.054. SERVICE BY PUBLICATION. (a) Citation or notice to a person to be served by publication shall be published one time in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the citation or notice, excluding the date of publication.

(b) The date of service of citation or notice by publication is the date of publication printed on the newspaper in which the citation or notice is published.

(c) If there is not a newspaper of general circulation published or printed in the county in which the citation or notice is to be published, the citation or notice under Subsection (a) shall be served by posting. (Tex. Prob. Code, Sec. 632(f)(3).)

Sec. 1051.055. SERVICE ON PARTY'S ATTORNEY OF RECORD. (a) If a party is represented by an attorney of record in a guardianship proceeding, a citation or notice required to be served on the party shall be served instead on that attorney.

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

(1) delivery to the attorney in person;

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

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

(c) A notice or citation may be served on an attorney under this section by:

(1) another party to the proceeding;

(2) the attorney of record for another party to the proceeding;

(3) an appropriate sheriff or constable; or

(4) another person competent to testify.

(d) Each of the following is prima facie evidence of the fact that service has been made under this section:

(1) the written statement of an attorney of record showing service;

(2) the return of the officer showing service; and

(3) the affidavit of a person showing service.

(e) Except as provided by Section 1051.105, an attorney ad litem may not waive personal service of citation. (Tex. Prob. Code, Sec. 634.)

Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a guardian or receiver shall serve the citation or notice by mailing the original citation or notice by registered or certified mail to:

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

or

(2) the guardian or receiver, if the guardian or

1 receiver does not have an attorney of record. (Tex. Prob. Code,  
2 Sec. 632(e).)

3 [Sections 1051.057-1051.100 reserved for expansion]

4 SUBCHAPTER C. NOTICE AND CITATION REQUIRED FOR APPLICATION FOR  
5 GUARDIANSHIP

6 Sec. 1051.101. NOTICE REQUIRED FOR APPLICATION FOR  
7 GUARDIANSHIP; CITATION OF APPLICANT NOT REQUIRED. (a) On the filing  
8 of an application for guardianship, notice shall be issued and  
9 served as provided by this subchapter.

10 (b) It is not necessary to serve a citation on a person who  
11 files an application for the creation of a guardianship under this  
12 title or for that person to waive the issuance and personal service  
13 of citation under this subchapter. (Tex. Prob. Code, Secs. 633(a),  
14 (g).)

15 Sec. 1051.102. ISSUANCE OF CITATION FOR APPLICATION FOR  
16 GUARDIANSHIP. (a) On the filing of an application for guardianship,  
17 the court clerk shall issue a citation stating:

- 18 (1) that the application was filed;  
19 (2) the name of the proposed ward;  
20 (3) the name of the applicant; and  
21 (4) the name of the person to be appointed guardian as  
22 provided in the application, if that person is not the applicant.

23 (b) The citation must cite all persons interested in the  
24 welfare of the proposed ward to appear at the time and place stated  
25 in the notice if the persons wish to contest the application.

26 (c) The citation shall be posted. (Tex. Prob. Code, Sec.  
27 633(b).)

1           Sec. 1051.103. SERVICE OF CITATION FOR APPLICATION FOR  
2 GUARDIANSHIP. The sheriff or other officer shall personally serve  
3 citation to appear and answer an application for guardianship on:

4           (1) a proposed ward who is 12 years of age or older;

5           (2) the proposed ward's parents, if the whereabouts of  
6 the parents are known or can be reasonably ascertained;

7           (3) any court-appointed conservator or person having  
8 control of the care and welfare of the proposed ward;

9           (4) the proposed ward's spouse, if the whereabouts of  
10 the spouse are known or can be reasonably ascertained; and

11           (5) the person named in the application to be  
12 appointed guardian, if that person is not the applicant. (Tex.  
13 Prob. Code, Sec. 633(c).)

14           Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP. (a)  
15 The person filing an application for guardianship shall mail a copy  
16 of the application and a notice containing the information required  
17 in the citation issued under Section 1051.102 by registered or  
18 certified mail, return receipt requested, or by any other form of  
19 mail that provides proof of delivery, to the following persons, if  
20 their whereabouts are known or can be reasonably ascertained:

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

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

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

25           (4) the operator of a residential facility in which  
26 the proposed ward resides;

27           (5) a person whom the applicant knows to hold a power

1 of attorney signed by the proposed ward;

2 (6) a person designated to serve as guardian of the  
3 proposed ward by a written declaration under Subchapter E, Chapter  
4 1104, if the applicant knows of the existence of the declaration;

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

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

12 (9) each person named as next of kin in the application  
13 as required by Section 1101.001(b)(11) or (13).

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

15 (1) a copy of any notice required by Subsection (a) and  
16 the proofs of delivery of the notice; and

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

19 (A) that the notice was mailed as required by  
20 Subsection (a); and

21 (B) the name of each person to whom the notice was  
22 mailed, if the person's name is not shown on the proof of delivery.

23 (c) Failure of the applicant to comply with Subsections  
24 (a)(2)-(9) does not affect the validity of a guardianship created  
25 under this title. (Tex. Prob. Code, Secs. 633(d), (d-1), (f)  
26 (part).)

27 Sec. 1051.105. WAIVER OF NOTICE OF APPLICATION FOR



1 GUARDIANSHIP. A person other than the proposed ward who is entitled  
2 to receive notice or personal service of citation under Sections  
3 1051.103 and 1051.104(a) may, by writing filed with the clerk,  
4 waive the receipt of notice or the issuance and personal service of  
5 citation either in person or through an attorney ad litem. (Tex.  
6 Prob. Code, Sec. 633(e).)

7 Sec. 1051.106. ACTION BY COURT ON APPLICATION FOR  
8 GUARDIANSHIP. The court may not act on an application for the  
9 creation of a guardianship until the applicant has complied with  
10 Section 1051.104(b) and not earlier than the Monday following the  
11 expiration of the 10-day period beginning on the date service of  
12 notice and citation has been made as provided by Sections 1051.102,  
13 1051.103, and 1051.104(a)(1). (Tex. Prob. Code, Sec. 633(f)  
14 (part).)

15 [Sections 1051.107-1051.150 reserved for expansion]

16 SUBCHAPTER D. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

17 Sec. 1051.151. REQUIREMENTS FOR RETURN ON CITATION OR  
18 NOTICE SERVED BY PERSONAL SERVICE. The return of the person serving  
19 a citation or notice under Section 1051.051 must:

20 (1) be endorsed on or attached to the citation or  
21 notice;

22 (2) state the date and place of service;

23 (3) certify that a copy of the citation or notice was  
24 delivered to the person directed to be served;

25 (4) be subscribed and sworn to before, and under the  
26 hand and official seal of, an officer authorized by the laws of this  
27 state to take an affidavit; and

1           (5) be returned to the county clerk who issued the  
2 citation or notice. (Tex. Prob. Code, Sec. 632(f)(1) (part).)

3           Sec. 1051.152. VALIDITY OF SERVICE AND RETURN ON CITATION  
4 OR NOTICE SERVED BY POSTING. (a) A citation or notice in a  
5 guardianship matter that is required to be served by posting and is  
6 issued in conformity with this title, and the service of and return  
7 of the citation or notice, is valid if:

8           (1) a sheriff or constable posts a copy of the citation  
9 or notice at the location or locations prescribed by this title; and

10           (2) the posting occurs on a day preceding the return  
11 day of service specified in the citation or notice that provides  
12 sufficient time for the period the citation or notice must be posted  
13 to expire before the specified return day.

14           (b) The fact that the sheriff or constable, as applicable,  
15 makes the return of service on the citation or notice described by  
16 Subsection (a) and returns the citation or notice on which the  
17 return has been made to the court before the expiration of the  
18 period the citation or notice must be posted does not affect the  
19 validity of the citation or notice or the service or return of  
20 service. This subsection applies even if the sheriff or constable  
21 makes the return of service and returns the citation or notice to  
22 the court on the same day the citation or notice is issued. (Tex.  
23 Prob. Code, Sec. 632(h).)

24           Sec. 1051.153. PROOF OF SERVICE. (a) Proof of service in  
25 each case requiring citation or notice must be filed before a  
26 hearing.

27           (b) Proof of service consists of:

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

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

5           (3) if the service is made by mail:

6                 (A) the certificate of the county clerk making  
7 the service, or the affidavit of the guardian or other person making  
8 the service that states that the citation or notice was mailed and  
9 the date of the mailing; and

10                (B) the return receipt attached to the  
11 certificate, if the mailing was by registered or certified mail and  
12 a receipt has been returned; and

13           (4) if the service is made by publication, an  
14 affidavit that:

15                 (A) is made by the publisher of the newspaper in  
16 which the citation or notice was published or an employee of the  
17 publisher;

18                 (B) contains or to which is attached a copy of the  
19 published citation or notice; and

20                 (C) states the date of publication printed on the  
21 newspaper in which the citation or notice was published. (Tex.  
22 Prob. Code, Sec. 632(i).)

23       Sec. 1051.154. RETURN TO COURT. A citation or notice issued  
24 by a county clerk must be returned to the court from which the  
25 citation or notice was issued on the first Monday after the service  
26 is perfected. (Tex. Prob. Code, Sec. 632(g).)

27       [Sections 1051.155-1051.200 reserved for expansion]

SUBCHAPTER E. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

Sec. 1051.201. COURT-ORDERED ISSUANCE, SERVICE, AND RETURN UNDER CERTAIN CIRCUMSTANCES. (a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:

- (1) an interested person requests that action;
- (2) a specific method is not provided by this title for giving the citation or notice;
- (3) a specific method is not provided by this title for the service and return of citation or notice; or
- (4) a provision with respect to a matter relating to citation or notice is inadequate.

(b) Citation or notice issued, served, and returned in the manner specified by a court order as provided by Subsection (a) has the same effect as if the manner of service and return had been specified by this title. (Tex. Prob. Code, Sec. 632(d).)

[Sections 1051.202-1051.250 reserved for expansion]

SUBCHAPTER F. ADDITIONAL NOTICE PROVISIONS

Sec. 1051.251. WAIVER OF NOTICE OF HEARING. (a) A competent person who is interested in a hearing in a guardianship proceeding may waive notice of the hearing in writing either in person or through an attorney.

(b) A consul or other representative of a foreign government whose appearance has been entered as provided by law on behalf of a person residing in a foreign country may waive notice on the person's behalf.

1 (c) A person who submits to the jurisdiction of the court in  
2 a hearing is considered to have waived notice of the hearing. (Tex.  
3 Prob. Code, Sec. 635.)

4 Sec. 1051.252. REQUEST FOR NOTICE OF FILING OF PLEADING.

5 (a) At any time after an application is filed to commence a  
6 guardianship proceeding, a person interested in the estate or  
7 welfare of a ward or incapacitated person may file with the county  
8 clerk a written request to be notified of all, or any specified,  
9 motions, applications, or pleadings filed with respect to the  
10 proceeding by any person or by a person specifically designated in  
11 the request. A person filing a request under this section is  
12 responsible for payment of the fees and other costs of providing the  
13 requested documents, and the clerk may require a deposit to cover  
14 the estimated costs of providing the notice. The clerk shall send  
15 to the requestor by regular mail a copy of any requested document.

16 (b) A county clerk's failure to comply with a request under  
17 this section does not invalidate a proceeding. (Tex. Prob. Code,  
18 Sec. 632(j).)

19 Sec. 1051.253. SERVICE OF NOTICE OF INTENTION TO TAKE  
20 DEPOSITIONS IN CERTAIN MATTERS. (a) In a guardianship proceeding  
21 in which there is no opposing party or attorney of record on whom to  
22 serve notice and copies of interrogatories, service may be made by  
23 posting notice of the intention to take depositions for a period of  
24 10 days as provided by Section 1051.053 governing a posting of  
25 notice.

26 (b) When notice by posting under Subsection (a) is filed  
27 with the clerk, a copy of the interrogatories must also be filed.

(c) At the expiration of the 10-day period prescribed by Subsection (a):

(1) commission may issue for taking the depositions for which the notice was posted; and

(2) the judge may file cross-interrogatories if no person appears. (Tex. Prob. Code, Sec. 649 (part).)

#### CHAPTER 1052. FILING AND RECORDKEEPING

##### SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

Sec. 1052.001. GUARDIANSHIP DOCKET

Sec. 1052.002. CLAIM DOCKET

Sec. 1052.003. GUARDIANSHIP FEE BOOK

Sec. 1052.004. ALTERNATE RECORDKEEPING

[Sections 1052.005-1052.050 reserved for expansion]

##### SUBCHAPTER B. FILES; INDEX

Sec. 1052.051. FILING PROCEDURES

Sec. 1052.052. CASE FILES

Sec. 1052.053. INDEX

#### CHAPTER 1052. FILING AND RECORDKEEPING

##### SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

Sec. 1052.001. GUARDIANSHIP DOCKET. (a) The county clerk shall maintain a record book titled "Judge's Guardianship Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;

(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship;

1           (3) the date each original application for a  
2 guardianship proceeding is filed;

3           (4) a notation of each order, judgment, decree, and  
4 proceeding that occurs in each estate, including the date it  
5 occurs; and

6           (5) the docket number of each guardianship as assigned  
7 under Subsection (b).

8           (b) The county clerk shall assign a docket number to each  
9 guardianship in the order a proceeding is commenced. (Tex. Prob.  
10 Code, Sec. 623(a).)

11          Sec. 1052.002. CLAIM DOCKET. (a) The county clerk shall  
12 maintain a record book titled "Claim Docket" and shall record in the  
13 book each claim that is presented against a guardianship for the  
14 court's approval.

15          (b) The county clerk shall assign one or more pages of the  
16 record book to each guardianship.

17          (c) The claim docket must be ruled in 16 columns at proper  
18 intervals from top to bottom, with a short note of the contents at  
19 the top of each column. The county clerk shall record for each  
20 claim, in the order the claims are filed, the following information  
21 in the respective columns, beginning with the first or marginal  
22 column:

23               (1) the name of the claimant;

24               (2) the amount of the claim;

25               (3) the date of the claim;

26               (4) the date the claim is filed;

27               (5) the date the claim is due;

- 1           (6)   the date the claim begins bearing interest;
- 2           (7)   the interest rate;
- 3           (8)   the date the claim is allowed by the guardian, if
- 4 applicable;
- 5           (9)   the amount allowed by the guardian, if applicable;
- 6           (10)   the date the claim is rejected, if applicable;
- 7           (11)   the date the claim is approved, if applicable;
- 8           (12)   the amount approved for the claim, if applicable;
- 9           (13)   the date the claim is disapproved, if applicable;
- 10           (14)   the class to which the claim belongs;
- 11           (15)   the date the claim is established by a judgment of
- 12 a court, if applicable; and
- 13           (16)   the amount of the judgment established under
- 14 Subdivision (15), if applicable. (Tex. Prob. Code, Sec. 624.)

15           Sec. 1052.003. GUARDIANSHIP FEE BOOK. (a) The county clerk  
16 shall maintain a record book titled "Guardianship Fee Book" and  
17 shall record in the book each item of cost that accrues to the  
18 officers of the court and any witness fees.

19           (b) Each record entry must include:

- 20           (1)   the party to whom the cost or fee is due;
- 21           (2)   the date the cost or fee accrued;
- 22           (3)   the guardianship or party liable for the cost or
- 23 fee; and
- 24           (4)   the date the cost or fee is paid. (Tex. Prob.
- 25 Code, Sec. 626.)

26           Sec. 1052.004. ALTERNATE RECORDKEEPING.       Instead of  
27 maintaining the record books described by Sections 1052.001,



1 1052.002, and 1052.003, the county clerk may maintain the  
2 information described by those sections relating to a person's  
3 guardianship proceeding:

- 4 (1) on a computer file;
  - 5 (2) on microfilm;
  - 6 (3) in the form of a digitized optical image; or
  - 7 (4) in another similar form of data compilation.
- 8 (Tex. Prob. Code, Sec. 627.)

9 [Sections 1052.005-1052.050 reserved for expansion]

10 SUBCHAPTER B. FILES; INDEX

11 Sec. 1052.051. FILING PROCEDURES. (a) An application for a  
12 guardianship proceeding, complaint, petition, or other paper  
13 permitted or required by law to be filed with a court in a  
14 guardianship matter must be filed with the county clerk of the  
15 appropriate county.

16 (b) Each paper filed in a guardianship proceeding must be  
17 given the docket number assigned to the estate.

18 (c) On receipt of a paper described by Subsection (a), the  
19 county clerk shall:

- 20 (1) file the paper; and
- 21 (2) endorse on the paper:
  - 22 (A) the date the paper is filed;
  - 23 (B) the docket number; and
  - 24 (C) the clerk's official signature. (Tex. Prob.
  - 25 Code, Secs. 621, 623(b).)

26 Sec. 1052.052. CASE FILES. (a) The county clerk shall  
27 maintain a case file for each person's filed guardianship

1 proceedings.

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

5 (1) application for the granting of guardianship;

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

8 (3) bond and official oath;

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

10 (5) exhibit and account;

11 (6) report of renting;

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

13 (8) report of sale;

14 (9) application for authority to execute a lease for  
15 mineral development, or for pooling or unitization of lands,  
16 royalty, or other interest in minerals, or to lend or invest money;

17 (10) report of lending or investing money; and

18 (11) report of guardians of the persons. (Tex. Prob.  
19 Code, Sec. 625.)

20 Sec. 1052.053. INDEX. (a) The county clerk shall properly  
21 index the records required under this chapter.

22 (b) The county clerk shall keep the index open for public  
23 inspection but may not release the index from the clerk's custody.  
24 (Tex. Prob. Code, Sec. 627A.)

25 CHAPTER 1053. OTHER COURT DUTIES AND PROCEDURES

26 SUBCHAPTER A. ENFORCEMENT OF ORDERS

27 Sec. 1053.001. ENFORCEMENT OF ORDERS

[Sections 1053.002-1053.050 reserved for expansion]

SUBCHAPTER B. COSTS AND SECURITY

Sec. 1053.051. APPLICABILITY OF CERTAIN LAWS

Sec. 1053.052. SECURITY FOR CERTAIN COSTS

[Sections 1053.053-1053.100 reserved for expansion]

SUBCHAPTER C. PROCEDURES FOR GUARDIANSHIP MATTERS

Sec. 1053.101. CALLING OF DOCKETS

Sec. 1053.102. SETTING OF CERTAIN HEARINGS BY CLERK

Sec. 1053.103. RENDERING OF DECISIONS, ORDERS,

DECREES, AND JUDGMENTS

CHAPTER 1053. OTHER COURT DUTIES AND PROCEDURES

SUBCHAPTER A. ENFORCEMENT OF ORDERS

Sec. 1053.001. ENFORCEMENT OF ORDERS. A judge may enforce an order entered against a guardian by attachment and confinement. Unless this title expressly provides otherwise, the term of confinement for any one offense under this section may not exceed three days. (Tex. Prob. Code, Sec. 651.)

[Sections 1053.002-1053.050 reserved for expansion]

SUBCHAPTER B. COSTS AND SECURITY

Sec. 1053.051. APPLICABILITY OF CERTAIN LAWS. A law regulating costs in ordinary civil cases applies to a guardianship matter unless otherwise expressly provided by this title. (Tex. Prob. Code, Sec. 622(a).)

Sec. 1053.052. SECURITY FOR CERTAIN COSTS. (a) The clerk may require a person who files an application, complaint, or opposition relating to a guardianship matter, other than a guardian, attorney ad litem, or guardian ad litem, to provide

1 security for the probable costs of the guardianship proceeding  
2 before filing the application, complaint, or opposition.

3 (b) At any time before the trial of an application,  
4 complaint, or opposition described by Subsection (a), an officer of  
5 the court or a person interested in the guardianship or in the  
6 welfare of the ward may, by written motion, obtain from the court an  
7 order requiring the person who filed the application, complaint, or  
8 opposition to provide security for the probable costs of the  
9 proceeding. The rules governing civil suits in the county court  
10 with respect to providing security for the probable costs of a  
11 proceeding control in cases described by Subsection (a) and this  
12 subsection.

13 (c) A guardian, attorney ad litem, or guardian ad litem  
14 appointed under this title by a court of this state may not be  
15 required to provide security for costs in an action brought by the  
16 guardian, attorney ad litem, or guardian ad litem in the  
17 guardian's, attorney ad litem's, or guardian ad litem's fiduciary  
18 capacity. (Tex. Prob. Code, Secs. 622(b), (c).)

19 [Sections 1053.053-1053.100 reserved for expansion]

20 SUBCHAPTER C. PROCEDURES FOR GUARDIANSHIP MATTERS

21 Sec. 1053.101. CALLING OF DOCKETS. The judge in whose court  
22 a guardianship proceeding is pending, as determined by the judge,  
23 shall:

24 (1) call guardianship matters in the matters' regular  
25 order on both the guardianship and claim dockets; and

26 (2) issue necessary orders. (Tex. Prob. Code, Sec.  
27 629.)

1           Sec. 1053.102.   SETTING OF CERTAIN HEARINGS BY CLERK.   (a)  
2   If a judge is unable to designate the time and place for hearing a  
3   guardianship matter pending in the judge's court because the judge  
4   is absent from the county seat or is on vacation, disqualified, ill,  
5   or deceased, the county clerk of the county in which the matter is  
6   pending may:

- 7                   (1)   designate the time and place for hearing;  
8                   (2)   enter the setting on the judge's docket; and  
9                   (3)   certify on the docket the reason that the judge is  
10   not acting to set the hearing.

11           (b)   If, after the perfection of the service of notices and  
12   citations required by law concerning the time and place of hearing,  
13   a qualified judge is not present for a hearing set under Subsection  
14   (a), the hearing is automatically continued from day to day until a  
15   qualified judge is present to hear and determine the matter. (Tex.  
16   Prob. Code, Sec. 630.)

17           Sec. 1053.103.   RENDERING OF DECISIONS, ORDERS, DECREES, AND  
18   JUDGMENTS.   The court shall render a decision, order, decree, or  
19   judgment in a guardianship matter in open court, except as  
20   otherwise expressly provided. (Tex. Prob. Code, Sec. 650.)

21           CHAPTER 1054.   COURT OFFICERS AND COURT-APPOINTED PERSONS

22                   SUBCHAPTER A.   ATTORNEYS AD LITEM AND INTERPRETERS

23   Sec. 1054.001.   APPOINTMENT OF ATTORNEY AD LITEM IN

24                                   PROCEEDING FOR APPOINTMENT OF

25                                   GUARDIAN

26   Sec. 1054.002.   TERM OF APPOINTMENT

27   Sec. 1054.003.   ACCESS TO RECORDS

1 Sec. 1054.004. DUTIES  
2 Sec. 1054.005. APPOINTMENT OF INTERPRETER  
3 [Sections 1054.006-1054.050 reserved for expansion]  
4 SUBCHAPTER B. GUARDIANS AD LITEM  
5 Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN  
6 GUARDIANSHIP PROCEEDING  
7 Sec. 1054.052. APPOINTMENT OF GUARDIAN AD LITEM  
8 RELATING TO CERTAIN OTHER SUITS  
9 Sec. 1054.053. TERM OF CERTAIN APPOINTMENTS  
10 Sec. 1054.054. DUTIES  
11 Sec. 1054.055. COMPENSATION AND EXPENSES  
12 Sec. 1054.056. IMMUNITY  
13 [Sections 1054.057-1054.100 reserved for expansion]  
14 SUBCHAPTER C. COURT VISITORS  
15 Sec. 1054.101. INAPPLICABILITY OF SUBCHAPTER TO  
16 CERTAIN GUARDIANSHIPS  
17 Sec. 1054.102. OPERATION OF COURT VISITOR PROGRAM  
18 Sec. 1054.103. EVALUATION OF WARD OR PROPOSED WARD  
19 Sec. 1054.104. EVALUATION REPORT  
20 Sec. 1054.105. COMPENSATION  
21 [Sections 1054.106-1054.150 reserved for expansion]  
22 SUBCHAPTER D. COURT INVESTIGATORS  
23 Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP  
24 APPLICATION  
25 Sec. 1054.152. GENERAL DUTIES  
26 Sec. 1054.153. INVESTIGATION REPORT  
27 Sec. 1054.154. EFFECT OF SUBCHAPTER ON OTHER LAW

[Sections 1054.155-1054.200 reserved for expansion]

SUBCHAPTER E. QUALIFICATIONS TO SERVE AS COURT-APPOINTED ATTORNEY

Sec. 1054.201. CERTIFICATION REQUIRED

Sec. 1054.202. CERTIFICATE EXPIRATION

Sec. 1054.203. ELIGIBILITY FOR APPOINTMENT ON

EXPIRATION OF CERTIFICATE

CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

SUBCHAPTER A. ATTORNEYS AD LITEM AND INTERPRETERS

Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests. (Tex. Prob. Code, Sec. 646(a) (part).)

Sec. 1054.002. TERM OF APPOINTMENT. Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward's best interests, the attorney's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian; or

(2) denies the application for appointment of a guardian. (Tex. Prob. Code, Sec. 646(e).)

Sec. 1054.003. ACCESS TO RECORDS. An attorney ad litem appointed under Section 1054.001 shall be provided copies of all of the current records in the guardianship case. The attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records. (Tex. Prob. Code, Sec. 646(a) (part).)

1           Sec. 1054.004. DUTIES. (a) An attorney ad litem appointed  
2 under Section 1054.001 shall interview the proposed ward within a  
3 reasonable time before the hearing in the proceeding for the  
4 appointment of a guardian. To the greatest extent possible, the  
5 attorney shall discuss with the proposed ward:

6                   (1) the law and facts of the case;

7                   (2) the proposed ward's legal options regarding  
8 disposition of the case; and

9                   (3) the grounds on which guardianship is sought.

10          (b) Before the hearing, the attorney ad litem shall review:

11                   (1) the application for guardianship;

12                   (2) certificates of current physical, medical, and  
13 intellectual examinations; and

14                   (3) all of the proposed ward's relevant medical,  
15 psychological, and intellectual testing records. (Tex. Prob. Code,  
16 Sec. 647.)

17          Sec. 1054.005. APPOINTMENT OF INTERPRETER. At the time the  
18 court appoints the attorney ad litem under Section 1054.001, the  
19 court shall appoint a language interpreter or sign interpreter if  
20 necessary to ensure effective communication between the proposed  
21 ward and the attorney. (Tex. Prob. Code, Sec. 646(d).)

22           [Sections 1054.006-1054.050 reserved for expansion]

23                   SUBCHAPTER B. GUARDIANS AD LITEM

24          Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN  
25 GUARDIANSHIP PROCEEDING. The judge may appoint a guardian ad litem  
26 to represent the interests of an incapacitated person in a  
27 guardianship proceeding. (Tex. Prob. Code, Sec. 645(a).)



1           Sec. 1054.052. APPOINTMENT OF GUARDIAN AD LITEM RELATING TO  
2 CERTAIN OTHER SUITS. In the interest of judicial economy, the court  
3 may appoint as guardian ad litem under Section 1104.354(1) the  
4 person who has been appointed attorney ad litem under Section  
5 1054.001 or the person who is serving as an ad litem for the ward's  
6 benefit in any other proceeding. (Tex. Prob. Code, Sec. 645(e).)

7           Sec. 1054.053. TERM OF CERTAIN APPOINTMENTS. Unless the  
8 court determines that the continued appointment of a guardian ad  
9 litem appointed in a proceeding for the appointment of a guardian is  
10 in the ward's best interests, the guardian ad litem's term of  
11 appointment expires, without a court order, on the date the court:

12                   (1) appoints a guardian; or

13                   (2) denies the application for appointment of a  
14 guardian. (Tex. Prob. Code, Sec. 645(f).)

15           Sec. 1054.054. DUTIES. (a) A guardian ad litem is an  
16 officer of the court.

17           (b) A guardian ad litem shall protect the incapacitated  
18 person whose interests the guardian has been appointed to represent  
19 in a manner that will enable the court to determine the action that  
20 will be in that person's best interests. (Tex. Prob. Code, Sec.  
21 645(c).)

22           Sec. 1054.055. COMPENSATION AND EXPENSES. (a) A guardian  
23 ad litem is entitled to reasonable compensation for services  
24 provided in the amount set by the court, to be taxed as costs in the  
25 proceeding.

26           (b) The fees and expenses of a guardian ad litem appointed  
27 under Section 1104.354(1) are costs of the litigation proceeding

1 that made the appointment necessary. (Tex. Prob. Code, Secs.  
2 645(b), (d).)

3 Sec. 1054.056. IMMUNITY. (a) Subject to Subsection (b), a  
4 guardian ad litem appointed under this subchapter or Section  
5 1102.001 or 1202.054 to represent the interests of an incapacitated  
6 person in a guardianship proceeding involving the creation,  
7 modification, or termination of a guardianship is not liable for  
8 civil damages arising from a recommendation made or an opinion  
9 given in the capacity of guardian ad litem.

10 (b) This section does not apply to a recommendation or  
11 opinion that is:

12 (1) wilfully wrongful;

13 (2) given:

14 (A) with conscious indifference to or reckless  
15 disregard for the safety of another;

16 (B) with malice; or

17 (C) in bad faith; or

18 (3) grossly negligent. (Tex. Prob. Code, Sec. 645A.)

19 [Sections 1054.057-1054.100 reserved for expansion]

20 SUBCHAPTER C. COURT VISITORS

21 Sec. 1054.101. INAPPLICABILITY OF SUBCHAPTER TO CERTAIN  
22 GUARDIANSHIPS. This subchapter does not apply to a guardianship  
23 created only because the appointment of a guardian for a person is  
24 necessary for the person to receive funds from a governmental  
25 source. (Tex. Prob. Code, Sec. 648(f).)

26 Sec. 1054.102. OPERATION OF COURT VISITOR PROGRAM. (a)  
27 Each statutory probate court shall operate a court visitor program

1 to assess the conditions of wards and proposed wards.

2 (b) A court, other than a statutory probate court, that has  
3 jurisdiction of a guardianship proceeding may operate a court  
4 visitor program in accordance with the population needs and  
5 financial abilities of the area the court serves. (Tex. Prob. Code,  
6 Sec. 648(a) (part).)

7 Sec. 1054.103. EVALUATION OF WARD OR PROPOSED WARD. A  
8 court, at any time before a guardian is appointed for a proposed  
9 ward or during the pendency of a guardianship of the person or  
10 estate, may appoint a court visitor to evaluate the ward or proposed  
11 ward and provide a written report that substantially complies with  
12 Section 1054.104(b) on:

13 (1) the request of any interested person, including  
14 the ward or proposed ward; or

15 (2) the court's own motion. (Tex. Prob. Code, Sec.  
16 648(b).)

17 Sec. 1054.104. EVALUATION REPORT. (a) A court visitor  
18 appointed under Section 1054.103 shall file the report on the  
19 evaluation of a ward or proposed ward not later than the 14th day  
20 after the date the court visitor conducts the evaluation. The court  
21 visitor shall swear under penalty of perjury that the report is  
22 accurate to the best of the court visitor's knowledge and belief.

23 (b) A court visitor's report must include:

24 (1) a description of the nature and degree of the  
25 ward's or proposed ward's capacity and incapacity, including a  
26 description of the ward's or proposed ward's medical history, if  
27 reasonably available and not waived by the court;

1           (2) a medical prognosis and list of the ward's or  
2 proposed ward's treating physicians, when appropriate;

3           (3) a description of the ward's or proposed ward's  
4 living conditions and circumstances;

5           (4) a description of the ward's or proposed ward's  
6 social, intellectual, physical, and educational conditions;

7           (5) a statement that the court visitor has personally  
8 visited or observed the ward or proposed ward;

9           (6) a statement of the date of the guardian's most  
10 recent visit, if a guardian has been appointed;

11           (7) a recommendation as to any modification needed in  
12 the guardianship or proposed guardianship, including removal or  
13 denial of the guardianship; and

14           (8) any other information required by the court.  
15 (Tex. Prob. Code, Secs. 648(c), (d).)

16       Sec. 1054.105. COMPENSATION. (a) A court that operates a  
17 court visitor program shall use persons willing to serve as court  
18 visitors without compensation to the greatest extent possible.

19       (b) A court visitor who has not expressed a willingness to  
20 serve without compensation is entitled to reasonable compensation  
21 for services provided in an amount set by the court, to be taxed as  
22 costs in the proceeding. (Tex. Prob. Code, Secs. 648(a) (part),  
23 (e).)

24       [Sections 1054.106-1054.150 reserved for expansion]

25                   SUBCHAPTER D. COURT INVESTIGATORS

26       Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP APPLICATION.  
27 On the filing of an application for guardianship under Section

1 1101.001, a court investigator shall investigate the circumstances  
2 alleged in the application to determine whether a less restrictive  
3 alternative to guardianship is appropriate. (Tex. Prob. Code, Sec.  
4 648A(a).)

5 Sec. 1054.152. GENERAL DUTIES. A court investigator shall:

6 (1) supervise a court visitor program established  
7 under Subchapter C and, in that capacity, serve as the chief court  
8 visitor;

9 (2) investigate a complaint received from any person  
10 about a guardianship and report to the judge, if necessary; and

11 (3) perform other duties as assigned by the judge or  
12 required by this title. (Tex. Prob. Code, Sec. 648A(b).)

13 Sec. 1054.153. INVESTIGATION REPORT. (a) A court  
14 investigator shall file with the court a report containing the  
15 court investigator's findings and conclusions after conducting an  
16 investigation under Section 1054.151 or 1054.152.

17 (b) In a contested case, the court investigator shall  
18 provide copies of the report of the court investigator's findings  
19 and conclusions to the attorneys for the parties before the earlier  
20 of:

21 (1) the seventh day after the date the court  
22 investigator completes the report; or

23 (2) the 10th day before the date the trial is scheduled  
24 to begin.

25 (c) Disclosure to a jury of the contents of a court  
26 investigator's report is subject to the Texas Rules of Evidence.  
27 (Tex. Prob. Code, Sec. 648A(c).)

1           Sec. 1054.154. EFFECT OF SUBCHAPTER ON OTHER LAW. Nothing  
2 in this subchapter supersedes any duty or obligation of another to  
3 report or investigate abuse or neglect under any statute of this  
4 state. (Tex. Prob. Code, Sec. 648A(d).)

5           [Sections 1054.155-1054.200 reserved for expansion]

6       SUBCHAPTER E. QUALIFICATIONS TO SERVE AS COURT-APPOINTED ATTORNEY

7           Sec. 1054.201. CERTIFICATION     REQUIRED.           (a)       A  
8 court-appointed attorney in a guardianship proceeding, including  
9 an attorney ad litem, must be certified by the State Bar of Texas,  
10 or a person or other entity designated by the state bar, as having  
11 successfully completed a course of study in guardianship law and  
12 procedure sponsored by the state bar or the state bar's designee.

13          (b) The State Bar of Texas shall require three hours of  
14 credit for certification under this subchapter. (Tex. Prob. Code,  
15 Secs. 646(b), 647A(a), (b).)

16          Sec. 1054.202. CERTIFICATE EXPIRATION.   (a)   Except as  
17 provided by Subsection (b), a certificate issued under this  
18 subchapter expires on the second anniversary of the date the  
19 certificate is issued.

20          (b) A new certificate obtained by a person to whom a  
21 certificate under this subchapter was previously issued expires on  
22 the fourth anniversary of the date the new certificate is issued if  
23 the person has been certified each of the four years immediately  
24 preceding the date the new certificate is issued. (Tex. Prob. Code,  
25 Secs. 647A(c), (e).)

26          Sec. 1054.203. ELIGIBILITY FOR APPOINTMENT ON EXPIRATION OF  
27 CERTIFICATE. An attorney whose certificate issued under this

subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem. (Tex. Prob. Code, Secs. 646(c), 647A(d).)

CHAPTER 1055. TRIAL AND HEARING MATTERS

SUBCHAPTER A. STANDING AND PLEADINGS

Sec. 1055.001. STANDING TO COMMENCE OR CONTEST

PROCEEDING

Sec. 1055.002. DEFECT IN PLEADING

[Sections 1055.003-1055.050 reserved for expansion]

SUBCHAPTER B. TRIAL AND HEARING

Sec. 1055.051. HEARING BY SUBMISSION

Sec. 1055.052. TRIAL BY JURY

[Sections 1055.053-1055.100 reserved for expansion]

SUBCHAPTER C. EVIDENCE

Sec. 1055.101. APPLICABILITY OF CERTAIN RULES RELATING

TO WITNESSES AND EVIDENCE

Sec. 1055.102. USE OF CERTAIN RECORDS AS EVIDENCE

CHAPTER 1055. TRIAL AND HEARING MATTERS

SUBCHAPTER A. STANDING AND PLEADINGS

Sec. 1055.001. STANDING TO COMMENCE OR CONTEST PROCEEDING.

(a) Except as provided by Subsection (b), any person has the right to:

(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(2) appear and contest a guardianship proceeding or

1 the appointment of a particular person as guardian.

2 (b) A person who has an interest that is adverse to a  
3 proposed ward or incapacitated person may not:

4 (1) file an application to create a guardianship for  
5 the proposed ward or incapacitated person;

6 (2) contest the creation of a guardianship for the  
7 proposed ward or incapacitated person;

8 (3) contest the appointment of a person as a guardian  
9 of the proposed ward or incapacitated person; or

10 (4) contest an application for complete restoration of  
11 a ward's capacity or modification of a ward's guardianship.

12 (c) The court shall determine by motion in limine the  
13 standing of a person who has an interest that is adverse to a  
14 proposed ward or incapacitated person. (Tex. Prob. Code, Sec.  
15 642.)

16 Sec. 1055.002. DEFECT IN PLEADING. A court may not  
17 invalidate a pleading in a guardianship matter, or an order based on  
18 the pleading, on the basis of a defect of form or substance in the  
19 pleading unless a timely objection has been made against the defect  
20 and the defect has been called to the attention of the court in  
21 which the proceeding was or is pending. (Tex. Prob. Code, Sec.  
22 641.)

23 [Sections 1055.003-1055.050 reserved for expansion]

24 SUBCHAPTER B. TRIAL AND HEARING

25 Sec. 1055.051. HEARING BY SUBMISSION. (a) A court may  
26 consider by submission a motion or application filed under this  
27 title unless the proceeding is:



1           (1) contested; or

2           (2) an application for the appointment of a guardian.

3           (b) The party seeking relief under a motion or application  
4 being considered by the court on submission has the burden of proof  
5 at the hearing.

6           (c) The court may consider a person's failure to file a  
7 response to a motion or application that may be considered on  
8 submission as a representation that the person does not oppose the  
9 motion or application.

10          (d) A person's request for oral argument is not a response  
11 to a motion or application under this section.

12          (e) The court, on the court's own motion, may order oral  
13 argument on a motion or application that may be considered by  
14 submission. (Tex. Prob. Code, Sec. 644.)

15          Sec. 1055.052. TRIAL BY JURY. A party in a contested  
16 guardianship proceeding is entitled to a jury trial on request.  
17 (Tex. Prob. Code, Sec. 643.)

18           [Sections 1055.053-1055.100 reserved for expansion]

19                               SUBCHAPTER C. EVIDENCE

20          Sec. 1055.101. APPLICABILITY OF CERTAIN RULES RELATING TO  
21 WITNESSES AND EVIDENCE. The rules relating to witnesses and  
22 evidence that apply in the district court apply in a guardianship  
23 proceeding to the extent practicable. (Tex. Prob. Code, Sec. 649  
24 (part).)

25          Sec. 1055.102. USE OF CERTAIN RECORDS AS EVIDENCE. The  
26 following are admissible as evidence in any court of this state:

27           (1) record books described by Sections 1052.001,

1052.002, and 1052.003 and individual case files described by  
Section 1052.052, including records maintained in a manner allowed  
under Section 1052.004; and

(2) certified copies or reproductions of the records.  
(Tex. Prob. Code, Sec. 628.)

CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

SUBCHAPTER A. EXECUTION

Sec. 1056.001. EXECUTIONS IN GUARDIANSHIP MATTERS

[Sections 1056.002-1056.050 reserved for expansion]

SUBCHAPTER B. ATTACHMENT OF ESTATE PROPERTY

Sec. 1056.051. ORDER FOR ISSUANCE OF WRIT OF

ATTACHMENT

Sec. 1056.052. BOND

[Sections 1056.053-1056.100 reserved for expansion]

SUBCHAPTER C. BILL OF REVIEW

Sec. 1056.101. REVISION AND CORRECTION OF ORDER OR

JUDGMENT IN GUARDIANSHIP PROCEEDING

Sec. 1056.102. INJUNCTION

CHAPTER 1056. EXECUTION, ATTACHMENT, AND BILL OF REVIEW

SUBCHAPTER A. EXECUTION

Sec. 1056.001. EXECUTIONS IN GUARDIANSHIP MATTERS. (a) An  
execution in a guardianship matter must be:

(1) directed "to any sheriff or any constable within  
the State of Texas";

(2) attested and signed by the clerk officially under  
court seal; and

(3) made returnable in 60 days.

1 (b) A proceeding under an execution in a guardianship matter  
2 is governed, to the extent applicable, by the laws regulating a  
3 proceeding under an execution issued by a district court.

4 (c) Notwithstanding Subsection (a), an execution directed  
5 to the sheriff or a constable of a specific county in this state may  
6 not be held defective if properly executed within that county by the  
7 sheriff or constable to whom the execution is directed. (Tex. Prob.  
8 Code, Sec. 653.)

9 [Sections 1056.002-1056.050 reserved for expansion]

10 SUBCHAPTER B. ATTACHMENT OF ESTATE PROPERTY

11 Sec. 1056.051. ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT.

12 (a) If a person interested in the estate of an incapacitated person  
13 files with the judge a written complaint made under oath alleging  
14 that the guardian is about to remove the estate or a part of the  
15 estate outside of the state, the judge may order a writ of  
16 attachment to issue, directed "to any sheriff or any constable  
17 within the State of Texas." The writ must order the sheriff or  
18 constable to:

19 (1) seize the estate or a part of the estate; and

20 (2) hold that property subject to further court order.

21 (b) Notwithstanding Subsection (a), a writ of attachment  
22 directed to the sheriff or constable of a specific county in this  
23 state is not defective if the writ was properly executed within that  
24 county by the sheriff or constable to whom the writ is directed.  
25 (Tex. Prob. Code, Sec. 654 (part).)

26 Sec. 1056.052. BOND. Before a judge may issue a writ of  
27 attachment ordered under Section 1056.051, the complainant must

1 execute a bond that is:

2 (1) payable to the guardian of the estate;

3 (2) in an amount set by the judge; and

4 (3) conditioned on the payment of all damages and  
5 costs that are recovered for a wrongful suit out of the writ. (Tex.  
6 Prob. Code, Sec. 654 (part).)

7 [Sections 1056.053-1056.100 reserved for expansion]

8 SUBCHAPTER C. BILL OF REVIEW

9 Sec. 1056.101. REVISION AND CORRECTION OF ORDER OR JUDGMENT  
10 IN GUARDIANSHIP PROCEEDING. (a) An interested person, including a  
11 ward, may, by a bill of review filed in the court in which the  
12 guardianship proceeding was held, have an order or judgment  
13 rendered by the court revised and corrected on a showing of error in  
14 the order or judgment.

15 (b) Except as provided by Subsection (c), a bill of review  
16 to revise and correct an order or judgment may not be filed more  
17 than two years after the date of the order or judgment.

18 (c) A bill of review to revise and correct an order or  
19 judgment filed by a person whose disability has been removed must be  
20 filed not later than the second anniversary of the date the person's  
21 disability was removed. (Tex. Prob. Code, Sec. 657 (part).)

22 Sec. 1056.102. INJUNCTION. A process or action under a  
23 court order or judgment subject to a bill of review filed under  
24 Section 1056.101 may be stayed only by writ of injunction. (Tex.  
25 Prob. Code, Sec. 657 (part).)

26 CHAPTER 1057. CHANGE AND RESIGNATION OF RESIDENT AGENT OF  
27 GUARDIAN FOR SERVICE OF PROCESS

1 Sec. 1057.001. CHANGE OF RESIDENT AGENT

2 Sec. 1057.002. RESIGNATION OF RESIDENT AGENT

3 CHAPTER 1057. CHANGE AND RESIGNATION OF RESIDENT AGENT OF  
4 GUARDIAN FOR SERVICE OF PROCESS

5 Sec. 1057.001. CHANGE OF RESIDENT AGENT. (a) A guardian  
6 may change the guardian's resident agent to accept service of  
7 process in a guardianship proceeding or other matter relating to  
8 the guardianship by filing with the court in which the guardianship  
9 proceeding is pending a statement titled "Designation of Successor  
10 Resident Agent" that states the names and addresses of:

- 11 (1) the guardian;  
12 (2) the resident agent; and  
13 (3) the successor resident agent.

14 (b) The designation of a successor resident agent takes  
15 effect on the date the statement is filed with the court. (Tex.  
16 Prob. Code, Sec. 760A.)

17 Sec. 1057.002. RESIGNATION OF RESIDENT AGENT. (a) A  
18 resident agent of a guardian may resign as resident agent by giving  
19 notice to the guardian and filing with the court in which the  
20 guardianship proceeding is pending a statement titled "Resignation  
21 of Resident Agent" that states:

- 22 (1) the name of the guardian;  
23 (2) the guardian's address most recently known by the  
24 resident agent;  
25 (3) that notice of the resignation has been given to  
26 the guardian and the date that notice was given; and  
27 (4) that the guardian does not have a resident agent.

1 (b) The resident agent shall send, by certified mail, return  
2 receipt requested, a copy of a resignation statement filed under  
3 Subsection (a) to:

4 (1) the guardian at the address most recently known by  
5 the resident agent; and

6 (2) each party in the case or the party's attorney or  
7 other designated representative of record.

8 (c) The resignation of the resident agent takes effect on  
9 the date the court enters an order accepting the resignation. A  
10 court may not enter an order accepting the resignation unless the  
11 resident agent complies with this section. (Tex. Prob. Code, Sec.  
12 760B.)

13 [Chapters 1058-1100 reserved for expansion]

14 SUBTITLE D. CREATION OF GUARDIANSHIP

15 CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

16 SUBCHAPTER A. INITIATION OF PROCEEDING FOR APPOINTMENT OF GUARDIAN

17 Sec. 1101.001. APPLICATION FOR APPOINTMENT OF  
18 GUARDIAN; CONTENTS

19 [Sections 1101.002-1101.050 reserved for expansion]

20 SUBCHAPTER B. HEARING; JURY TRIAL

21 Sec. 1101.051. HEARING

22 Sec. 1101.052. JURY TRIAL

23 Sec. 1101.053. PROVISION OF RECORDS REQUIRED; USE OF  
24 RECORDS

25 [Sections 1101.054-1101.100 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF NECESSITY OF GUARDIANSHIP; FINDINGS  
AND PROOF

Sec. 1101.101. FINDINGS AND PROOF REQUIRED

Sec. 1101.102. DETERMINATION OF INCAPACITY OF CERTAIN  
ADULTS: RECURRING ACTS OR OCCURRENCES

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN  
ADULTS: PHYSICIAN EXAMINATION

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION  
REGARDING MENTAL RETARDATION

Sec. 1101.105. PROHIBITION AGAINST CONSIDERATION OF  
AGE AS SOLE FACTOR IN APPOINTMENT OF  
GUARDIAN FOR ADULTS

Sec. 1101.106. EVIDENCE OF NECESSITY OF GUARDIANSHIP  
TO RECEIVE GOVERNMENTAL FUNDS

[Sections 1101.107-1101.150 reserved for expansion]

SUBCHAPTER D. COURT ACTION

Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL  
AUTHORITY

Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED  
AUTHORITY

Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING  
GUARDIAN

Sec. 1101.154. APPOINTMENT OF GUARDIAN OF ESTATE FOR  
CERTAIN MINORS PROHIBITED

Sec. 1101.155. DISMISSAL OF APPLICATION

CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

SUBCHAPTER A. INITIATION OF PROCEEDING FOR APPOINTMENT OF GUARDIAN

Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS. (a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

(7) the nature and description of any kind of



guardianship existing for the proposed ward in any other state;

(8) the name and address of any person or institution having the care and custody of the proposed ward;

(9) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and siblings are deceased, the names and addresses of the proposed ward's next of kin who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following

information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's next of kin who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104. (Tex. Prob. Code, Sec. 682.)

[Sections 1101.002-1101.050 reserved for expansion]

#### SUBCHAPTER B. HEARING; JURY TRIAL

Sec. 1101.051. HEARING. (a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly

1 incapacitated adult to:

2 (A) feed, clothe, and shelter himself or herself;

3 (B) care for his or her own physical health; and

4 (C) manage his or her property or financial  
5 affairs;

6 (2) ascertain the age of any proposed ward who is a  
7 minor;

8 (3) inquire into the governmental reports for any  
9 person who must have a guardian appointed to receive funds due the  
10 person from any governmental source; and

11 (4) inquire into the qualifications, abilities, and  
12 capabilities of the person seeking to be appointed guardian.

13 (b) A proposed ward must be present at the hearing unless  
14 the court, on the record or in the order, determines that a personal  
15 appearance is not necessary.

16 (c) The court may close the hearing at the request of the  
17 proposed ward or the proposed ward's counsel. (Tex. Prob. Code,  
18 Secs. 685(a), (c).)

19 Sec. 1101.052. JURY TRIAL. A proposed ward is entitled to a  
20 jury trial on request. (Tex. Prob. Code, Sec. 685(b).)

21 Sec. 1101.053. PROVISION OF RECORDS REQUIRED; USE OF  
22 RECORDS. (a) Before a hearing may be held for the appointment of a  
23 guardian, current and relevant medical, psychological, and  
24 intellectual testing records of the proposed ward must be provided  
25 to the attorney ad litem appointed to represent the proposed ward  
26 unless:

27 (1) the proposed ward is a minor or a person who must

1 have a guardian appointed to receive funds due the person from any  
2 governmental source; or

3 (2) the court makes a finding on the record that:

4 (A) current or relevant records do not exist; and

5 (B) examining the proposed ward for the purpose  
6 of creating the records is impractical.

7 (b) Current medical, psychological, and intellectual  
8 testing records are a sufficient basis for a determination of  
9 guardianship.

10 (c) The findings and recommendations contained in the  
11 medical, psychological, and intellectual testing records are not  
12 binding on the court. (Tex. Prob. Code, Sec. 686.)

13 [Sections 1101.054-1101.100 reserved for expansion]

14 SUBCHAPTER C. DETERMINATION OF NECESSITY OF GUARDIANSHIP; FINDINGS  
15 AND PROOF

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

18 (1) find by clear and convincing evidence that:

19 (A) the proposed ward is an incapacitated person;

20 (B) it is in the proposed ward's best interest to  
21 have the court appoint a person as the proposed ward's guardian; and

22 (C) the proposed ward's rights or property will  
23 be protected by the appointment of a guardian; and

24 (2) find by a preponderance of the evidence that:

25 (A) the court has venue of the case;

26 (B) the person to be appointed guardian is  
27 eligible to act as guardian and is entitled to appointment, or, if

no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this title. (Tex. Prob. Code, Secs. 684(a), (b), (c) (part).)

Sec. 1101.102. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: RECURRING ACTS OR OCCURRENCES. A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences in the preceding six months and not by isolated instances of negligence or bad judgment. (Tex. Prob. Code, Sec. 684(c) (part).)

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: PHYSICIAN EXAMINATION. (a) Except as provided by Section

1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician performed not earlier than the 120th day before the date the application is filed.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public

1 election; and

2 (B) has the ability to safely operate a motor  
3 vehicle;

4 (3) provide an evaluation of the proposed ward's  
5 physical condition and mental function and summarize the proposed  
6 ward's medical history if reasonably available;

7 (4) state how or in what manner the proposed ward's  
8 ability to make or communicate responsible decisions concerning  
9 himself or herself is affected by the proposed ward's physical or  
10 mental health, including the proposed ward's ability to:

11 (A) understand or communicate;

12 (B) recognize familiar objects and individuals;

13 (C) perform simple calculations;

14 (D) reason logically; and

15 (E) administer to daily life activities;

16 (5) state whether any current medication affects the  
17 proposed ward's demeanor or the proposed ward's ability to  
18 participate fully in a court proceeding;

19 (6) describe the precise physical and mental  
20 conditions underlying a diagnosis of a mental disability, and state  
21 whether the proposed ward would benefit from supports and services  
22 that would allow the individual to live in the least restrictive  
23 setting; and

24 (7) include any other information required by the  
25 court.

26 (c) If the court determines it is necessary, the court may  
27 appoint the necessary physicians to examine the proposed ward. The

1 court must make its determination with respect to the necessity for  
2 a physician's examination of the proposed ward at a hearing held for  
3 that purpose. Not later than the fourth day before the date of the  
4 hearing, the applicant shall give to the proposed ward and the  
5 proposed ward's attorney ad litem written notice specifying the  
6 purpose and the date and time of the hearing.

7 (d) A physician who examines the proposed ward, other than a  
8 physician or psychologist who examines the proposed ward under  
9 Section 1101.104(2), shall make available for inspection by the  
10 attorney ad litem appointed to represent the proposed ward a  
11 written letter or certificate from the physician that complies with  
12 the requirements of Subsections (a) and (b). (Tex. Prob. Code,  
13 Secs. 687(a), (b).)

14 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING  
15 MENTAL RETARDATION. If mental retardation is the basis of the  
16 proposed ward's alleged incapacity, the court may not grant an  
17 application to create a guardianship for the proposed ward unless  
18 the applicant presents to the court:

19 (1) a written letter or certificate that:

20 (A) complies with Sections 1101.103(a) and (b);

21 and

22 (B) states that the physician has made a  
23 determination of mental retardation in accordance with Section  
24 593.005, Health and Safety Code; or

25 (2) both:

26 (A) written documentation showing that, not  
27 earlier than 24 months before the hearing date, the proposed ward



1 has been examined by a physician or psychologist licensed in this  
2 state or certified by the Department of Aging and Disability  
3 Services to perform the examination, in accordance with rules of  
4 the executive commissioner of the Health and Human Services  
5 Commission governing examinations of that kind; and

6 (B) the physician's or psychologist's written  
7 findings and recommendations, including a statement as to whether  
8 the physician or psychologist has made a determination of mental  
9 retardation in accordance with Section 593.005, Health and Safety  
10 Code. (Tex. Prob. Code, Sec. 687(c).)

11 Sec. 1101.105. PROHIBITION AGAINST CONSIDERATION OF AGE AS  
12 SOLE FACTOR IN APPOINTMENT OF GUARDIAN FOR ADULTS. In determining  
13 whether to appoint a guardian for an incapacitated person who is not  
14 a minor, the court may not use age as the sole factor. (Tex. Prob.  
15 Code, Sec. 602 (part).)

16 Sec. 1101.106. EVIDENCE OF NECESSITY OF GUARDIANSHIP TO  
17 RECEIVE GOVERNMENTAL FUNDS. A certificate of the executive head or  
18 a representative of a bureau, department, or agency of the  
19 government, to the effect that the appointment of a guardian is a  
20 condition precedent to the payment of any funds due the proposed  
21 ward from that governmental entity, is prima facie evidence of the  
22 necessity for the appointment of a guardian. (Tex. Prob. Code, Sec.  
23 684(e).)

24 [Sections 1101.107-1101.150 reserved for expansion]

25 SUBCHAPTER D. COURT ACTION

26 Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL  
27 AUTHORITY. (a) If it is found that the proposed ward is totally

1 without capacity to care for himself or herself, manage his or her  
2 property, operate a motor vehicle, and vote in a public election,  
3 the court may appoint a guardian of the proposed ward's person or  
4 estate, or both, with full authority over the incapacitated person  
5 except as provided by law.

6 (b) An order appointing a guardian under this section must  
7 contain findings of fact and specify:

8 (1) the information required by Section 1101.153(a);

9 (2) that the guardian has full authority over the  
10 incapacitated person;

11 (3) if necessary, the amount of funds from the corpus  
12 of the person's estate the court will allow the guardian to spend  
13 for the education and maintenance of the person under Subchapter A,  
14 Chapter 1156;

15 (4) whether the person is totally incapacitated  
16 because of a mental condition; and

17 (5) that the person does not have the capacity to  
18 operate a motor vehicle and to vote in a public election. (Tex.  
19 Prob. Code, Sec. 693(a).)

20 Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED  
21 AUTHORITY. (a) If it is found that the proposed ward lacks the  
22 capacity to do some, but not all, of the tasks necessary to care for  
23 himself or herself or to manage his or her property, the court may  
24 appoint a guardian with limited powers and permit the proposed ward  
25 to care for himself or herself or to manage his or her property  
26 commensurate with the proposed ward's ability.

27 (b) An order appointing a guardian under this section must

1 contain findings of fact and specify:

2 (1) the information required by Section 1101.153(a);

3 (2) the specific powers, limitations, or duties of the  
4 guardian with respect to the person's care or the management of the  
5 person's property by the guardian;

6 (3) if necessary, the amount of funds from the corpus  
7 of the person's estate the court will allow the guardian to spend  
8 for the education and maintenance of the person under Subchapter A,  
9 Chapter 1156; and

10 (4) whether the person is incapacitated because of a  
11 mental condition and, if so, whether the person retains the right to  
12 vote in a public election or maintains eligibility to hold or obtain  
13 a license to operate a motor vehicle under Chapter 521,  
14 Transportation Code. (Tex. Prob. Code, Sec. 693(b).)

15 Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING  
16 GUARDIAN. (a) A court order appointing a guardian must specify:

17 (1) the name of the person appointed;

18 (2) the name of the ward;

19 (3) whether the guardian is of the person or estate of  
20 the ward, or both;

21 (4) the amount of any bond required;

22 (5) if it is a guardianship of the estate of the ward  
23 and the court considers an appraisal to be necessary, one, two, or  
24 three disinterested persons to appraise the estate and to return  
25 the appraisement to the court; and

26 (6) that the clerk will issue letters of guardianship  
27 to the person appointed when the person has qualified according to

1 law.

2 (b) An order appointing a guardian may not duplicate or  
3 conflict with the powers and duties of any other guardian.

4 (c) An order appointing a guardian or a successor guardian  
5 may specify as authorized by Section 1202.001(c) a period during  
6 which a petition for adjudication that the ward no longer requires  
7 the guardianship may not be filed without special leave. (Tex.  
8 Prob. Code, Secs. 693(c), (d), (e).)

9 Sec. 1101.154. APPOINTMENT OF GUARDIAN OF ESTATE FOR  
10 CERTAIN MINORS PROHIBITED. A court may not appoint a guardian of  
11 the estate of a minor when a payment of claims is made under Chapter  
12 1355. (Tex. Prob. Code, Sec. 684(d).)

13 Sec. 1101.155. DISMISSAL OF APPLICATION. If it is found  
14 that a proposed ward who is an adult possesses the capacity to care  
15 for himself or herself and manage his or her property as would a  
16 reasonably prudent person, the court shall dismiss an application  
17 for guardianship. (Tex. Prob. Code, Sec. 692.)

18 CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

19 Sec. 1102.001. COURT-INITIATED INVESTIGATION

20 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR  
21 INVESTIGATION

22 Sec. 1102.003. INFORMATION LETTER

23 Sec. 1102.004. APPLICATION FOR GUARDIANSHIP FOLLOWING  
24 INVESTIGATION

25 Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM

26 CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

27 Sec. 1102.001. COURT-INITIATED INVESTIGATION. If a court

1 has probable cause to believe that a person domiciled or found in  
2 the county in which the court is located is an incapacitated person,  
3 and the person does not have a guardian in this state, the court  
4 shall appoint a guardian ad litem or court investigator to  
5 investigate the person's conditions and circumstances to determine  
6 whether:

- 7           (1) the person is an incapacitated person; and  
8           (2) a guardianship is necessary. (Tex. Prob. Code,  
9 Sec. 683(a) (part).)

10       Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR  
11 INVESTIGATION. To establish probable cause under Section 1102.001,  
12 the court may require:

13           (1) an information letter about the person believed to  
14 be incapacitated that is submitted by an interested person and  
15 satisfies the requirements of Section 1102.003; or

16           (2) a written letter or certificate from a physician  
17 who has examined the person believed to be incapacitated that  
18 satisfies the requirements of Section 1101.103, except that the  
19 letter must be:

20               (A) dated not earlier than the 120th day before  
21 the date of the appointment of a guardian ad litem or court  
22 investigator under Section 1102.001; and

23               (B) based on an examination the physician  
24 performed not earlier than the 120th day before that date. (Tex.  
25 Prob. Code, Sec. 683(b).)

26       Sec. 1102.003. INFORMATION LETTER. An information letter  
27 under Section 1102.002(1) about a person believed to be

1 incapacitated may:

2 (1) include the person's name, address, telephone  
3 number, county of residence, and date of birth;

4 (2) state whether the person's residence is a private  
5 residence, health care facility, or other type of residence;

6 (3) describe the relationship between the person and  
7 the interested person submitting the letter;

8 (4) contain the names and telephone numbers of any  
9 known friends and relatives of the person;

10 (5) state whether a guardian of the person or estate  
11 has been appointed in this state for the person;

12 (6) state whether the person has executed a power of  
13 attorney and, if so, the designee's name, address, and telephone  
14 number;

15 (7) describe any property of the person, including the  
16 estimated value of that property;

17 (8) list the amount and source of any monthly income of  
18 the person;

19 (9) describe the nature and degree of the person's  
20 alleged incapacity; and

21 (10) state whether the person is in imminent danger of  
22 serious impairment to the person's physical health, safety, or  
23 estate. (Tex. Prob. Code, Sec. 683A.)

24 Sec. 1102.004. APPLICATION FOR GUARDIANSHIP FOLLOWING  
25 INVESTIGATION. A guardian ad litem or court investigator who,  
26 after an investigation as prescribed by Section 1102.001, believes  
27 that the person is an incapacitated person and that a guardianship

1 is necessary shall file an application for the appointment of a  
2 guardian of the person or estate, or both, for the person. (Tex.  
3 Prob. Code, Sec. 683(a) (part).)

4       Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) A  
5 court that appoints a guardian ad litem under Section 1102.001 may  
6 authorize compensation of the guardian ad litem from available  
7 funds of the proposed ward's estate, regardless of whether a  
8 guardianship is created for the proposed ward.

9       (b) After examining the ward's or proposed ward's assets and  
10 determining that the ward or proposed ward is unable to pay for  
11 services provided by the guardian ad litem, the court may authorize  
12 compensation from the county treasury. (Tex. Prob. Code, Sec.  
13 683(c).)

14       CHAPTER 1103. PROCEDURE TO APPOINT GUARDIAN FOR CERTAIN MINORS  
15                               REQUIRING GUARDIANSHIPS AS ADULTS

16       Sec. 1103.001. APPLICATION FOR APPOINTMENT OF GUARDIAN

17       Sec. 1103.002. APPOINTMENT OF CONSERVATOR AS GUARDIAN

18                               WITHOUT HEARING

19       Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP

20       Sec. 1103.004. SETTLEMENT AND CLOSING OF PRIOR

21                               GUARDIANSHIP

22       CHAPTER 1103. PROCEDURE TO APPOINT GUARDIAN FOR CERTAIN MINORS  
23                               REQUIRING GUARDIANSHIPS AS ADULTS

24       Sec. 1103.001. APPLICATION FOR APPOINTMENT OF GUARDIAN.  
25 Not earlier than the 180th day before the proposed ward's 18th  
26 birthday, a person may file an application under Section 1101.001  
27 for the appointment of a guardian of the person or estate, or both,

1 of a proposed ward who:

2 (1) is a minor; and

3 (2) because of incapacity will require a guardianship  
4 after the proposed ward is no longer a minor. (Tex. Prob. Code, Sec.  
5 682A(a) (part).)

6 Sec. 1103.002. APPOINTMENT OF CONSERVATOR AS GUARDIAN  
7 WITHOUT HEARING. (a) Notwithstanding any other law, if the  
8 applicant who files an application under Section 1101.001 or  
9 1103.001 is a person who was appointed conservator of a disabled  
10 child for whom a court obtains jurisdiction under Section 606(k),  
11 the applicant may present to the court a written letter or  
12 certificate that meets the requirements of Sections 1101.103(a) and  
13 (b).

14 (b) If, on receipt of the letter or certificate described by  
15 Subsection (a), the court is able to make the findings required by  
16 Section 1101.101, the court, notwithstanding Subchapter C, Chapter  
17 1104, shall:

18 (1) appoint the conservator as guardian without  
19 conducting a hearing; and

20 (2) to the extent possible preserve the terms of  
21 possession and access to the ward that applied before the court  
22 obtained jurisdiction under Section 606(k). (Tex. Prob. Code, Secs.  
23 682A(a-1), (a-2).)

24 Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP. If the  
25 application filed under Section 1103.001 is heard before the  
26 proposed ward's 18th birthday, a guardianship created under this  
27 chapter may not take effect and the person appointed guardian may



not take the oath as required under Section 1105.051 or give a bond as required under Section 1105.101 until the proposed ward's 18th birthday. (Tex. Prob. Code, Sec. 682A(a) (part).)

Sec. 1103.004. SETTLEMENT AND CLOSING OF PRIOR GUARDIANSHIP. Notwithstanding Section 1202.001(b), the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Section 1103.001 is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or

(2) the guardian appointed by the court, after a hearing on the application, has qualified under Section 1105.002. (Tex. Prob. Code, Sec. 682A(b).)

#### CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN

##### SUBCHAPTER A. GENERAL PROVISIONS RELATING TO APPOINTMENT OF GUARDIAN

Sec. 1104.001. GUARDIAN OF THE PERSON OR ESTATE

Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON

[Sections 1104.003-1104.050 reserved for expansion]

##### SUBCHAPTER B. SELECTION OF GUARDIAN FOR MINOR

Sec. 1104.051. GUARDIAN OF MINOR CHILDREN

Sec. 1104.052. GUARDIAN FOR MINOR ORPHAN

Sec. 1104.053. GUARDIAN DESIGNATED BY WILL OR WRITTEN

##### DECLARATION

Sec. 1104.054. SELECTION OF GUARDIAN BY MINOR

[Sections 1104.055-1104.100 reserved for expansion]

SUBCHAPTER C. SELECTION OF GUARDIAN FOR INCAPACITATED PERSON OTHER  
THAN MINOR

Sec. 1104.101. APPOINTMENT ACCORDING TO CIRCUMSTANCES  
AND BEST INTERESTS

Sec. 1104.102. APPOINTMENT PREFERENCES

Sec. 1104.103. DESIGNATION OF GUARDIAN BY WILL OR  
WRITTEN DECLARATION

[Sections 1104.104-1104.150 reserved for expansion]

SUBCHAPTER D. WRITTEN DECLARATION BY CERTAIN PARENTS TO APPOINT  
GUARDIAN FOR THEIR CHILDREN

Sec. 1104.151. DEFINITIONS

Sec. 1104.152. REQUIREMENTS FOR DECLARATION

Sec. 1104.153. FORM AND CONTENT OF DECLARATION AND  
SELF-PROVING AFFIDAVIT

Sec. 1104.154. ALTERNATIVE TO SELF-PROVING AFFIDAVIT

Sec. 1104.155. ALTERNATE SELF-PROVING OF DECLARATION

Sec. 1104.156. FILING OF DECLARATION AND SELF-PROVING  
AFFIDAVIT

Sec. 1104.157. PROOF OF DECLARATION

Sec. 1104.158. PRIMA FACIE EVIDENCE

Sec. 1104.159. REVOCATION OF DECLARATION

Sec. 1104.160. ALTERNATE OR OTHER COURT-APPOINTED  
GUARDIAN

[Sections 1104.161-1104.200 reserved for expansion]

SUBCHAPTER E. WRITTEN DECLARATION TO DESIGNATE GUARDIAN BEFORE  
NEED ARISES

Sec. 1104.201. DEFINITIONS

1 Sec. 1104.202. DESIGNATION OF GUARDIAN FOR DECLARANT  
2 Sec. 1104.203. REQUIREMENTS FOR DECLARATION  
3 Sec. 1104.204. FORM AND CONTENT OF DECLARATION AND  
4 SELF-PROVING AFFIDAVIT  
5 Sec. 1104.205. ALTERNATIVE TO SELF-PROVING AFFIDAVIT  
6 Sec. 1104.206. ALTERNATE SELF-PROVING OF DECLARATION  
7 Sec. 1104.207. FILING OF DECLARATION AND SELF-PROVING  
8 AFFIDAVIT  
9 Sec. 1104.208. PROOF OF DECLARATION  
10 Sec. 1104.209. PRIMA FACIE EVIDENCE  
11 Sec. 1104.210. REVOCATION OF DECLARATION  
12 Sec. 1104.211. EFFECT OF DIVORCE ON DESIGNATION OF  
13 SPOUSE  
14 Sec. 1104.212. ALTERNATE OR OTHER COURT-APPOINTED  
15 GUARDIAN  
16 [Sections 1104.213-1104.250 reserved for expansion]  
17 SUBCHAPTER F. CERTIFICATION REQUIREMENTS  
18 FOR CERTAIN GUARDIANS  
19 Sec. 1104.251. CERTIFICATION REQUIRED FOR CERTAIN  
20 GUARDIANS  
21 Sec. 1104.252. EFFECT OF PROVISIONAL CERTIFICATE  
22 Sec. 1104.253. EXCEPTION FOR FAMILY MEMBERS AND  
23 FRIENDS  
24 Sec. 1104.254. EXCEPTION FOR CERTAIN VOLUNTEERS  
25 Sec. 1104.255. EXPIRATION OF CERTIFICATION  
26 Sec. 1104.256. FAILURE TO COMPLY; COURT'S DUTY TO  
27 NOTIFY

1 Sec. 1104.257. INFORMATION REGARDING SERVICES PROVIDED

2 BY GUARDIANSHIP PROGRAM

3 Sec. 1104.258. INFORMATION REGARDING CERTAIN STATE

4 EMPLOYEES PROVIDING GUARDIANSHIP

5 SERVICES

6 [Sections 1104.259-1104.300 reserved for expansion]

7 SUBCHAPTER G. PRIVATE PROFESSIONAL GUARDIANS

8 Sec. 1104.301. CERTIFICATION AND REGISTRATION REQUIRED

9 Sec. 1104.302. ANNUAL CERTIFICATE OF REGISTRATION

10 Sec. 1104.303. REQUIREMENTS OF APPLICATION

11 Sec. 1104.304. TERM OF REGISTRATION; RENEWAL

12 Sec. 1104.305. USE OF REGISTRATION INFORMATION

13 Sec. 1104.306. USE OF NAMES AND BUSINESS ADDRESSES

14 [Sections 1104.307-1104.350 reserved for expansion]

15 SUBCHAPTER H. GROUNDS FOR DISQUALIFICATION

16 Sec. 1104.351. INCAPACITY OR INEXPERIENCE

17 Sec. 1104.352. UNSUITABILITY

18 Sec. 1104.353. NOTORIOUSLY BAD CONDUCT; PRESUMPTION

19 CONCERNING BEST INTEREST

20 Sec. 1104.354. CONFLICT OF INTEREST

21 Sec. 1104.355. DISQUALIFIED IN DECLARATION

22 Sec. 1104.356. LACK OF CERTAIN REQUIRED CERTIFICATION

23 Sec. 1104.357. NONRESIDENT WITHOUT RESIDENT AGENT

24 [Sections 1104.358-1104.400 reserved for expansion]

25 SUBCHAPTER I. ACCESS TO CRIMINAL HISTORY RECORDS

26 Sec. 1104.401. DEFINITION

1 Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL  
2 HISTORY RECORD INFORMATION; AUTHORITY  
3 TO CHARGE FEE

4 Sec. 1104.403. SUBMISSION OF CRIMINAL HISTORY RECORD  
5 INFORMATION BY PROPOSED GUARDIAN

6 Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING  
7 CERTAIN PERSONS HOLDING A CERTIFICATE

8 Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF COURT

9 Sec. 1104.406. DEPARTMENT'S DUTY TO OBTAIN CRIMINAL  
10 HISTORY RECORD INFORMATION

11 Sec. 1104.407. DUTY TO PROVIDE INFORMATION ON REQUEST

12 Sec. 1104.408. INFORMATION FOR EXCLUSIVE USE OF COURT  
13 OR GUARDIANSHIP CERTIFICATION BOARD

14 Sec. 1104.409. USE OF INFORMATION BY COURT

15 Sec. 1104.410. USE OF INFORMATION BY GUARDIANSHIP  
16 CERTIFICATION BOARD

17 Sec. 1104.411. CRIMINAL OFFENSE FOR UNAUTHORIZED  
18 RELEASE OR DISCLOSURE

19 Sec. 1104.412. EFFECT OF SUBCHAPTER ON DEPARTMENT'S  
20 AUTHORITY TO OBTAIN OR USE  
21 INFORMATION

22 CHAPTER 1104. SELECTION OF AND ELIGIBILITY TO SERVE AS GUARDIAN

23 SUBCHAPTER A. GENERAL PROVISIONS RELATING TO APPOINTMENT OF  
24 GUARDIAN

25 Sec. 1104.001. GUARDIAN OF THE PERSON OR ESTATE. (a) Only  
26 one person may be appointed as guardian of the person or estate, but  
27 one person may be appointed guardian of the person and another

1 person may be appointed guardian of the estate, if it is in the best  
2 interest of the incapacitated person or ward.

3 (b) Subsection (a) does not prohibit the joint appointment,  
4 if the court finds it to be in the best interest of the  
5 incapacitated person or ward, of:

6 (1) a husband and wife;

7 (2) joint managing conservators;

8 (3) co-guardians appointed under the laws of a  
9 jurisdiction other than this state; or

10 (4) both parents of an adult who is incapacitated if  
11 the incapacitated person:

12 (A) has not been the subject of a suit affecting  
13 the parent-child relationship; or

14 (B) has been the subject of a suit affecting the  
15 parent-child relationship and both of the incapacitated person's  
16 parents were named as joint managing conservators in the suit but  
17 are no longer serving in that capacity. (Tex. Prob. Code, Sec.  
18 690.)

19 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before  
20 appointing a guardian, the court shall make a reasonable effort to  
21 consider the incapacitated person's preference of the person to be  
22 appointed guardian and, to the extent consistent with other  
23 provisions of this title, shall give due consideration to the  
24 preference indicated by the incapacitated person. (Tex. Prob.  
25 Code, Sec. 689.)

26 [Sections 1104.003-1104.050 reserved for expansion]

SUBCHAPTER B. SELECTION OF GUARDIAN FOR MINOR

Sec. 1104.051. GUARDIAN OF MINOR CHILDREN. (a) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity.

(b) The rights of parents who do not live together are equal. The court shall assign the guardianship of their minor children to one parent considering only the best interests of the children.

(c) If one parent is deceased, the surviving parent is the natural guardian of the person of the minor children and is entitled to be appointed guardian of the minor children's estates. (Tex. Prob. Code, Sec. 676(b).)

Sec. 1104.052. GUARDIAN FOR MINOR ORPHAN. In appointing a guardian for a minor orphan:

(1) if the last surviving parent did not appoint a guardian, the nearest ascendant in the direct line of the minor is entitled to guardianship of both the person and the estate of the minor;

(2) if more than one ascendant exists in the same degree in the direct line of the minor, the court shall appoint one ascendant according to circumstances and considering the minor's best interests;

(3) if the minor does not have an ascendant in the

1 direct line of the minor:

2 (A) the court shall appoint the nearest of kin;  
3 or

4 (B) if two or more persons are in the same degree  
5 of kinship to the minor, the court shall appoint one of those  
6 persons according to circumstances and considering the minor's best  
7 interests; and

8 (4) if the minor does not have a relative who is  
9 eligible to be guardian, or if none of the eligible persons apply to  
10 be guardian, the court shall appoint a qualified person as  
11 guardian. (Tex. Prob. Code, Sec. 676(c).)

12 Sec. 1104.053. GUARDIAN DESIGNATED BY WILL OR WRITTEN  
13 DECLARATION. (a) Notwithstanding Section 1104.001 or 1104.051,  
14 the surviving parent of a minor may by will or written declaration  
15 appoint any eligible person to be guardian of the person of the  
16 parent's minor children after the parent dies or in the event of the  
17 parent's incapacity.

18 (b) After the surviving parent of a minor dies or if the  
19 court finds the surviving parent is an incapacitated person, the  
20 court shall appoint the person designated in the will or  
21 declaration to serve as guardian of the person of the parent's minor  
22 children in preference to another otherwise entitled to serve as  
23 guardian under this title, unless the court finds that the person  
24 designated to serve as guardian:

- 25 (1) is disqualified;  
26 (2) is deceased;  
27 (3) refuses to serve; or



1           (4) would not serve the minor children's best  
2 interests.

3           (c) On compliance with this title, an eligible person is  
4 also entitled to be appointed guardian of the minor children's  
5 estates after the surviving parent dies or in the event of the  
6 surviving parent's incapacity. (Tex. Prob. Code, Secs. 676(d),  
7 (e), (f).)

8           Sec. 1104.054. SELECTION OF GUARDIAN BY MINOR. (a)  
9 Notwithstanding any other provision of this subchapter, if an  
10 application is filed for the guardianship of the person or estate,  
11 or both, of a minor at least 12 years of age, the minor may select  
12 the guardian by a writing filed with the clerk, if the court finds  
13 that the selection is in the minor's best interest and approves the  
14 selection.

15           (b) Notwithstanding any other provision of this subchapter,  
16 a minor at least 12 years of age may select another guardian of the  
17 minor's person or estate, or both, if the minor has a guardian  
18 appointed by the court, by will of the minor's parent, or by written  
19 declaration of the minor's parent, and that guardian dies, resigns,  
20 or is removed from guardianship. The minor must make the selection  
21 by filing an application in open court in person or by an attorney.  
22 The court shall make the appointment and revoke the letters of  
23 guardianship of the former guardian if the court is satisfied that:

- 24           (1) the person selected is suitable and competent; and  
25           (2) the appointment of the person is in the minor's  
26 best interest. (Tex. Prob. Code, Secs. 676(a), 680.)

27           [Sections 1104.055-1104.100 reserved for expansion]

SUBCHAPTER C. SELECTION OF GUARDIAN FOR INCAPACITATED PERSON OTHER  
THAN MINOR

Sec. 1104.101. APPOINTMENT ACCORDING TO CIRCUMSTANCES AND  
BEST INTERESTS. The court shall appoint a guardian for an  
incapacitated person other than a minor according to the  
circumstances and considering the incapacitated person's best  
interests. (Tex. Prob. Code, Sec. 677(a) (part).)

Sec. 1104.102. APPOINTMENT PREFERENCES. If the court finds  
that two or more eligible persons are equally entitled to be  
appointed guardian of an incapacitated person:

(1) the incapacitated person's spouse is entitled to  
the guardianship in preference to any other person, if the spouse is  
one of the eligible persons;

(2) the eligible person nearest of kin to the  
incapacitated person is entitled to the guardianship, if the  
incapacitated person's spouse is not one of the eligible persons;  
or

(3) the court shall appoint the eligible person who is  
best qualified to serve as guardian if:

(A) the persons entitled to serve under  
Subdivisions (1) and (2) refuse to serve;

(B) two or more persons entitled to serve under  
Subdivision (2) are related in the same degree of kinship to the  
incapacitated person; or

(C) neither the incapacitated person's spouse  
nor any person related to the incapacitated person is an eligible  
person. (Tex. Prob. Code, Sec. 677(a) (part).)

1           Sec. 1104.103. DESIGNATION OF GUARDIAN BY WILL OR WRITTEN  
2 DECLARATION. (a) The surviving parent of an adult individual who is  
3 an incapacitated person may, if the parent is the guardian of the  
4 person of the adult individual, by will or written declaration  
5 appoint an eligible person to serve as guardian of the person of the  
6 adult individual after the parent dies or in the event of the  
7 parent's incapacity.

8           (b) After the surviving parent dies or if the court finds  
9 the surviving parent has become an incapacitated person after being  
10 appointed the adult individual's guardian, the court shall appoint  
11 the person designated in the will or declaration to serve as  
12 guardian in preference to any other person otherwise entitled to  
13 serve as guardian under this title, unless the court finds that the  
14 person designated to serve as guardian:

15                   (1) is disqualified;  
16                   (2) is deceased;  
17                   (3) refuses to serve; or  
18                   (4) would not serve the adult individual's best  
19 interests.

20           (c) On compliance with this title, the eligible person  
21 appointed under Subsection (b) is also entitled to be appointed  
22 guardian of the estate of the adult individual after the surviving  
23 parent dies or in the event of the surviving parent's incapacity, if  
24 the surviving parent is the guardian of the estate of the adult  
25 individual. (Tex. Prob. Code, Secs. 677(b), (c), (d).)

26           [Sections 1104.104-1104.150 reserved for expansion]

SUBCHAPTER D. WRITTEN DECLARATION BY CERTAIN PARENTS TO APPOINT  
GUARDIAN FOR THEIR CHILDREN

Sec. 1104.151. DEFINITIONS. In this subchapter:

(1) "Declaration" means a written declaration of a person that:

(A) appoints a guardian for the person's child under Section 1104.053(a) or 1104.103(a); and

(B) satisfies the requirements of this subdivision and Sections 1104.152, 1104.153, 1104.154, 1104.156, 1104.159, and 1104.160.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.153.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration. (Tex. Prob. Code, Secs. 677A(h), 677B(a).)

Sec. 1104.152. REQUIREMENTS FOR DECLARATION. (a) A declaration appointing an eligible person to be guardian of the person of a parent's child under Section 1104.053(a) or 1104.103(a) must be signed by the declarant and be:

(1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is

not written wholly in the declarant's handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:

(1) the competence of the declarant; and

(2) the execution of the declaration. (Tex. Prob. Code, Secs. 677A(a), (b), (c).)

Sec. 1104.153. FORM AND CONTENT OF DECLARATION AND SELF-PROVING AFFIDAVIT. (a) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child.

(b) The following form may be used but is not required to be used:

DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN

IN THE EVENT OF MY DEATH OR INCAPACITY

I, \_\_\_\_\_, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

_____	_____
_____	_____
_____	_____

(add blanks as appropriate)

I designate \_\_\_\_\_ to serve as guardian of the person of my (child or children), \_\_\_\_\_ as first alternate guardian of the person of my (child or children), \_\_\_\_\_ as second

1 alternate guardian of the person of my (child or children), and  
2 \_\_\_\_\_ as third alternate guardian of the person of my (child or  
3 children).

4 I direct that the guardian of the person of my (child or  
5 children) serve (with or without) bond.

6 (If applicable) I designate \_\_\_\_\_ to serve as guardian  
7 of the estate of my (child or children), \_\_\_\_\_ as first  
8 alternate guardian of the estate of my (child or children),  
9 \_\_\_\_\_ as second alternate guardian of the estate of my (child  
10 or children), and \_\_\_\_\_ as third alternate guardian of the  
11 estate of my (child or children).

12 If any guardian or alternate guardian dies, does not qualify,  
13 or resigns, the next named alternate guardian becomes guardian of  
14 my (child or children).

15 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

16 \_\_\_\_\_

17 Declarant

18 \_\_\_\_\_

19 Witness

\_\_\_\_\_

Witness

20 SELF-PROVING AFFIDAVIT

21 Before me, the undersigned authority, on this date personally  
22 appeared \_\_\_\_\_, the declarant, and \_\_\_\_\_ and \_\_\_\_\_  
23 as witnesses, and all being duly sworn, the declarant said that the  
24 above instrument was his or her Declaration of Appointment of  
25 Guardian for the Declarant's Children in the Event of Declarant's  
26 Death or Incapacity and that the declarant had made and executed it  
27 for the purposes expressed in the declaration. The witnesses

declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

\_\_\_\_\_

Declarant

\_\_\_\_\_

Affiant

\_\_\_\_\_

Affiant

Subscribed and sworn to before me by \_\_\_\_\_, the above named declarant, and \_\_\_\_\_ (names of affiants) affiants, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public in and for the

State of Texas

My Commission expires:

\_\_\_\_\_

(Tex. Prob. Code, Sec. 677A(g).)

Sec. 1104.154. ALTERNATIVE TO SELF-PROVING AFFIDAVIT. (a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, \_\_\_\_\_, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of

Guardian for My Children in the Event of My Death or Incapacity, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Declarant

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas



My Commission expires:

---

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.153 is considered self-proved. (Tex. Prob. Code, Secs. 677A(i), (j).)

Sec. 1104.155. ALTERNATE SELF-PROVING OF DECLARATION. At any time during the declarant's lifetime, a declaration described by Section 1104.152(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107. (Tex. Prob. Code, Sec. 677B(c).)

Sec. 1104.156. FILING OF DECLARATION AND SELF-PROVING AFFIDAVIT. The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. (Tex. Prob. Code, Sec. 677A(d).)

Sec. 1104.157. PROOF OF DECLARATION. (a) The court may admit a declaration that is self-proved into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(b) A declaration described by Section 1104.152(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator's handwriting is proved under

1 Section 256.154.

2 (c) A declaration described by Section 1104.152(a)(2) that  
3 is not self-proved may be proved in the same manner that an attested  
4 written will produced in court is proved under Section 256.153.  
5 (Tex. Prob. Code, Secs. 677B(b), (e), (f).)

6 Sec. 1104.158. PRIMA FACIE EVIDENCE. A properly executed  
7 and witnessed self-proving declaration, including a declaration  
8 and self-proving affidavit described by Section 1104.152(c), is  
9 prima facie evidence that:

10 (1) the declarant was competent at the time the  
11 declarant executed the declaration; and

12 (2) the guardian named in the declaration would serve  
13 the best interests of the ward or incapacitated person. (Tex. Prob.  
14 Code, Sec. 677B(d).)

15 Sec. 1104.159. REVOCATION OF DECLARATION. The declarant  
16 may revoke a declaration in any manner provided for the revocation  
17 of a will under Section 253.002, including the subsequent  
18 re-execution of the declaration in the manner required for the  
19 original declaration. (Tex. Prob. Code, Sec. 677A(f).)

20 Sec. 1104.160. ALTERNATE OR OTHER COURT-APPOINTED  
21 GUARDIAN. (a) The court shall appoint the next eligible designated  
22 alternate guardian named in a declaration if the designated  
23 guardian does not qualify, is deceased, refuses to serve, resigns,  
24 or dies after being appointed guardian, or is otherwise unavailable  
25 to serve as guardian.

26 (b) The court shall appoint another person to serve as  
27 guardian as otherwise provided by this title if the designated

1 guardian and all designated alternate guardians named in the  
2 declaration:

- 3 (1) do not qualify;
- 4 (2) are deceased;
- 5 (3) refuse to serve; or
- 6 (4) later die or resign. (Tex. Prob. Code, Sec.  
7 677A(e).)

8 [Sections 1104.161-1104.200 reserved for expansion]

9 SUBCHAPTER E. WRITTEN DECLARATION TO DESIGNATE GUARDIAN BEFORE  
10 NEED ARISES

11 Sec. 1104.201. DEFINITIONS. In this subchapter:

12 (1) "Declaration" means a written declaration of a  
13 person that:

14 (A) designates another person to serve as a  
15 guardian of the person or estate of the declarant; and

16 (B) satisfies the requirements of this  
17 subdivision and Sections 1104.202, 1104.203, 1104.204, 1104.205,  
18 1104.207, 1104.210, 1104.211, and 1104.212.

19 (2) "Self-proving affidavit" means an affidavit the  
20 form and content of which substantially comply with the  
21 requirements of Section 1104.204.

22 (3) "Self-proving declaration" includes a  
23 self-proving affidavit that is attached or annexed to a  
24 declaration. (Tex. Prob. Code, Secs. 679(j), 679A(a).)

25 Sec. 1104.202. DESIGNATION OF GUARDIAN FOR DECLARANT. (a)  
26 A person other than an incapacitated person may designate by  
27 declaration a person to serve as guardian of the person or estate of

1 the declarant if the declarant becomes incapacitated. The court  
2 shall appoint the person designated in the declaration to serve as  
3 guardian in preference to any other person otherwise entitled to  
4 serve as guardian under this title, unless the court finds that the  
5 person designated to serve as guardian:

6 (1) is disqualified; or

7 (2) would not serve the ward's best interests.

8 (b) A declarant may, in the declaration, disqualify a named  
9 person from serving as guardian of the declarant's person or  
10 estate. The court may not under any circumstances appoint as  
11 guardian a person named under this subsection. (Tex. Prob. Code,  
12 Secs. 679(a) (part), (b), (f) (part).)

13 Sec. 1104.203. REQUIREMENTS FOR DECLARATION. (a) A  
14 declaration under this subchapter must be signed by the declarant  
15 and be:

16 (1) written wholly in the declarant's handwriting; or

17 (2) attested to in the declarant's presence by at least  
18 two credible witnesses who are:

19 (A) 14 years of age or older; and

20 (B) not named as guardian or alternate guardian  
21 in the declaration.

22 (b) Notwithstanding Subsection (a), a declaration that is  
23 not written wholly in the declarant's handwriting may be signed by  
24 another person for the declarant under the direction of and in the  
25 presence of the declarant.

26 (c) A declaration described by Subsection (a)(2) may have  
27 attached a self-proving affidavit signed by the declarant and the

1 witnesses attesting to:

2 (1) the competence of the declarant; and

3 (2) the execution of the declaration. (Tex. Prob.  
4 Code, Secs. 679(a) (part), (c), (d).)

5 Sec. 1104.204. FORM AND CONTENT OF DECLARATION AND  
6 SELF-PROVING AFFIDAVIT. (a) A declaration and affidavit may be in  
7 any form adequate to clearly indicate the declarant's intention to  
8 designate a guardian.

9 (b) The following form may be used but is not required to be  
10 used:

11 DECLARATION OF GUARDIAN

12 IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

13 I, \_\_\_\_\_, make this Declaration of Guardian, to operate  
14 if the need for a guardian for me later arises.

15 1. I designate \_\_\_\_\_ to serve as guardian of my person,  
16 \_\_\_\_\_ as first alternate guardian of my person, \_\_\_\_\_ as  
17 second alternate guardian of my person, and \_\_\_\_\_ as third  
18 alternate guardian of my person.

19 2. I designate \_\_\_\_\_ to serve as guardian of my estate,  
20 \_\_\_\_\_ as first alternate guardian of my estate, \_\_\_\_\_ as  
21 second alternate guardian of my estate, and \_\_\_\_\_ as third  
22 alternate guardian of my estate.

23 3. If any guardian or alternate guardian dies, does not  
24 qualify, or resigns, the next named alternate guardian becomes my  
25 guardian.

26 4. I expressly disqualify the following persons from  
27 serving as guardian of my person: \_\_\_\_\_, \_\_\_\_\_, and

2           5. I expressly disqualify the following persons from  
3   serving as guardian of my estate: \_\_\_\_\_, \_\_\_\_\_, and  
4   \_\_\_\_\_.

7 Declarant

## 9 Witness

10 SELF-PROVING AFFIDAVIT

---

21

22 Declarant

24 Affiant

25           Subscribed and sworn to before me by the above named  
26   declarant and affiants on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public in and for the  
State of Texas  
My Commission expires:

\_\_\_\_\_

(Tex. Prob. Code, Sec. 679(i).)

Sec. 1104.205. ALTERNATIVE TO SELF-PROVING AFFIDAVIT. (a)  
As an alternative to the self-proving affidavit authorized by  
Section 1104.204, a declaration of guardian in the event of later  
incapacity or need of guardian may be simultaneously executed,  
attested, and made self-proved by including the following in  
substantially the same form and with substantially the same  
contents:

I, \_\_\_\_\_, as declarant, after being duly  
sworn, declare to the undersigned witnesses and to the undersigned  
authority that this instrument is my Declaration of Guardian in the  
Event of Later Incapacity or Need of Guardian, and that I have made  
and executed it for the purposes expressed in the declaration. I now  
sign this declaration in the presence of the attesting witnesses  
and the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Declarant

The undersigned, \_\_\_\_\_ and  
\_\_\_\_\_, each being 14 years of age or older, after  
being duly sworn, declare to the declarant and to the undersigned  
authority that the declarant declared to us that this instrument is  
the declarant's Declaration of Guardian in the Event of Later  
Incapacity or Need of Guardian and that the declarant executed it

for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission expires:  
\_\_\_\_\_

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.204 is considered self-proved. (Tex. Prob. Code, Secs. 679(k), (l).)

Sec. 1104.206. ALTERNATE SELF-PROVING OF DECLARATION. At any time during the declarant's lifetime, a declaration described by Section 1104.203(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107. (Tex. Prob. Code, Sec. 679A(c).)

Sec. 1104.207. FILING OF DECLARATION AND SELF-PROVING AFFIDAVIT. The declaration and any self-proving affidavit may be



1 filed with the court at any time after the application for  
2 appointment of a guardian is filed and before a guardian is  
3 appointed. (Tex. Prob. Code, Sec. 679(e).)

4       Sec. 1104.208. PROOF OF DECLARATION. (a) The court may  
5 admit a declaration that is self-proved into evidence without the  
6 testimony of witnesses attesting to the competency of the declarant  
7 and the execution of the declaration. Additional proof of the  
8 execution of the declaration with the formalities and solemnities  
9 and under the circumstances required to make it a valid declaration  
10 is not necessary.

11       (b) A declaration described by Section 1104.203(a)(1) that  
12 is not self-proved may be proved in the same manner that a will  
13 written wholly in the testator's handwriting is proved under  
14 Section 256.154.

15       (c) A declaration described by Section 1104.203(a)(2) that  
16 is not self-proved may be proved in the same manner that an attested  
17 written will produced in court is proved under Section 256.153.  
18 (Tex. Prob. Code, Secs. 679A(b), (e), (f).)

19       Sec. 1104.209. PRIMA FACIE EVIDENCE. A properly executed  
20 and witnessed self-proving declaration, including a declaration  
21 and self-proving affidavit described by Section 1104.203(c), is  
22 prima facie evidence that:

23           (1) the declarant was competent at the time the  
24 declarant executed the declaration; and

25           (2) the guardian named in the declaration would serve  
26 the best interests of the ward or incapacitated person. (Tex. Prob.  
27 Code, Sec. 679A(d).)

1           Sec. 1104.210. REVOCATION OF DECLARATION. The declarant  
2 may revoke a declaration in any manner provided for the revocation  
3 of a will under Section 253.002, including the subsequent  
4 re-execution of the declaration in the manner required for the  
5 original declaration. (Tex. Prob. Code, Sec. 679(g).)

6           Sec. 1104.211. EFFECT OF DIVORCE ON DESIGNATION OF SPOUSE.  
7 If a declarant designates the declarant's spouse to serve as  
8 guardian under this subchapter, and the declarant is subsequently  
9 divorced from that spouse before a guardian is appointed, the  
10 provision of the declaration designating the spouse has no effect.  
11 (Tex. Prob. Code, Sec. 679(h).)

12           Sec. 1104.212. ALTERNATE OR OTHER COURT-APPOINTED  
13 GUARDIAN. (a) The court shall appoint the next eligible designated  
14 alternate guardian named in a declaration if the designated  
15 guardian does not qualify, is deceased, refuses to serve, resigns,  
16 or dies after being appointed guardian, or is otherwise unavailable  
17 to serve as guardian.

18           (b) The court shall appoint another person to serve as  
19 guardian as otherwise provided by this title if the designated  
20 guardian and all designated alternate guardians named in the  
21 declaration:

- 22                   (1) do not qualify;  
23                   (2) are deceased;  
24                   (3) refuse to serve; or  
25                   (4) later die or resign. (Tex. Prob. Code, Sec. 679(f)  
26 (part).)

27           [Sections 1104.213-1104.250 reserved for expansion]

SUBCHAPTER F. CERTIFICATION REQUIREMENTS

FOR CERTAIN GUARDIANS

Sec. 1104.251. CERTIFICATION REQUIRED FOR CERTAIN GUARDIANS. (a) An individual must be certified under Subchapter C, Chapter 111, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; or

(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward of the program. (Tex. Prob. Code, Secs. 696A, 697B(a).)

Sec. 1104.252. EFFECT OF PROVISIONAL CERTIFICATE. For purposes of this subchapter, a person who holds a provisional certificate issued under Section 111.0421, Government Code, is considered to be certified. (Tex. Prob. Code, Sec. 697B(e).)

Sec. 1104.253. EXCEPTION FOR FAMILY MEMBERS AND FRIENDS. A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 111, Government Code, or any other law to serve as the person's guardian. (Tex. Prob. Code, Sec. 696B.)

1           Sec. 1104.254. EXCEPTION FOR CERTAIN VOLUNTEERS. An  
2 individual volunteering with a guardianship program is not required  
3 to be certified as provided by Section 1104.251 to provide  
4 guardianship services on the program's behalf. (Tex. Prob. Code,  
5 Sec. 697B(d).)

6           Sec. 1104.255. EXPIRATION OF CERTIFICATION. A person whose  
7 certification under Subchapter C, Chapter 111, Government Code, has  
8 expired must obtain a new certification under that subchapter to  
9 provide or continue providing guardianship services to a ward or  
10 incapacitated person under this title. (Tex. Prob. Code, Sec.  
11 697B(b).)

12          Sec. 1104.256. FAILURE TO COMPLY; COURT'S DUTY TO NOTIFY.  
13 The court shall notify the Guardianship Certification Board if the  
14 court becomes aware of a person who is not complying with:

15               (1) the terms of a certification issued under  
16 Subchapter C, Chapter 111, Government Code; or

17               (2) the standards and rules adopted under that  
18 subchapter. (Tex. Prob. Code, Sec. 697B(c).)

19          Sec. 1104.257. INFORMATION REGARDING SERVICES PROVIDED BY  
20 GUARDIANSHIP PROGRAM. Not later than January 31 of each year, each  
21 guardianship program operating in a county shall submit to the  
22 county clerk a copy of the report submitted to the Guardianship  
23 Certification Board under Section 111.044, Government Code. (Tex.  
24 Prob. Code, Sec. 697A(a).)

25          Sec. 1104.258. INFORMATION REGARDING CERTAIN STATE  
26 EMPLOYEES PROVIDING GUARDIANSHIP SERVICES. Not later than January  
27 31 of each year, the Department of Aging and Disability Services

1 shall submit to the Guardianship Certification Board a statement  
2 containing:

3 (1) the name, address, and telephone number of each  
4 department employee who is or will be providing guardianship  
5 services to a ward or proposed ward on the department's behalf; and

6 (2) the name of each county in which each employee  
7 named in Subdivision (1) is providing or is authorized to provide  
8 those services. (Tex. Prob. Code, Sec. 697A(b).)

9 [Sections 1104.259-1104.300 reserved for expansion]

10 SUBCHAPTER G. PRIVATE PROFESSIONAL GUARDIANS

11 Sec. 1104.301. CERTIFICATION AND REGISTRATION REQUIRED. A  
12 court may not appoint a private professional guardian to serve as a  
13 guardian or permit a private professional guardian to continue to  
14 serve as a guardian under this title if the private professional  
15 guardian is not:

16 (1) certified as provided by Section 1104.251(a),  
17 1104.252, 1104.255, or 1104.256; or

18 (2) in compliance with the registration requirements  
19 of this subchapter. (Tex. Prob. Code, Sec. 696.)

20 Sec. 1104.302. ANNUAL CERTIFICATE OF REGISTRATION. A  
21 private professional guardian must annually apply for a certificate  
22 of registration. (Tex. Prob. Code, Sec. 697(a) (part).)

23 Sec. 1104.303. REQUIREMENTS OF APPLICATION. (a) An  
24 application for a certificate of registration must include a sworn  
25 statement containing the following information concerning a  
26 private professional guardian or each person who represents or  
27 plans to represent the interests of a ward as a guardian on behalf

1 of the private professional guardian:

2 (1) place of residence;

3 (2) business address and business telephone number;

4 (3) educational background and professional  
5 experience;

6 (4) three or more professional references;

7 (5) the name of each ward the private professional  
8 guardian or person is or will be serving as a guardian;

9 (6) the aggregate fair market value of the property of  
10 all wards that is or will be managed by the private professional  
11 guardian or person;

12 (7) whether the private professional guardian or  
13 person has ever been removed as a guardian by the court or resigned  
14 as a guardian in a particular case, and, if so:

15 (A) a description of the circumstances causing  
16 the removal or resignation; and

17 (B) the style of the suit, the docket number, and  
18 the court having jurisdiction over the proceeding; and

19 (8) the certification number or provisional  
20 certification number issued to the private professional guardian or  
21 person by the Guardianship Certification Board.

22 (b) The application must be:

23 (1) made to the clerk of the county having venue of the  
24 proceeding for the appointment of a guardian; and

25 (2) accompanied by a nonrefundable fee set by the  
26 clerk in an amount necessary to cover the cost of administering this  
27 subchapter. (Tex. Prob. Code, Secs. 697(a) (part), (b).)

1           Sec. 1104.304. TERM OF REGISTRATION; RENEWAL. (a) The term  
2 of an initial registration begins on the date the requirements  
3 under Section 1104.303 are met and extends through December 31 of  
4 the year in which the application is made. After the term of the  
5 initial registration, the term of registration begins on January 1  
6 and extends through December 31 of each year.

7           (b) An application to renew a registration must be completed  
8 during December of the year preceding the year for which the renewal  
9 is requested. (Tex. Prob. Code, Sec. 697(c).)

10          Sec. 1104.305. USE OF REGISTRATION INFORMATION. (a) The  
11 clerk shall bring the information received under Section 1104.303  
12 to the judge's attention for review.

13          (b) The judge shall use the information only to determine  
14 whether to appoint, remove, or continue the appointment of a  
15 private professional guardian. (Tex. Prob. Code, Sec. 697(d).)

16          Sec. 1104.306. USE OF NAMES AND BUSINESS ADDRESSES. Not  
17 later than January 31 of each year, the clerk shall submit to the  
18 Guardianship Certification Board the name and business address of  
19 each private professional guardian who has satisfied the  
20 registration requirements of this subchapter during the preceding  
21 year. (Tex. Prob. Code, Sec. 697(e).)

22           [Sections 1104.307-1104.350 reserved for expansion]

23           SUBCHAPTER H. GROUNDS FOR DISQUALIFICATION

24          Sec. 1104.351. INCAPACITY OR INEXPERIENCE. A person may  
25 not be appointed guardian if the person is:

- 26           (1) a minor or other incapacitated person; or  
27           (2) a person who, because of inexperience, lack of

1 education, or other good reason, is incapable of properly and  
2 prudently managing and controlling the person or estate of the  
3 ward. (Tex. Prob. Code, Sec. 681 (part).)

4       Sec. 1104.352. UNSUITABILITY.       A person may not be  
5 appointed guardian if the court finds the person to be unsuitable.  
6 (Tex. Prob. Code, Sec. 681 (part).)

7       Sec. 1104.353. NOTORIOUSLY BAD CONDUCT; PRESUMPTION  
8 CONCERNING BEST INTEREST. (a) A person may not be appointed  
9 guardian if the person's conduct is notoriously bad.

10       (b) It is presumed to be not in the best interests of a ward  
11 or incapacitated person to appoint as guardian of the ward or  
12 incapacitated person a person who has been finally convicted of:

13               (1) any sexual offense, including sexual assault,  
14 aggravated sexual assault, and prohibited sexual conduct;

15               (2) aggravated assault;

16               (3) injury to a child, elderly individual, or disabled  
17 individual; or

18               (4) abandoning or endangering a child. (Tex. Prob.  
19 Code, Secs. 678, 681 (part).)

20       Sec. 1104.354. CONFLICT OF INTEREST. A person may not be  
21 appointed guardian if the person:

22               (1) is a party or is a person whose parent is a party to  
23 a lawsuit concerning or affecting the welfare of the proposed ward,  
24 unless the court:

25                       (A) determines that the lawsuit claim of the  
26 person who has applied to be appointed guardian is not in conflict  
27 with the lawsuit claim of the proposed ward; or



1 (B) appoints a guardian ad litem to represent the  
2 interests of the proposed ward throughout the litigation of the  
3 ward's lawsuit claim;

4 (2) is indebted to the proposed ward, unless the  
5 person pays the debt before appointment; or

6 (3) asserts a claim adverse to the proposed ward or the  
7 proposed ward's property. (Tex. Prob. Code, Sec. 681 (part).)

8 Sec. 1104.355. DISQUALIFIED IN DECLARATION. A person may  
9 not be appointed guardian if the person is disqualified in a  
10 declaration under Section 1104.202(b). (Tex. Prob. Code, Sec. 681  
11 (part).)

12 Sec. 1104.356. LACK OF CERTAIN REQUIRED CERTIFICATION. A  
13 person may not be appointed guardian if the person does not have the  
14 certification to serve as guardian that is required by Subchapter  
15 F. (Tex. Prob. Code, Sec. 681 (part).)

16 Sec. 1104.357. NONRESIDENT WITHOUT RESIDENT AGENT. A  
17 person may not be appointed guardian if the person is a nonresident  
18 who has failed to file with the court the name of a resident agent to  
19 accept service of process in all actions or proceedings relating to  
20 the guardianship. (Tex. Prob. Code, Sec. 681 (part).)

21 [Sections 1104.358-1104.400 reserved for expansion]

22 SUBCHAPTER I. ACCESS TO CRIMINAL HISTORY RECORDS

23 Sec. 1104.401. DEFINITION. In this subchapter,  
24 "department" means the Department of Aging and Disability Services.  
25 (New.)

26 Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL  
27 HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE. (a) Except as

1 provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk  
2 of the county having venue of the proceeding for the appointment of  
3 a guardian shall obtain criminal history record information that is  
4 maintained by the Department of Public Safety or the Federal Bureau  
5 of Investigation identification division relating to:

6 (1) a private professional guardian;

7 (2) each person who represents or plans to represent  
8 the interests of a ward as a guardian on behalf of the private  
9 professional guardian;

10 (3) each person employed by a private professional  
11 guardian who will:

12 (A) have personal contact with a ward or proposed  
13 ward;

14 (B) exercise control over and manage a ward's  
15 estate; or

16 (C) perform any duties with respect to the  
17 management of a ward's estate;

18 (4) each person employed by or volunteering or  
19 contracting with a guardianship program to provide guardianship  
20 services to a ward of the program on the program's behalf; or

21 (5) any other person proposed to serve as a guardian  
22 under this title, including a proposed temporary guardian and a  
23 proposed successor guardian, other than the ward's or proposed  
24 ward's family member or an attorney.

25 (b) The clerk may charge a \$10 fee to recover the costs of  
26 obtaining criminal history record information under Subsection  
27 (a). (Tex. Prob. Code, Secs. 698(a), (e).)

1           Sec. 1104.403. SUBMISSION OF CRIMINAL HISTORY RECORD  
2 INFORMATION BY PROPOSED GUARDIAN. Not later than the 10th day  
3 before the date of the hearing to appoint a guardian, a person may  
4 submit to the clerk a copy of the person's criminal history record  
5 information required under Section 1104.402(a)(5) that the person  
6 obtains not earlier than the 30th day before the date of the hearing  
7 from:

- 8                   (1) the Department of Public Safety; or  
9                   (2) the Federal Bureau of Investigation. (Tex. Prob.  
10 Code, Sec. 698(a-5).)

11           Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING  
12 CERTAIN PERSONS HOLDING A CERTIFICATE. (a) The clerk described by  
13 Section 1104.402 is not required to obtain criminal history record  
14 information for a person who holds a certificate issued under  
15 Section 111.042, Government Code, or a provisional certificate  
16 issued under Section 111.0421, Government Code, if the Guardianship  
17 Certification Board conducted a criminal history check on the  
18 person before issuing or renewing the certificate.

19           (b) The board shall provide to the clerk at the court's  
20 request the criminal history record information that was obtained  
21 from the Department of Public Safety or the Federal Bureau of  
22 Investigation. (Tex. Prob. Code, Sec. 698(a-6).)

23           Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF COURT. (a)  
24 Criminal history record information obtained or provided under  
25 Section 1104.402, 1104.403, or 1104.404 is privileged and  
26 confidential and is for the exclusive use of the court. The  
27 criminal history record information may not be released or

1 otherwise disclosed to any person or agency except on court order or  
2 consent of the person being investigated.

3 (b) The county clerk may destroy the criminal history record  
4 information after the information is used for the purposes  
5 authorized by this subchapter. (Tex. Prob. Code, Sec. 698(b).)

6 Sec. 1104.406. DEPARTMENT'S DUTY TO OBTAIN CRIMINAL HISTORY  
7 RECORD INFORMATION. (a) The department shall obtain criminal  
8 history record information that is maintained by the Department of  
9 Public Safety or the Federal Bureau of Investigation identification  
10 division relating to each individual who is or will be providing  
11 guardianship services to a ward of or referred by the department,  
12 including:

13 (1) an employee of or an applicant selected for an  
14 employment position with the department;

15 (2) a volunteer or an applicant selected to volunteer  
16 with the department;

17 (3) an employee of or an applicant selected for an  
18 employment position with a business entity or other person who  
19 contracts with the department to provide guardianship services to a  
20 ward referred by the department; and

21 (4) a volunteer or an applicant selected to volunteer  
22 with a business entity or other person described by Subdivision  
23 (3).

24 (b) The department must obtain the information in  
25 Subsection (a) before:

26 (1) making an offer of employment to an applicant for  
27 an employment position; or

1           (2) a volunteer contacts a ward of or referred by the  
2 department.

3           (c) The department must annually obtain the information in  
4 Subsection (a) regarding employees or volunteers providing  
5 guardianship services. (Tex. Prob. Code, Secs. 698(a-1), (a-2),  
6 (a-3).)

7           Sec. 1104.407. DUTY TO PROVIDE INFORMATION ON REQUEST. The  
8 department shall provide the information obtained under Section  
9 1102.406(a) to:

10           (1) the clerk of the county having venue of the  
11 guardianship proceeding at the court's request; and

12           (2) the Guardianship Certification Board at the  
13 board's request. (Tex. Prob. Code, Sec. 698(a-4).)

14           Sec. 1104.408. INFORMATION FOR EXCLUSIVE USE OF COURT OR  
15 GUARDIANSHIP CERTIFICATION BOARD. (a) Criminal history record  
16 information obtained under Section 1104.407 is privileged and  
17 confidential and is for the exclusive use of the court or  
18 Guardianship Certification Board, as appropriate. The information  
19 may not be released or otherwise disclosed to any person or agency  
20 except:

21           (1) on court order;

22           (2) with the consent of the person being investigated;

23 or

24           (3) as authorized by Section 1104.404 of this code or  
25 Section 411.1386(a-6), Government Code.

26           (b) The county clerk or Guardianship Certification Board  
27 may destroy the criminal history record information after the

1 information is used for the purposes authorized by this subchapter.  
2 (Tex. Prob. Code, Sec. 698(b-1).)

3 Sec. 1104.409. USE OF INFORMATION BY COURT. The court  
4 shall use the information obtained under this subchapter only in  
5 determining whether to:

6 (1) appoint, remove, or continue the appointment of a  
7 private professional guardian, a guardianship program, or the  
8 department; or

9 (2) appoint any other person proposed to serve as a  
10 guardian under this title, including a proposed temporary guardian  
11 and a proposed successor guardian, other than the ward's or  
12 proposed ward's family member or an attorney. (Tex. Prob. Code,  
13 Sec. 698(c).)

14 Sec. 1104.410. USE OF INFORMATION BY GUARDIANSHIP  
15 CERTIFICATION BOARD. Criminal history record information obtained  
16 by the Guardianship Certification Board under Section 1104.407(2)  
17 may be used for any purpose related to the issuance, denial,  
18 renewal, suspension, or revocation of a certificate issued by the  
19 board. (Tex. Prob. Code, Sec. 698(c-1).)

20 Sec. 1104.411. CRIMINAL OFFENSE FOR UNAUTHORIZED RELEASE OR  
21 DISCLOSURE. (a) A person commits an offense if the person releases  
22 or discloses any information received under this subchapter without  
23 the authorization prescribed by Section 1104.405 or 1104.408.

24 (b) An offense under this section is a Class A misdemeanor.  
25 (Tex. Prob. Code, Sec. 698(d).)

26 Sec. 1104.412. EFFECT OF SUBCHAPTER ON DEPARTMENT'S  
27 AUTHORITY TO OBTAIN OR USE INFORMATION. This subchapter does not

1 prohibit the department from obtaining and using criminal history  
2 record information as provided by other law. (Tex. Prob. Code, Sec.  
3 698(f).)

4 CHAPTER 1105. QUALIFICATION OF GUARDIANS

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 1105.001. DEFINITIONS

7 Sec. 1105.002. MANNER OF QUALIFICATION OF GUARDIAN

8 Sec. 1105.003. PERIOD FOR TAKING OATH AND GIVING BOND

9 [Sections 1105.004-1105.050 reserved for expansion]

10 SUBCHAPTER B. OATHS

11 Sec. 1105.051. OATH OF GUARDIAN

12 Sec. 1105.052. ADMINISTRATION OF OATH

13 [Sections 1105.053-1105.100 reserved for expansion]

14 SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

15 Sec. 1105.101. BOND GENERALLY REQUIRED; EXCEPTIONS

16 Sec. 1105.102. BOND FOR CERTAIN GUARDIANS OF THE

17 PERSON

18 Sec. 1105.103. BOND REQUIRED FROM GUARDIAN OTHERWISE

19 EXEMPT

20 Sec. 1105.104. BONDS OF JOINT GUARDIANS

21 Sec. 1105.105. BOND OF MARRIED PERSON

22 Sec. 1105.106. BOND OF MARRIED PERSON YOUNGER THAN 18

23 YEARS OF AGE

24 Sec. 1105.107. BOND OF GUARDIANSHIP PROGRAM

25 Sec. 1105.108. SUBSCRIPTION OF BOND BY PRINCIPALS AND

26 SURETIES

27 Sec. 1105.109. FORM OF BOND

1 Sec. 1105.110. FILING OF BOND  
2 Sec. 1105.111. FAILURE TO GIVE BOND  
3 Sec. 1105.112. BOND NOT VOID ON FIRST RECOVERY  
4 [Sections 1105.113-1105.150 reserved for expansion]  
5 SUBCHAPTER D. OTHER PROVISIONS RELATING TO BONDS OF GUARDIANS OF  
6 THE ESTATE  
7 Sec. 1105.151. GENERAL FORMALITIES  
8 Sec. 1105.152. GENERAL STANDARD REGARDING AMOUNT OF  
9 BOND  
10 Sec. 1105.153. EVIDENTIARY HEARING ON AMOUNT OF BOND  
11 Sec. 1105.154. SPECIFIC BOND AMOUNT  
12 Sec. 1105.155. AGREEMENT REGARDING DEPOSIT OF ESTATE  
13 ASSETS  
14 Sec. 1105.156. DEPOSIT OF ESTATE ASSETS ON TERMS  
15 PRESCRIBED BY COURT  
16 Sec. 1105.157. DEPOSITS OF GUARDIAN  
17 Sec. 1105.158. BOND REQUIRED INSTEAD OF DEPOSITS  
18 Sec. 1105.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF  
19 GUARDIANSHIP  
20 Sec. 1105.160. AUTHORIZED CORPORATE OR PERSONAL  
21 SURETIES  
22 Sec. 1105.161. SURETIES FOR CERTAIN BONDS  
23 Sec. 1105.162. DEPOSITS BY PERSONAL SURETY  
24 Sec. 1105.163. APPLICABILITY OF SUBCHAPTER TO CERTAIN  
25 COURT ORDERS  
26 [Sections 1105.164-1105.200 reserved for expansion]



SUBCHAPTER E. PROVISIONS RELATING TO PERSONAL SURETIES

Sec. 1105.201. AFFIDAVIT OF PERSONAL SURETY

Sec. 1105.202. LIEN ON REAL PROPERTY OWNED BY PERSONAL  
SURETY

Sec. 1105.203. SUBORDINATION OF LIEN ON REAL PROPERTY  
OWNED BY PERSONAL SURETY

Sec. 1105.204. RELEASE OF LIEN ON REAL PROPERTY OWNED  
BY PERSONAL SURETIES

[Sections 1105.205-1105.250 reserved for expansion]

SUBCHAPTER F. NEW BONDS

Sec. 1105.251. GROUNDS FOR REQUIRING NEW BOND

Sec. 1105.252. COURT ORDER OR CITATION ON NEW BOND

Sec. 1105.253. SHOW CAUSE HEARING ON NEW BOND  
REQUIREMENT

Sec. 1105.254. EFFECT OF ORDER REQUIRING NEW BOND

Sec. 1105.255. NEW BOND IN DECREASED AMOUNT

Sec. 1105.256. REQUEST BY SURETY FOR NEW BOND

Sec. 1105.257. DISCHARGE OF FORMER SURETIES ON  
APPROVAL OF NEW BOND

CHAPTER 1105. QUALIFICATION OF GUARDIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1105.001. DEFINITIONS. In this chapter:

(1) "Bond" means a bond required by this chapter to be  
given by a person appointed to serve as a guardian.

(2) "Oath" means an oath required by this chapter to be  
taken by a person appointed to serve as a guardian. (New.)

Sec. 1105.002. MANNER OF QUALIFICATION OF GUARDIAN. (a)

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

3 (1) taken and filed the oath required under Section  
4 1105.051;

5 (2) given the required bond;

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

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

8 (b) A guardian who is not required to give a bond is  
9 considered to have qualified when the guardian has taken and filed  
10 the required oath. (Tex. Prob. Code, Sec. 699.)

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

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

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

18 (b) A guardian of an estate must give a bond before being  
19 issued letters of guardianship unless a bond is not required under  
20 this title. (Tex. Prob. Code, Secs. 701 (part), 703(a) (part).)

21 [Sections 1105.004-1105.050 reserved for expansion]

22 SUBCHAPTER B. OATHS

23 Sec. 1105.051. OATH OF GUARDIAN. (a) A guardian shall take  
24 an oath to discharge faithfully the duties of guardian for the  
25 person or estate, or both, of a ward.

26 (b) If the Department of Aging and Disability Services is  
27 appointed guardian, a department representative shall take the oath

1 required by Subsection (a). (Tex. Prob. Code, Sec. 700.)

2       Sec. 1105.052. ADMINISTRATION OF OATH. An oath may be taken  
3 before any person authorized to administer oaths under the laws of  
4 this state. (Tex. Prob. Code, Sec. 701 (part).)

5       [Sections 1105.053-1105.100 reserved for expansion]

6       SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

7       Sec. 1105.101. BOND GENERALLY REQUIRED; EXCEPTIONS. (a)  
8 Except as provided by this section, a guardian of the person or the  
9 estate of a ward shall give a bond.

10       (b) A bond is not required if the guardian is:

11           (1) a corporate fiduciary; or

12           (2) a guardianship program operated by a county.

13       (c) The court shall issue letters of guardianship of the  
14 person to a person without the requirement of a bond if:

15           (1) the person is named to be appointed guardian in a  
16 will made by a surviving parent that is probated by a court in this  
17 state, or in a written declaration made by a surviving parent, and  
18 the will or declaration directs that the guardian serve without a  
19 bond; and

20           (2) the court finds that the guardian is qualified.

21       (d) The court may not waive the requirement of bond for the  
22 guardian of the estate of a ward, regardless of whether a surviving  
23 parent's will or written declaration directs the court to waive the  
24 bond. (Tex. Prob. Code, Sec. 702.)

25       Sec. 1105.102. BOND FOR CERTAIN GUARDIANS OF THE PERSON.

26 (a) This section applies only to a bond required to be posted by a  
27 guardian of the person of a ward when there is no guardian of the

1 ward's estate.

2 (b) To ensure the performance of the guardian's duties, a  
3 court may accept only:

- 4 (1) a corporate surety bond;  
5 (2) a personal surety bond;  
6 (3) a deposit of money instead of a surety bond; or  
7 (4) a personal bond.

8 (c) In determining the appropriate type and amount of bond  
9 to set for the guardian, the court shall consider:

- 10 (1) the familial relationship of the guardian to the  
11 ward;  
12 (2) the guardian's ties to the community;  
13 (3) the guardian's financial condition;  
14 (4) the guardian's past history of compliance with the  
15 court; and  
16 (5) the reason the guardian may have previously been  
17 denied a corporate surety bond. (Tex. Prob. Code, Sec. 702A.)

18 Sec. 1105.103. BOND REQUIRED FROM GUARDIAN OTHERWISE  
19 EXEMPT. (a) This section applies only to an individual guardian of  
20 the estate from whom a bond was not required.

21 (b) A person who has a debt, claim, or demand against the  
22 guardianship, with respect to the justice of which an oath has been  
23 made by the person, the person's agent or attorney, or another  
24 person interested in the guardianship, in person or as the  
25 representative of another person, may file a written complaint  
26 under oath in the court in which the guardian was appointed.

27 (c) After a complaint is filed under Subsection (b), the

1 court shall cite the guardian to appear and show cause why the  
2 guardian should not be required to give a bond.

3 (d) On hearing a complaint filed under Subsection (b), if it  
4 appears to the court that the guardian is wasting, mismanaging, or  
5 misapplying the guardianship estate and that a creditor may  
6 probably lose the creditor's debt, or that a person's interest in  
7 the guardianship may be diminished or lost, the court shall enter an  
8 order requiring the guardian to give a bond not later than the 10th  
9 day after the date of the order.

10 (e) A bond required under Subsection (d) must be:

11 (1) in an amount sufficient to protect the  
12 guardianship and the guardianship's creditors;

13 (2) approved by and payable to the judge; and

14 (3) conditioned that the guardian:

15 (A) will well and truly administer the  
16 guardianship; and

17 (B) will not waste, mismanage, or misapply the  
18 guardianship estate.

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

23 (1) administer the guardianship according to the  
24 provisions of a will or law;

25 (2) take the oath required of a guardian under Section  
26 1105.051 before the person enters on the administration of the  
27 guardianship; and

1           (3) give bond in the same manner and in the same amount  
2 provided by this title for the issuance of original letters of  
3 guardianship. (Tex. Prob. Code, Secs. 722, 723, 724, 725.)

4           Sec. 1105.104. BONDS OF JOINT GUARDIANS. If two or more  
5 persons are appointed as guardians and are required to give a bond  
6 by the court or under this title, the court may require:

7           (1) a separate bond from each person; or

8           (2) a joint bond from all of the persons. (Tex. Prob.  
9 Code, Sec. 706.)

10          Sec. 1105.105. BOND OF MARRIED PERSON. (a) A married  
11 person appointed as guardian may jointly execute, with or without,  
12 the person's spouse, a bond required by law.

13          (b) A bond executed by a married person:

14           (1) binds the person's separate estate; and

15           (2) may bind the person's spouse only if the spouse  
16 signs the bond. (Tex. Prob. Code, Sec. 707.)

17          Sec. 1105.106. BOND OF MARRIED PERSON YOUNGER THAN 18 YEARS  
18 OF AGE. A bond required to be executed by a person who is younger  
19 than 18 years of age, is or has been married, and accepts and  
20 qualifies as guardian is as valid and binding for all purposes as if  
21 the person were of legal age. (Tex. Prob. Code, Sec. 708.)

22          Sec. 1105.107. BOND OF GUARDIANSHIP PROGRAM. The judge may  
23 require a guardianship program appointed guardian under this title  
24 to file one bond that:

25           (1) meets all the conditions required under this  
26 title; and

27           (2) is in an amount sufficient to protect all of the

1 guardianships and the creditors of the guardianships of the wards  
2 receiving services from the guardianship program. (Tex. Prob.  
3 Code, Sec. 708A.)

4 Sec. 1105.108. SUBSCRIPTION OF BOND BY PRINCIPALS AND  
5 SURETIES. A bond required under this title shall be subscribed by  
6 the principals and sureties. (Tex. Prob. Code, Sec. 705 (part).)

7 Sec. 1105.109. FORM OF BOND. The following form, or a form  
8 with the same substance, may be used for the bond of a guardian:

9 "The State of Texas

10 "County of \_\_\_\_\_

11 "Know all persons by these presents that we, \_\_\_\_\_ (insert  
12 name of each principal), as principal, and \_\_\_\_\_ (insert name of each  
13 surety), as sureties, are held and firmly bound to the judge of \_\_\_\_\_  
14 (insert reference to appropriate judge), and that judge's  
15 successors in office, in the sum of \$\_\_\_\_\_; conditioned that the  
16 above bound principal or principals, appointed by the judge as  
17 guardian or temporary guardian of the person or of the estate, or  
18 both, of \_\_\_\_\_ (insert name of ward, stating in each case  
19 whether the person is a minor or an incapacitated person other than  
20 a minor), shall well and truly perform all of the duties required of  
21 the guardian or temporary guardian by law under appointment."  
22 (Tex. Prob. Code, Sec. 704.)

23 Sec. 1105.110. FILING OF BOND. A bond required under this  
24 title shall be filed with the clerk after the court approves the  
25 bond. (Tex. Prob. Code, Sec. 705 (part).)

26 Sec. 1105.111. FAILURE TO GIVE BOND. Another person may be  
27 appointed as guardian to replace a guardian who fails to give the

bond required by the court within the period required under this title. (Tex. Prob. Code, Sec. 721.)

Sec. 1105.112. BOND NOT VOID ON FIRST RECOVERY. A guardian's bond is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the entire amount of the bond is recovered. (Tex. Prob. Code, Sec. 726.)

[Sections 1105.113-1105.150 reserved for expansion]

SUBCHAPTER D. OTHER PROVISIONS RELATING TO BONDS OF GUARDIANS OF  
THE ESTATE

Sec. 1105.151. GENERAL FORMALITIES. A bond given by a guardian of the estate must:

- (1) be conditioned as required by law;
- (2) be payable to the judge or that judge's successors in office;
- (3) have the written approval of the judge in the judge's official capacity; and
- (4) be executed and approved in accordance with this subchapter. (Tex. Prob. Code, Sec. 703(a) (part).)

Sec. 1105.152. GENERAL STANDARD REGARDING AMOUNT OF BOND. (a) The judge shall set the amount of a bond for a guardian of an estate in an amount sufficient to protect the guardianship and the guardianship's creditors, as provided by this title.

(b) In determining the amount of the bond, the court may not consider estate assets placed in a management trust under Chapter 1301. (Tex. Prob. Code, Secs. 703(b), (s).)

Sec. 1105.153. EVIDENTIARY HEARING ON AMOUNT OF BOND. Before setting the amount of a bond required of a guardian of an



estate, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;

(2) the amount of cash estimated to be needed for administrative purposes, including the operation of a business, factory, farm, or ranch owned by the guardianship estate, and administrative expenses for one year;

(3) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;

(4) the estimated value of certificates of stock, bonds, notes, or other securities of the ward, and the name of the depository in which the stocks, bonds, notes, or other securities are deposited;

(5) the face value of life insurance or other policies payable to the ward or the ward's estate;

(6) the estimated value of other personal property that is owned by the guardianship, or by a person with a disability; and

(7) the estimated amount of debts due and owing by the ward. (Tex. Prob. Code, Sec. 703(c).)

Sec. 1105.154. SPECIFIC BOND AMOUNT. (a) Except as otherwise provided by this section, the judge shall set the amount of a bond of a guardian of an estate in an amount equal to the sum of:

(1) the estimated value of all personal property

1 belonging to the ward; and

2 (2) an additional amount to cover revenue anticipated  
3 to be derived during the succeeding 12 months from:

4 (A) interest and dividends;

5 (B) collectible claims;

6 (C) the aggregate amount of any installments or  
7 periodic payments, excluding income derived or to be derived from  
8 federal social security payments; and

9 (D) rentals for the use of property.

10 (b) The judge shall reduce the amount of the original bond  
11 under Subsection (a) in proportion to the amount of cash or the  
12 value of securities or other assets:

13 (1) authorized or required to be deposited by court  
14 order; or

15 (2) voluntarily deposited by the guardian or the  
16 sureties on the guardian's bond as provided in Sections 1105.156  
17 and 1105.157(a).

18 (c) The judge shall set the amount of the bond for a  
19 temporary guardian. (Tex. Prob. Code, Secs. 703(d), (q).)

20 Sec. 1105.155. AGREEMENT REGARDING DEPOSIT OF ESTATE  
21 ASSETS. (a) If the court considers it to be in the best interests  
22 of the ward, the court may require the guardian of the estate and  
23 the corporate or personal sureties on the guardian's bond to agree  
24 to deposit cash and other assets of the guardianship estate in a  
25 depository described by Subsection (b). If the depository is  
26 otherwise proper, the court may require the deposit to be made in a  
27 manner so as to prevent the withdrawal of the money or other assets

1 in the guardianship estate without the written consent of the  
2 surety or on court order made after notice to the surety.

3 (b) Cash and assets must be deposited under this section in  
4 a financial institution as defined by Section 201.101, Finance  
5 Code, that:

6 (1) has its main office or a branch office in this  
7 state; and

8 (2) is qualified to act as a depository in this state  
9 under the laws of this state or the United States.

10 (c) An agreement made by a guardian and the sureties on the  
11 guardian's bond under this section does not release the principal  
12 or sureties from liability, or change the liability of the  
13 principal or sureties, as established by the terms of the bond.  
14 (Tex. Prob. Code, Sec. 703(e).)

15 Sec. 1105.156. DEPOSIT OF ESTATE ASSETS ON TERMS PRESCRIBED  
16 BY COURT. (a) Cash, securities, or other personal assets of a ward  
17 to which the ward is entitled may, or if considered by the court to  
18 be in the best interests of the ward, shall, be deposited in one or  
19 more depositories described by this subchapter on terms prescribed  
20 by the court.

21 (b) The court in which the guardianship proceeding is  
22 pending may authorize or require additional estate assets currently  
23 on hand or that accrue during the pendency of the proceeding to be  
24 deposited as provided by Subsection (a) on:

25 (1) the court's own motion; or

26 (2) the written application of the guardian or any  
27 other person interested in the ward.

1           (c) The amount of the bond required to be given by the  
2 guardian of the estate shall be reduced in proportion to the amount  
3 of the cash or the value of the securities or other assets deposited  
4 under this section.

5           (d) Cash, securities, or other assets deposited under this  
6 section may be withdrawn wholly or partly from the depository only  
7 in accordance with a court order, and the amount of the guardian's  
8 bond shall be increased in proportion to the amount of the cash or  
9 the value of the securities or other assets authorized to be  
10 withdrawn. (Tex. Prob. Code, Sec. 703(f).)

11           Sec. 1105.157. DEPOSITS OF GUARDIAN. (a) Instead of giving  
12 a surety or sureties on a bond, or to reduce the amount of a bond,  
13 the guardian of an estate may deposit the guardian's own cash or  
14 securities acceptable to the court with a financial institution as  
15 defined by Section 201.101, Finance Code, that has its main office  
16 or a branch office in this state.

17           (b) If the deposit is otherwise proper, the deposit must be  
18 in an amount or value equal to the amount of the bond required or the  
19 bond shall be reduced by the value of assets that are deposited.

20           (c) A depository that receives a deposit made under  
21 Subsection (a) shall issue a receipt for the deposit that:

22                 (1) shows the amount of cash deposited or the amount  
23 and description of the securities deposited, as applicable; and

24                 (2) states that the depository agrees to disburse or  
25 deliver the cash or securities only on receipt of a certified copy  
26 of an order of the court in which the proceeding is pending.

27           (d) A receipt issued by a depository under Subsection (c)

1 must be attached to the guardian's bond and be delivered to and  
2 filed by the county clerk after the receipt is approved by the  
3 judge.

4 (e) The amount of cash or securities on deposit may be  
5 increased or decreased, by court order from time to time, as the  
6 interests of the guardianship require.

7 (f) A deposit of cash or securities made instead of a surety  
8 on the bond may be withdrawn or released only on order of a court  
9 that has jurisdiction.

10 (g) A creditor has the same rights against a guardian of the  
11 estate and the deposits as are provided for recovery against  
12 sureties on a bond. (Tex. Prob. Code, Secs. 703(g), (h), (i), (j),  
13 (k).)

14 Sec. 1105.158. BOND REQUIRED INSTEAD OF DEPOSITS. (a) The  
15 court may on its own motion or on the written application by the  
16 guardian of an estate or any other person interested in the  
17 guardianship:

18 (1) require the guardian to give adequate bond instead  
19 of the deposit; or

20 (2) authorize withdrawal of the deposit and  
21 substitution of a bond with sureties.

22 (b) Before the 21st day after the date the guardian is  
23 personally served with notice of the filing of the application or  
24 the date the court enters the court's motion, the guardian shall  
25 file a sworn statement showing the condition of the guardianship.

26 (c) A guardian who fails to comply with Subsection (b) is  
27 subject to removal as in other cases.

(d) The deposit may not be released or withdrawn until the court:

(1) is satisfied as to the condition of the guardianship estate;

(2) determines the amount of the bond; and

(3) receives and approves the bond. (Tex. Prob. Code, Sec. 703(1).)

Sec. 1105.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF GUARDIANSHIP. (a) Any deposit of assets of the guardian of an estate, the guardianship, or a surety that remains at the time a guardianship is closed shall be released by court order and paid to the person entitled to the assets.

(b) Except as provided by Subsection (c), a writ of attachment or garnishment does not lie against a deposit described by Subsection (a).

(c) A writ of attachment or garnishment may lie against a deposit described by Subsection (a) as to a claim of a creditor of the guardianship or a person interested in the guardianship, including a distributee or ward, only to the extent the court has ordered distribution. (Tex. Prob. Code, Sec. 703(m).)

Sec. 1105.160. AUTHORIZED CORPORATE OR PERSONAL SURETIES.

(a) The surety on a bond of a guardian of an estate may be an authorized corporate or personal surety.

(b) A bond of a guardian of an estate with sureties who are individuals must have at least two sureties, each of whom must:

(1) execute an affidavit in the manner provided by Subchapter E; and

1           (2) own property in this state, excluding property  
2 exempt by law, that the judge is satisfied is sufficient to qualify  
3 the person as a surety as required by law.

4           (c) A bond with an authorized corporate surety is only  
5 required to have one surety, except as otherwise provided by law.  
6 (Tex. Prob. Code, Secs. 703(n), (p) (part).)

7           Sec. 1105.161. SURETIES FOR CERTAIN BONDS. (a) If the  
8 amount of the bond of a guardian of an estate exceeds \$50,000, the  
9 court may require that the bond be signed by:

10           (1) at least two authorized corporate sureties; or

11           (2) one corporate surety and at least two good and  
12 sufficient personal sureties.

13           (b) The guardianship shall pay the cost of a bond with  
14 corporate sureties. (Tex. Prob. Code, Sec. 703(o).)

15           Sec. 1105.162. DEPOSITS BY PERSONAL SURETY. Instead of  
16 executing an affidavit under Section 1105.201 or creating a lien  
17 under Section 1105.202 when required, a personal surety may deposit  
18 the surety's own cash or securities in the same manner as a guardian  
19 instead of pledging real property as security, subject to the  
20 provisions governing the deposits if made by a guardian. (Tex.  
21 Prob. Code, Sec. 703(p) (part).)

22           Sec. 1105.163. APPLICABILITY OF SUBCHAPTER TO CERTAIN COURT  
23 ORDERS. To the extent applicable, the provisions of this  
24 subchapter relating to the deposit of cash and securities cover the  
25 orders entered by the court when:

26           (1) property of a guardianship has been authorized to  
27 be sold or rented;

1           (2) money is borrowed from the guardianship;

2           (3) real property, or an interest in real property,  
3 has been authorized to be leased for mineral development or made  
4 subject to unitization;

5           (4) the general bond has been found insufficient; or

6           (5) money is borrowed or invested on behalf of a ward.  
7 (Tex. Prob. Code, Sec. 703(r).)

8           [Sections 1105.164-1105.200 reserved for expansion]

9           SUBCHAPTER E. PROVISIONS RELATING TO PERSONAL SURETIES

10          Sec. 1105.201. AFFIDAVIT OF PERSONAL SURETY. (a) Before a  
11 judge considers a bond with a personal surety, each personal surety  
12 must execute an affidavit stating the amount by which the surety's  
13 assets that are reachable by creditors exceeds the surety's  
14 liabilities. The total of the surety's worth must equal at least  
15 twice the amount of the bond.

16          (b) Each affidavit must be presented to the judge for  
17 consideration and, if approved, shall be attached to and form part  
18 of the bond. (Tex. Prob. Code, Sec. 709(a).)

19          Sec. 1105.202. LIEN ON REAL PROPERTY OWNED BY PERSONAL  
20 SURETY. (a) If a judge finds that the estimated value of personal  
21 property of the guardianship that cannot be deposited, as provided  
22 by Subchapter D, is such that personal sureties cannot be accepted  
23 without the creation of a specific lien on the real property owned  
24 by the sureties, the judge shall enter an order requiring each  
25 surety to designate real property that is owned by the surety,  
26 located in this state, and subject to execution. The designated  
27 property must have a value that exceeds all liens and unpaid taxes



1 by an amount at least equal to the amount of the bond and must have  
2 an adequate legal description, all of which the surety shall  
3 incorporate in an affidavit. Following approval by the judge, the  
4 affidavit shall be attached to and form part of the bond.

5 (b) A lien arises as security for the performance of the  
6 obligation of the bond only on the real property designated in the  
7 affidavit.

8 (c) Before letters of guardianship are issued to the  
9 guardian whose bond includes an affidavit under this section, the  
10 court clerk shall mail a statement to the office of the county clerk  
11 of each county in which any real property designated in the  
12 affidavit is located. The statement must be signed by the court  
13 clerk and include:

- 14 (1) a sufficient description of the real property;  
15 (2) the names of the principal and sureties on the  
16 bond;  
17 (3) the amount of the bond;  
18 (4) the name of the guardianship; and  
19 (5) the name of the court in which the bond is given.

20 (d) Each county clerk who receives a statement required by  
21 Subsection (c) shall record the statement in the county deed  
22 records. Each recorded statement shall be indexed in a manner that  
23 permits the convenient determination of the existence and character  
24 of the lien described in the statement.

25 (e) The recording and indexing required by Subsection (d) is  
26 constructive notice to a person regarding the existence of the lien  
27 on the real property located in the county, effective as of the date

1 of the indexing.

2 (f) If each personal surety subject to a court order under  
3 this section does not comply with the order, the judge may require  
4 that the bond be signed by:

5 (1) an authorized corporate surety; or

6 (2) an authorized corporate surety and at least two  
7 personal sureties. (Tex. Prob. Code, Secs. 709(b), 710.)

8 Sec. 1105.203. SUBORDINATION OF LIEN ON REAL PROPERTY OWNED  
9 BY PERSONAL SURETY. (a) A personal surety required to create a  
10 lien on specific real property under Section 1105.202 who wishes to  
11 lease the real property for mineral development may file a written  
12 application in the court in which the proceeding is pending  
13 requesting subordination of the lien to the proposed lease.

14 (b) The judge may enter an order granting the application.

15 (c) A certified copy of an order entered under this section  
16 that is filed and recorded in the deed records of the proper county  
17 is sufficient to subordinate the lien to the rights of a lessee  
18 under the proposed lease. (Tex. Prob. Code, Sec. 709(c).)

19 Sec. 1105.204. RELEASE OF LIEN ON REAL PROPERTY OWNED BY  
20 PERSONAL SURETIES. (a) A personal surety who has given a lien  
21 under Section 1105.202 may apply to the court to have the lien  
22 released.

23 (b) The court shall order the lien released if:

24 (1) the court is satisfied that the bond is sufficient  
25 without the lien; or

26 (2) sufficient other real or personal property of the  
27 surety is substituted on the same terms required for the lien that

1 is to be released.

2 (c) If the personal surety does not offer a lien on other  
3 substituted property under Subsection (b)(2) and the court is not  
4 satisfied that the bond is sufficient without the substitution of  
5 other property, the court shall order the guardian to appear and  
6 give a new bond.

7 (d) A certified copy of the court's order releasing the lien  
8 and describing the property that was subject to the lien has the  
9 effect of canceling the lien if the order is filed with the county  
10 clerk and recorded in the deed records of the county in which the  
11 property is located. (Tex. Prob. Code, Secs. 719, 720.)

12 [Sections 1105.205-1105.250 reserved for expansion]

13 SUBCHAPTER F. NEW BONDS

14 Sec. 1105.251. GROUNDS FOR REQUIRING NEW BOND. (a) A  
15 guardian may be required to give a new bond if:

16 (1) a surety on a bond dies, removes beyond the limits  
17 of this state, or becomes insolvent;

18 (2) in the court's opinion:

19 (A) the sureties on a bond are insufficient; or

20 (B) a bond is defective;

21 (3) the amount of a bond is insufficient;

22 (4) a surety on a bond petitions the court to be  
23 discharged from future liability on the bond; or

24 (5) a bond and the record of the bond have been lost or  
25 destroyed.

26 (b) A person interested in the guardianship may have the  
27 guardian cited to appear and show cause why the guardian should not

1 be required to give a new bond by filing a written application with  
2 the county clerk of the county in which the guardianship proceeding  
3 is pending. The application must allege that:

- 4           (1) the bond is insufficient or defective; or  
5           (2) the bond and the record of the bond have been lost  
6 or destroyed. (Tex. Prob. Code, Secs. 711, 712.)

7       Sec. 1105.252. COURT ORDER OR CITATION ON NEW BOND. (a)  
8 When a judge is made aware that a bond is insufficient or that a bond  
9 and the record of the bond have been lost or destroyed, the judge  
10 shall:

11           (1) without delay and without notice enter an order  
12 requiring the guardian to give a new bond; or

13           (2) without delay have the guardian cited to show  
14 cause why the guardian should not be required to give a new bond.

15       (b) An order entered under Subsection (a)(1) must state:

- 16           (1) the reasons for requiring a new bond;  
17           (2) the amount of the new bond; and  
18           (3) the period within which the new bond must be given,  
19 which may not expire earlier than the 10th day after the date of the  
20 order.

21       (c) A guardian who opposes an order entered under Subsection  
22 (a)(1) may demand a hearing on the order. The hearing must be held  
23 before the expiration of the period within which the new bond must  
24 be given. (Tex. Prob. Code, Secs. 713, 714(a).)

25       Sec. 1105.253. SHOW CAUSE HEARING ON NEW BOND REQUIREMENT.

26 (a) On the return of a citation ordering a guardian to show cause  
27 why the guardian should not be required to give a new bond, the

1 judge shall, on the date specified in the return of citation for the  
2 hearing of the matter, inquire into the sufficiency of the reasons  
3 for requiring a new bond.

4 (b) If the judge is satisfied that a new bond should be  
5 required, the judge shall enter an order requiring a new bond. The  
6 order must state:

7 (1) the amount of the new bond; and

8 (2) the period within which the new bond must be given,  
9 which may not expire later than the 20th day after the date of the  
10 order. (Tex. Prob. Code, Sec. 714(b).)

11 Sec. 1105.254. EFFECT OF ORDER REQUIRING NEW BOND. (a) An  
12 order requiring a guardian to give a new bond has the effect of  
13 suspending the guardian's powers.

14 (b) After the order is entered, the guardian may not pay out  
15 any of the guardianship's money or take any other official action,  
16 except to preserve the guardianship's property, until the new bond  
17 is given and approved. (Tex. Prob. Code, Sec. 715.)

18 Sec. 1105.255. NEW BOND IN DECREASED AMOUNT. (a) A  
19 guardian required to give a bond may at any time file with the clerk  
20 a written application requesting that the court reduce the amount  
21 of the bond.

22 (b) After the guardian files an application under  
23 Subsection (a), the clerk shall issue and have posted notice to all  
24 persons interested in the estate and to a surety on the bond. The  
25 notice must inform the interested persons and surety of:

26 (1) the fact that the application has been filed;

27 (2) the nature of the application; and

(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the guardianship; and

(2) the judge approves an accounting filed at the time of the application. (Tex. Prob. Code, Sec. 716.)

Sec. 1105.256. REQUEST BY SURETY FOR NEW BOND. (a) A surety on a guardian's bond may at any time file with the clerk a petition requesting that the court in which the proceeding is pending:

(1) require the guardian to give a new bond; and

(2) discharge the petitioner from all liability for the future acts of the guardian.

(b) If a petition is filed under Subsection (a), the guardian shall be cited to appear and give a new bond. (Tex. Prob. Code, Sec. 718.)

Sec. 1105.257. DISCHARGE OF FORMER SURETIES ON APPROVAL OF NEW BOND. When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond. (Tex. Prob. Code, Sec. 717.)

#### CHAPTER 1106. LETTERS OF GUARDIANSHIP

Sec. 1106.001. ISSUANCE OF CERTIFICATE AS LETTERS OF GUARDIANSHIP

Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP

1 Sec. 1106.003. RENEWAL OF LETTERS OF GUARDIANSHIP

2 Sec. 1106.004. REPLACEMENT AND OTHER ADDITIONAL

3 LETTERS OF GUARDIANSHIP

4 Sec. 1106.005. EFFECT OF LETTERS OR CERTIFICATE

5 Sec. 1106.006. VALIDATION OF CERTAIN LETTERS OF

6 GUARDIANSHIP

7 CHAPTER 1106. LETTERS OF GUARDIANSHIP

8 Sec. 1106.001. ISSUANCE OF CERTIFICATE AS LETTERS OF

9 GUARDIANSHIP. (a) When a person who is appointed guardian has

10 qualified under Section 1105.002, the clerk shall issue to the

11 guardian a certificate under seal stating:

12 (1) the fact of the appointment and of the  
13 qualification;

14 (2) the date of the appointment and of the  
15 qualification; and

16 (3) the date the letters of guardianship expire.

17 (b) The certificate issued by the clerk under Subsection (a)

18 constitutes letters of guardianship. (Tex. Prob. Code, Sec.

19 659(a).)

20 Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP.

21 Letters of guardianship expire one year and four months after the

22 date the letters are issued, unless renewed. (Tex. Prob. Code, Sec.

23 659(b).)

24 Sec. 1106.003. RENEWAL OF LETTERS OF GUARDIANSHIP. (a) The

25 clerk may not renew letters of guardianship relating to the

26 appointment of a guardian of the estate until the court receives and

27 approves the guardian's annual account.

1           (b) The clerk may not renew letters of guardianship relating  
2 to the appointment of a guardian of the person until the court  
3 receives and approves the guardian's annual report.

4           (c) If a guardian's annual account or annual report is  
5 disapproved or is not timely filed, the clerk may not issue further  
6 letters of guardianship to the delinquent guardian unless ordered  
7 by the court.

8           (d) Except as otherwise provided by this subsection,  
9 regardless of the date the court approves an annual account or  
10 annual report for purposes of this section, a renewal of letters of  
11 guardianship relates back to the date the original letters were  
12 issued. If the accounting period has been changed as provided by  
13 this title, a renewal relates back to the first day of the  
14 accounting period. (Tex. Prob. Code, Secs. 659(c), (d).)

15           Sec. 1106.004. REPLACEMENT AND OTHER ADDITIONAL LETTERS OF  
16 GUARDIANSHIP. When letters of guardianship have been destroyed or  
17 lost, the clerk shall issue new letters that have the same effect as  
18 the original letters. The clerk shall also issue any number of  
19 letters on request of the person who holds the letters. (Tex. Prob.  
20 Code, Sec. 661.)

21           Sec. 1106.005. EFFECT OF LETTERS OR CERTIFICATE. (a)  
22 Letters of guardianship or a certificate issued under Section  
23 1106.001 under seal of the clerk of the court that granted the  
24 letters is sufficient evidence of:

25                   (1) the appointment and qualification of the guardian;  
26 and

27                   (2) the date of qualification.



1 (b) The court order that appoints the guardian is evidence  
2 of the authority granted to the guardian and of the scope of the  
3 powers and duties that the guardian may exercise only after the date  
4 letters of guardianship or a certificate has been issued under  
5 Section 1106.001. (Tex. Prob. Code, Sec. 660.)

6 Sec. 1106.006. VALIDATION OF CERTAIN LETTERS OF  
7 GUARDIANSHIP. (a) Letters of guardianship existing on September  
8 1, 1993, that were issued to a nonresident guardian without the  
9 procedure or any part of the procedure provided in this chapter, or  
10 without a notice or citation required of a resident guardian, are  
11 validated as of the letters' dates, to the extent that the absence  
12 of the procedure, notice, or citation is concerned. An otherwise  
13 valid conveyance, mineral lease, or other act of a nonresident  
14 guardian qualified and acting in connection with the letters of  
15 guardianship and under supporting orders of a county or probate  
16 court of this state is validated.

17 (b) This section does not apply to letters of guardianship,  
18 a conveyance, a lease, or another act of a nonresident guardian  
19 under this section if the absence of the procedure, notice, or  
20 citation involving the letters, conveyance, lease, or other act of  
21 the nonresident guardian is an issue in a lawsuit pending in this  
22 state on September 1, 1993. (Tex. Prob. Code, Sec. 663.)

23 [Chapters 1107-1150 reserved for expansion]

24 SUBTITLE E. ADMINISTRATION OF GUARDIANSHIP

25 CHAPTER 1151. RIGHTS, POWERS, AND DUTIES UNDER GUARDIANSHIP

26 SUBCHAPTER A. RIGHTS, POWERS, AND DUTIES IN GENERAL

27 Sec. 1151.001. RIGHTS AND POWERS RETAINED BY WARD

1 Sec. 1151.002. RIGHTS OF GOOD FAITH PURCHASERS

2 Sec. 1151.003. GUARDIAN MAY NOT DISPUTE WARD'S RIGHT  
3 TO PROPERTY; EXCEPTION

4 Sec. 1151.004. POWERS AND DUTIES OF PERSON SERVING AS  
5 GUARDIAN OF BOTH PERSON AND ESTATE

6 [Sections 1151.005-1151.050 reserved for expansion]

7 SUBCHAPTER B. POWERS AND DUTIES OF GUARDIANS RELATING TO CARE OF  
8 WARD

9 Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS  
10 OF THE PERSON

11 Sec. 1151.052. CARE OF ADULT WARD

12 Sec. 1151.053. COMMITMENT OF WARD

13 Sec. 1151.054. ADMINISTRATION OF MEDICATION

14 [Sections 1151.055-1151.100 reserved for expansion]

15 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE ESTATE

16 Sec. 1151.101. GENERAL POWERS AND DUTIES

17 Sec. 1151.102. EXERCISE OF AUTHORITY UNDER COURT ORDER

18 Sec. 1151.103. EXERCISE OF AUTHORITY WITHOUT COURT  
19 ORDER

20 Sec. 1151.104. AUTHORITY TO COMMENCE SUITS

21 Sec. 1151.105. ORDINARY DILIGENCE REQUIRED

22 [Sections 1151.106-1151.150 reserved for expansion]

23 SUBCHAPTER D. POSSESSION AND CARE OF WARD'S PROPERTY BY GUARDIAN OF  
24 THE ESTATE

25 Sec. 1151.151. DUTY OF CARE

26 Sec. 1151.152. POSSESSION OF PERSONAL PROPERTY AND  
27 RECORDS

1 Sec. 1151.153. POSSESSION OF PROPERTY HELD IN COMMON

2 OWNERSHIP

3 Sec. 1151.154. ADMINISTRATION OF PARTNERSHIP INTEREST

4 Sec. 1151.155. OPERATION OR RENTAL OF FARM, RANCH,

5 FACTORY, OR OTHER BUSINESS

6 [Sections 1151.156-1151.200 reserved for expansion]

7 SUBCHAPTER E. AUTHORITY OF GUARDIAN TO ENGAGE IN CERTAIN BORROWING

8 Sec. 1151.201. MORTGAGE OR PLEDGE OF ESTATE PROPERTY

9 AUTHORIZED IN CERTAIN CIRCUMSTANCES

10 Sec. 1151.202. APPLICATION; ORDER

11 Sec. 1151.203. TERM OF LOAN OR RENEWAL

12 [Sections 1151.204-1151.250 reserved for expansion]

13 SUBCHAPTER F. GUARDIANS APPOINTED FOR WARD TO RECEIVE GOVERNMENT

14 FUNDS

15 Sec. 1151.251. POWERS AND DUTIES OF GUARDIAN APPOINTED

16 AS NECESSARY FOR WARD TO RECEIVE

17 GOVERNMENT FUNDS

18 Sec. 1151.252. VALIDATION OF CERTAIN PRIOR ACTS OF

19 GUARDIAN

20 [Sections 1151.253-1151.300 reserved for expansion]

21 SUBCHAPTER G. NOTICE BY GUARDIAN TO DEPARTMENT OF VETERANS AFFAIRS

22 Sec. 1151.301. NOTICE OF FILING REQUIRED; HEARING DATE

23 CHAPTER 1151. RIGHTS, POWERS, AND DUTIES UNDER GUARDIANSHIP

24 SUBCHAPTER A. RIGHTS, POWERS, AND DUTIES IN GENERAL

25 Sec. 1151.001. RIGHTS AND POWERS RETAINED BY WARD. An  
26 incapacitated person for whom a guardian is appointed retains all  
27 legal and civil rights and powers except those designated by court

1 order as legal disabilities by virtue of having been specifically  
2 granted to the guardian. (Tex. Prob. Code, Sec. 675.)

3       Sec. 1151.002. RIGHTS OF GOOD FAITH PURCHASERS. (a) This  
4 section applies only to a guardian who has qualified acting as  
5 guardian and in conformity with the law and the guardian's  
6 authority.

7       (b) A guardian's act is valid for all purposes regarding the  
8 rights of an innocent purchaser of property of the guardianship  
9 estate who purchased the property from the guardian for valuable  
10 consideration, in good faith, and without notice of any illegality  
11 in the title to the property, regardless of whether the guardian's  
12 act or the authority under which the act was performed is  
13 subsequently set aside, annulled, or declared invalid. (Tex. Prob.  
14 Code, Sec. 662.)

15       Sec. 1151.003. GUARDIAN MAY NOT DISPUTE WARD'S RIGHT TO  
16 PROPERTY; EXCEPTION. A guardian, or an heir, executor,  
17 administrator, or assignee of a guardian, may not dispute the right  
18 of the ward to any property that came into the guardian's possession  
19 as guardian of the ward, except property:

20               (1) that is recovered from the guardian; or

21               (2) on which there is a personal action pending. (Tex.  
22 Prob. Code, Sec. 778.)

23       Sec. 1151.004. POWERS AND DUTIES OF PERSON SERVING AS  
24 GUARDIAN OF BOTH PERSON AND ESTATE. The guardian of both the person  
25 and the estate of a ward has all the rights and powers and shall  
26 perform all the duties of the guardian of the person and the  
27 guardian of the estate. (Tex. Prob. Code, Sec. 769.)

[Sections 1151.005-1151.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF GUARDIANS RELATING TO CARE OF  
WARD

Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS OF  
THE PERSON. (a) The guardian of the person of a ward is entitled  
to take charge of the person of the ward.

(b) The duties of the guardian of the person correspond with  
the rights of the guardian.

(c) A guardian of the person has:

(1) the right to have physical possession of the ward  
and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and  
protection for the ward;

(3) the duty to provide the ward with clothing, food,  
medical care, and shelter;

(4) the power to consent to medical, psychiatric, and  
surgical treatment other than the inpatient psychiatric commitment  
of the ward; and

(5) on application to and order of the court, the power  
to establish a trust in accordance with 42 U.S.C. Section  
1396p(d)(4)(B) and direct that the income of the ward as defined by  
that section be paid directly to the trust, solely for the purpose  
of the ward's eligibility for medical assistance under Chapter 32,  
Human Resources Code.

(d) Notwithstanding Subsection (c)(4), a guardian of the  
person of a ward has the power to personally transport the ward or  
to direct the ward's transport by emergency medical services or

1 other means to an inpatient mental health facility for a  
2 preliminary examination in accordance with Subchapters A and C,  
3 Chapter 573, Health and Safety Code. (Tex. Prob. Code, Sec. 767.)

4 Sec. 1151.052. CARE OF ADULT WARD. (a) The guardian of an  
5 adult ward may spend funds of the guardianship as provided by court  
6 order to care for and maintain the ward.

7 (b) The guardian of an adult ward who has decision-making  
8 ability may apply on the ward's behalf for residential care and  
9 services provided by a public or private facility if the ward agrees  
10 to be placed in the facility. The guardian shall report the  
11 condition of the ward to the court at regular intervals at least  
12 annually, unless the court orders more frequent reports. The  
13 guardian shall include in a report of an adult ward who is receiving  
14 residential care in a public or private residential care facility a  
15 statement as to the necessity for continued care in the facility.  
16 (Tex. Prob. Code, Sec. 770(a).)

17 Sec. 1151.053. COMMITMENT OF WARD. (a) Except as provided  
18 by Subsection (b) or (c), a guardian may not voluntarily admit a  
19 ward to a public or private inpatient psychiatric facility operated  
20 by the Department of State Health Services for care and treatment or  
21 to a residential facility operated by the Department of Aging and  
22 Disability Services for care and treatment. If care and treatment  
23 in a psychiatric or residential facility is necessary, the ward or  
24 the ward's guardian may:

25 (1) apply for services under Section 593.027 or  
26 593.028, Health and Safety Code;

27 (2) apply to a court to commit the person under

1 Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462,  
2 Health and Safety Code; or

3 (3) transport the ward to an inpatient mental health  
4 facility for a preliminary examination in accordance with  
5 Subchapters A and C, Chapter 573, Health and Safety Code.

6 (b) A guardian of a person younger than 16 years of age may  
7 voluntarily admit an incapacitated person to a public or private  
8 inpatient psychiatric facility for care and treatment.

9 (c) A guardian of a person may voluntarily admit an  
10 incapacitated person to a residential care facility for emergency  
11 care or respite care under Section 593.027 or 593.028, Health and  
12 Safety Code. (Tex. Prob. Code, Secs. 770(b), (c), (d).)

13 Sec. 1151.054. ADMINISTRATION OF MEDICATION. (a) In this  
14 section, "psychoactive medication" has the meaning assigned by  
15 Section 574.101, Health and Safety Code.

16 (b) The guardian of the person of a ward who is not a minor  
17 and who is under a protective custody order as provided by  
18 Subchapter B, Chapter 574, Health and Safety Code, may consent to  
19 the administration of psychoactive medication as prescribed by the  
20 ward's treating physician regardless of the ward's expressed  
21 preferences regarding treatment with psychoactive medication.  
22 (Tex. Prob. Code, Sec. 770A.)

23 [Sections 1151.055-1151.100 reserved for expansion]

24 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE ESTATE

25 Sec. 1151.101. GENERAL POWERS AND DUTIES. (a) Subject to  
26 Subsection (b), the guardian of the estate of a ward is entitled to:

27 (1) possess and manage all property belonging to the

1 ward;

2 (2) collect all debts, rentals, or claims that are due  
3 to the ward;

4 (3) enforce all obligations in favor of the ward; and

5 (4) bring and defend suits by or against the ward.

6 (b) In the management of a ward's estate, the guardian of  
7 the estate is governed by the provisions of this title. (Tex. Prob.  
8 Code, Sec. 768 (part).)

9 Sec. 1151.102. EXERCISE OF AUTHORITY UNDER COURT ORDER.

10 (a) The guardian of the estate may renew or extend any obligation  
11 owed by or to the ward on application and if authorized by order.

12 (b) On written application to the court, a guardian of the  
13 estate may take an action described by Subsection (c) if:

14 (1) the guardian considers the action in the best  
15 interests of the estate; and

16 (2) the action is authorized by court order.

17 (c) A guardian of the estate who complies with Subsection  
18 (b) may:

19 (1) purchase or exchange property;

20 (2) take a claim or property for the use and benefit of  
21 the estate in payment of a debt due or owing to the estate;

22 (3) compound a bad or doubtful debt due or owing to the  
23 estate;

24 (4) make a compromise or a settlement in relation to  
25 property or a claim in dispute or litigation;

26 (5) compromise or pay in full any secured claim that  
27 has been allowed and approved as required by law against the estate



1 by conveying to the holder of the secured claim the real estate or  
2 personal property securing the claim:

3 (A) in full payment, liquidation, and  
4 satisfaction of the claim; and

5 (B) in consideration of cancellation of a note,  
6 deed of trust, mortgage, chattel mortgage, or other evidence of a  
7 lien that secures the payment of the claim;

8 (6) abandon worthless or burdensome property and the  
9 administration of that property;

10 (7) purchase a prepaid funeral benefits contract; and

11 (8) establish a trust in accordance with 42 U.S.C.  
12 Section 1396p(d)(4)(B), and direct that the income of the ward as  
13 defined by that section be paid directly to the trust, solely for  
14 the purpose of the ward's eligibility for medical assistance under  
15 Chapter 32, Human Resources Code.

16 (d) A mortgagee, another secured party, or a trustee may  
17 foreclose on property abandoned under Subsection (c)(6) without  
18 further court order. (Tex. Prob. Code, Sec. 774(a).)

19 Sec. 1151.103. EXERCISE OF AUTHORITY WITHOUT COURT ORDER.

20 (a) The guardian of the estate of a ward may, without application to  
21 or order of the court:

22 (1) release a lien on payment at maturity of the debt  
23 secured by the lien;

24 (2) vote stocks by limited or general proxy;

25 (3) pay calls and assessments;

26 (4) insure the estate against liability in appropriate  
27 cases;

1           (5) insure estate property against fire, theft, and  
2 other hazards; and

3           (6) pay taxes, court costs, and bond premiums.

4           (b) A guardian of the estate may apply and obtain a court  
5 order if the guardian doubts the propriety of the exercise of any  
6 power listed in Subsection (a). (Tex. Prob. Code, Sec. 774(b).)

7           Sec. 1151.104. AUTHORITY TO COMMENCE SUITS. (a) The  
8 guardian of the estate of a ward appointed in this state may  
9 commence a suit for:

10           (1) the recovery of personal property, debts, or  
11 damages; or

12           (2) title to or possession of land, any right attached  
13 to or arising from that land, or injury or damage done.

14           (b) A judgment in a suit described by Subsection (a) is  
15 conclusive, but may be set aside by any person interested for fraud  
16 or collusion on the guardian's part. (Tex. Prob. Code, Sec. 773.)

17           Sec. 1151.105. ORDINARY DILIGENCE REQUIRED. (a) If there  
18 is a reasonable prospect of collecting the claims or recovering the  
19 property, the guardian of the estate shall use ordinary diligence  
20 to:

21           (1) collect all claims and debts due the ward; and

22           (2) recover possession of all property to which the  
23 ward has claim or title.

24           (b) If the guardian wilfully neglects to use ordinary  
25 diligence, the guardian and the sureties on the guardian's bond are  
26 liable, on the suit of any person interested in the estate, for the  
27 use of the estate, the amount of the claims, or the value of the

property that has been lost due to the guardian's neglect. (Tex. Prob. Code, Sec. 772.)

[Sections 1151.106-1151.150 reserved for expansion]

SUBCHAPTER D. POSSESSION AND CARE OF WARD'S PROPERTY BY GUARDIAN OF  
THE ESTATE

Sec. 1151.151. DUTY OF CARE. (a) The guardian of the estate shall take care of and manage the estate as a prudent person would manage the person's own property, except as otherwise provided by this title.

(b) The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by prudent management as required by Subsection (a). (Tex. Prob. Code, Sec. 768 (part).)

Sec. 1151.152. POSSESSION OF PERSONAL PROPERTY AND RECORDS. (a) Immediately after receiving letters of guardianship, the guardian of the estate shall collect and take possession of the ward's personal property, record books, title papers, and other business papers.

(b) The guardian of the estate shall deliver the ward's personal property, record books, title papers, and other business papers to a person legally entitled to that property when:

(1) the guardianship has been closed; or

(2) a successor guardian has received letters of guardianship. (Tex. Prob. Code, Sec. 771.)

Sec. 1151.153. POSSESSION OF PROPERTY HELD IN COMMON OWNERSHIP. The guardian of the estate is entitled to possession of a ward's property held or owned in common with a part owner in the

1 same manner as another owner in common or joint owner is entitled.  
2 (Tex. Prob. Code, Sec. 775.)

3       Sec. 1151.154. ADMINISTRATION OF PARTNERSHIP INTEREST. (a)  
4 This section applies only to a general partnership governed by a  
5 partnership agreement or articles of partnership that provide that,  
6 on the incapacity of a partner, the guardian of the estate of the  
7 partner is entitled to the place of the incapacitated partner in the  
8 partnership.

9       (b) If a ward was a partner in a general partnership, the  
10 guardian who contracts to come into the partnership is, to the  
11 extent allowed by law, liable to a third person only to the extent  
12 of:

13               (1) the incapacitated partner's capital in the  
14 partnership; and

15               (2) the assets of the incapacitated partner's estate  
16 that are held by the guardian.

17       (c) This section does not exonerate a guardian from  
18 liability for the guardian's negligence. (Tex. Prob. Code, Sec.  
19 780.)

20       Sec. 1151.155. OPERATION OR RENTAL OF FARM, RANCH, FACTORY,  
21 OR OTHER BUSINESS. (a) If the ward owns a farm, ranch, factory, or  
22 other business that is not required to be immediately sold for the  
23 payment of a debt or other lawful purpose, the guardian of the  
24 estate on order of the court shall, as it appears to be in the  
25 estate's best interests:

26               (1) continue to operate, or cause the continued  
27 operation of, the farm, ranch, factory, or other business; or

(2) rent the farm, ranch, factory, or other business.

(b) In deciding whether to issue an order under Subsection (a), the court:

(1) shall consider:

(A) the condition of the estate; and

(B) the necessity that may exist for the future sale of the property or business for the payment of a debt, claim, or other lawful expenditure; and

(2) may not extend the time of renting any of the property beyond what appears consistent with the maintenance and education of a ward or the settlement of the ward's estate. (Tex. Prob. Code, Sec. 779.)

[Sections 1151.156-1151.200 reserved for expansion]

SUBCHAPTER E. AUTHORITY OF GUARDIAN TO ENGAGE IN CERTAIN BORROWING

Sec. 1151.201. MORTGAGE OR PLEDGE OF ESTATE PROPERTY AUTHORIZED IN CERTAIN CIRCUMSTANCES. (a) Under court order, the guardian may mortgage or pledge any property of a guardianship estate by deed of trust or otherwise as security for an indebtedness when necessary for:

(1) the payment of any ad valorem, income, gift, or transfer tax due from a ward, regardless of whether the tax is assessed by a state, a political subdivision of the state, the federal government, or a foreign country;

(2) the payment of any expense of administration, including amounts necessary for the operation of a business, farm, or ranch owned by the estate;

(3) the payment of any claim allowed and approved, or

1 established by suit, against the ward or the ward's estate;

2 (4) the renewal and extension of an existing lien;

3 (5) an improvement or repair to the ward's real estate

4 if:

5 (A) the real estate is not revenue producing but  
6 could be made revenue producing by certain improvements and  
7 repairs; or

8 (B) the revenue from the real estate could be  
9 increased by making improvements or repairs to the real estate;

10 (6) the purchase of a residence for the ward or a  
11 dependent of the ward, if the court finds that borrowing money for  
12 that purpose is in the ward's best interests; and

13 (7) funeral expenses of the ward and expenses of the  
14 ward's last illness, if the guardianship is kept open after the  
15 ward's death.

16 (b) Under court order, the guardian of the estate may also  
17 receive an extension of credit on the ward's behalf that is wholly  
18 or partly secured by a lien on real property that is the ward's  
19 homestead when necessary to:

20 (1) make an improvement or repair to the homestead; or

21 (2) pay for the ward's education or medical expenses.

22 (c) Proceeds of a home equity loan described by Subsection  
23 (b) may be used only for the purposes authorized under Subsection  
24 (b) and to pay the outstanding balance of the loan. (Tex. Prob.  
25 Code, Secs. 781(a), (a-1), (a-2).)

26 Sec. 1151.202. APPLICATION; ORDER. (a) The guardian of the  
27 estate must file a sworn application with the court for authority

1 to:

2 (1) borrow money for a purpose authorized by Section  
3 1151.201(a) or (b); or

4 (2) create or extend a lien on estate property as  
5 security.

6 (b) The application must state fully and in detail the  
7 circumstances that the guardian of the estate believes make the  
8 granting of the authority necessary.

9 (c) On the filing of an application under Subsection (a),  
10 the clerk shall issue and have posted a citation to all interested  
11 persons stating the nature of the application and requiring the  
12 interested persons to appear and show cause why the application  
13 should not be granted.

14 (d) If the court is satisfied by the evidence presented at  
15 the hearing on an application filed under Subsection (a) that it is  
16 in the interest of the ward or the ward's estate to borrow money or  
17 to extend and renew an existing lien, the court shall issue an order  
18 to that effect, setting out the terms of the authority granted.

19 (e) If a new lien is created on guardianship estate  
20 property, the court may require, for the protection of the  
21 guardianship estate and the estate's creditors, that the guardian's  
22 general bond be increased or an additional bond be given, as for the  
23 sale of real property belonging to the estate. (Tex. Prob. Code,  
24 Secs. 781(b), (c) (part).)

25 Sec. 1151.203. TERM OF LOAN OR RENEWAL. The term of a loan  
26 or renewal authorized under Section 1151.202 must be for the length  
27 of time that the court determines to be in the best interests of the

ward or the ward's estate. (Tex. Prob. Code, Sec. 781(c) (part).)

[Sections 1151.204-1151.250 reserved for expansion]

SUBCHAPTER F. GUARDIANS APPOINTED FOR WARD TO RECEIVE GOVERNMENT  
FUNDS

Sec. 1151.251. POWERS AND DUTIES OF GUARDIAN APPOINTED AS  
NECESSARY FOR WARD TO RECEIVE GOVERNMENT FUNDS. (a) A guardian of  
the person for whom it is necessary to have a guardian appointed to  
receive funds from a governmental source may:

(1) administer only:

(A) the funds received from the governmental  
source;

(B) all earnings, interest, or profits derived  
from the funds; and

(C) all property acquired with the funds; and

(2) receive the funds and pay the expenses of  
administering the guardianship and the expenses for the support,  
maintenance, or education of the ward or the ward's dependents.

(b) Expenditures under Subsection (a)(2) for the support,  
maintenance, or education of the ward or the ward's dependents may  
not exceed \$12,000 during any 12-month period without the court's  
approval. (Tex. Prob. Code, Sec. 782(a).)

Sec. 1151.252. VALIDATION OF CERTAIN PRIOR ACTS OF  
GUARDIAN. An act performed before September 1, 1993, by a guardian  
of the estate of a person for whom it is necessary to have a guardian  
appointed to receive and disburse funds that are due the person from  
a governmental source is validated if the act was performed in  
conformance with an order of a court that has venue with respect to



the support, maintenance, and education of the ward or the ward's dependents and the investment of surplus funds of the ward under this title and if the validity of the act was not an issue in a probate proceeding or civil lawsuit that was pending on September 1, 1993. (Tex. Prob. Code, Sec. 782(b).)

[Sections 1151.253-1151.300 reserved for expansion]

SUBCHAPTER G. NOTICE BY GUARDIAN TO DEPARTMENT OF VETERANS AFFAIRS

Sec. 1151.301. NOTICE OF FILING REQUIRED; HEARING DATE.

(a) This section applies only to:

(1) a filing by a guardian whose ward is a beneficiary of the Department of Veterans Affairs of:

(A) an annual or other account of funds; or

(B) an application for the expenditure or investment of funds; or

(2) a filing of a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs.

(b) The court shall set a date for a hearing of a matter initiated by a filing to which this section applies not earlier than 20 days from the date of the filing.

(c) Not later than the fifth day after the date of a filing to which this section applies, the person who makes the filing shall give notice of the date of the filing by mailing a certified copy of the filing to the office of the Department of Veterans Affairs in whose territory the court is located.

(d) An office of the Department of Veterans Affairs through its attorney may waive the service of notice or the time required for setting a hearing under this section. (Tex. Prob. Code, Sec.

1 636.)

2 CHAPTER 1152. GUARDIANSHIP PENDING APPEAL OF APPOINTMENT

3 Sec. 1152.001. GUARDIAN TO SERVE PENDING APPEAL OF  
4 APPOINTMENT

5 Sec. 1152.002. APPEAL BOND

6 CHAPTER 1152. GUARDIANSHIP PENDING APPEAL OF APPOINTMENT

7 Sec. 1152.001. GUARDIAN TO SERVE PENDING APPEAL OF  
8 APPOINTMENT. Pending an appeal from an order or judgment  
9 appointing a guardian, the appointee shall continue to:

10 (1) act as guardian; and

11 (2) prosecute a pending suit in favor of the  
12 guardianship. (Tex. Prob. Code, Sec. 655.)

13 Sec. 1152.002. APPEAL BOND. (a) Except as provided by  
14 Subsection (b), if a guardian appeals, an appeal bond is not  
15 required.

16 (b) A guardian must give an appeal bond if the appeal  
17 personally concerns the guardian. (Tex. Prob. Code, Sec. 656.)

18 CHAPTER 1153. NOTICE TO CLAIMANTS

19 Sec. 1153.001. REQUIRED NOTICE REGARDING PRESENTMENT  
20 OF CLAIMS IN GENERAL

21 Sec. 1153.002. PROOF OF PUBLICATION

22 Sec. 1153.003. REQUIRED NOTICE TO CERTAIN CLAIMANTS

23 Sec. 1153.004. PERMISSIVE NOTICE TO UNSECURED CREDITOR  
24 REGARDING PERIOD FOR PRESENTMENT OF  
25 CLAIM

26 Sec. 1153.005. ONE NOTICE SUFFICIENT; LIABILITY FOR  
27 FAILURE TO GIVE REQUIRED NOTICE

CHAPTER 1153. NOTICE TO CLAIMANTS

Sec. 1153.001. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL. (a) Within one month after receiving letters of guardianship, a guardian of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law. The notice must be:

(1) published in a newspaper printed in the county in which the letters were issued; and

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

(b) Notice provided under Subsection (a) must include:

(1) the date the letters of guardianship were issued to the guardian of the estate;

(2) the address to which a claim may be presented; and

(3) an instruction of the guardian's choice that the claim be addressed in care of:

(A) the guardian;

(B) the guardian's attorney; or

(C) "Guardian, Estate of \_\_\_\_\_" (naming the estate).

(c) If a newspaper is not printed in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title. (Tex. Prob. Code, Secs. 783(a), (c).)

Sec. 1153.002. PROOF OF PUBLICATION. A copy of the published notice required by Section 1153.001(a)(1), with the

1 publisher's affidavit, sworn to and subscribed before a proper  
2 officer, to the effect that the notice was published as provided in  
3 this title for the service of citation or notice by publication,  
4 shall be filed in the court in which the cause is pending. (Tex.  
5 Prob. Code, Sec. 783(b).)

6       Sec. 1153.003. REQUIRED NOTICE TO CERTAIN CLAIMANTS. (a)  
7 Within four months after receiving letters of guardianship, the  
8 guardian of an estate shall give notice of the issuance of the  
9 letters to each person who has a claim for money against the ward's  
10 estate:

11               (1) that is secured by a deed of trust, mortgage, or  
12 vendor's, mechanic's, or other contractor's lien on real estate  
13 belonging to the estate; or

14               (2) about which the guardian has actual knowledge.

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

16               (1) sent by certified or registered mail, return  
17 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; and

24               (2) the guardian's affidavit stating:

25                       (A) that the notice was mailed as required by  
26 law; and

27                       (B) the name of the person to whom the notice was

1 mailed, if that name is not shown on the notice or receipt. (Tex.  
2 Prob. Code, Secs. 784(a), (b), (c), (d).)

3       Sec. 1153.004. PERMISSIVE NOTICE TO UNSECURED CREDITOR  
4 REGARDING PERIOD FOR PRESENTMENT OF CLAIM. The guardian of the  
5 estate may expressly state in a notice given to an unsecured  
6 creditor under Section 1153.003(a)(2) that the creditor must  
7 present a claim not later than the 120th day after the date the  
8 creditor receives the notice or the claim is barred, if the claim is  
9 not barred by the general statutes of limitation. A statement under  
10 this section must include:

11               (1) the address to which the claim may be presented;  
12 and

13               (2) an instruction that the claim be filed with the  
14 clerk of the court that issued the letters of guardianship. (Tex.  
15 Prob. Code, Sec. 784(e).)

16       Sec. 1153.005. ONE NOTICE SUFFICIENT; LIABILITY FOR FAILURE  
17 TO GIVE REQUIRED NOTICE. (a) A guardian of an estate is not  
18 required to give a notice required by Section 1153.003 if another  
19 person also appointed as guardian or a former guardian has given  
20 that notice.

21               (b) If the guardian fails to give a notice required by other  
22 sections of this title or to cause the notice to be given, the  
23 guardian and the sureties on the guardian's bond are liable for any  
24 damage a person suffers because of the neglect, unless it appears  
25 that the person otherwise had notice. (Tex. Prob. Code, Sec. 785.)

CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

SUBCHAPTER A. APPRAISERS

Sec. 1154.001. APPOINTMENT OF APPRAISERS

Sec. 1154.002. APPRAISERS' FEES

Sec. 1154.003. FAILURE OR REFUSAL TO ACT BY APPRAISERS

[Sections 1154.004-1154.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST  
OF CLAIMS

Sec. 1154.051. INVENTORY AND APPRAISEMENT

Sec. 1154.052. LIST OF CLAIMS

Sec. 1154.053. AFFIDAVIT OF GUARDIAN

Sec. 1154.054. APPROVAL OR DISAPPROVAL BY THE COURT

Sec. 1154.055. FAILURE OF JOINT GUARDIANS TO FILE

INVENTORY, APPRAISEMENT, AND LIST OF  
CLAIMS

[Sections 1154.056-1154.100 reserved for expansion]

SUBCHAPTER C. CHANGES TO INVENTORY, APPRAISEMENT, AND LIST OF  
CLAIMS

Sec. 1154.101. DISCOVERY OF ADDITIONAL PROPERTY OR  
CLAIMS

Sec. 1154.102. ADDITIONAL INVENTORY AND APPRAISEMENT  
OR LIST OF CLAIMS

Sec. 1154.103. CORRECTION OF INVENTORY, APPRAISEMENT,  
OR LIST OF CLAIMS FOR ERRONEOUS OR  
UNJUST ITEM

Sec. 1154.104. REAPPRAISEMENT

[Sections 1154.105-1154.150 reserved for expansion]

SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS  
EVIDENCE

Sec. 1154.151. USE OF INVENTORY, APPRAISEMENT, AND  
LIST OF CLAIMS AS EVIDENCE

CHAPTER 1154. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

SUBCHAPTER A. APPRAISERS

Sec. 1154.001. APPOINTMENT OF APPRAISERS. (a) After letters of guardianship of the estate are granted, the court, for good cause shown, on the court's own motion or the motion of any interested person, shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the ward's property.

(b) If the court makes an appointment under Subsection (a) and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers it necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county. (Tex. Prob. Code, Sec. 727.)

Sec. 1154.002. APPRAISERS' FEES. An appraiser appointed by the court is entitled to receive a reasonable fee, payable out of the estate, for the performance of the appraiser's duties as an appraiser. (Tex. Prob. Code, Sec. 732.)

Sec. 1154.003. FAILURE OR REFUSAL TO ACT BY APPRAISERS. If an appraiser appointed under Section 1154.001 fails or refuses to act, the court shall remove the appraiser and appoint one or more appraisers. (Tex. Prob. Code, Sec. 728.)

[Sections 1154.004-1154.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST  
OF CLAIMS

Sec. 1154.051. INVENTORY AND APPRAISEMENT. (a) Not later than the 30th day after the date the guardian of the estate qualifies, unless a longer period is granted by the court, the guardian shall file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all the ward's property that has come into the guardian's possession or of which the guardian has knowledge. The inventory must:

(1) include:

(A) all the ward's real property located in this state; and

(B) all the ward's personal property regardless of where the property is located; and

(2) specify:

(A) which portion of the property is separate property and which is community property; and

(B) if the property is owned in common with other persons, the ward's interest in that property and the names and relationship, if known, of the co-owners.

(b) The guardian shall:

(1) set out in the inventory the guardian's appraisal of the fair market value of each item in the inventory on the date of the grant of letters of guardianship; or

(2) if the court has appointed an appraiser for the



1 estate:

2 (A) determine the fair market value of each item  
3 in the inventory with the assistance of the appraiser; and

4 (B) set out in the inventory the appraisement  
5 made by the appraiser.

6 (c) The court for good cause shown may require the guardian  
7 to file the inventory and appraisement not later than the 30th day  
8 after the date of qualification of the guardian.

9 (d) The inventory, when approved by the court and filed with  
10 the court clerk, is for all purposes the inventory and appraisement  
11 of the estate referred to in this title. (Tex. Prob. Code, Sec.  
12 729.)

13 Sec. 1154.052. LIST OF CLAIMS. The guardian of the estate  
14 shall make and attach to the inventory and appraisement required by  
15 Section 1154.051 a complete list of claims due or owing to the ward.  
16 The list of claims must state:

17 (1) the name and, if known, address of each person  
18 indebted to the ward; and

19 (2) regarding each claim:

20 (A) the nature of the debt, whether it is a note,  
21 bill, bond, or other written obligation, or whether it is an account  
22 or verbal contract;

23 (B) the date the debt was incurred;

24 (C) the date the debt was or is due;

25 (D) the amount of the claim, the rate of interest  
26 on the claim, and the period for which the claim bears interest; and

27 (E) if any portion of the claim is held in common

1 with others, the interest of the estate in the claim and the names  
2 and relationships of the other part owners. (Tex. Prob. Code, Sec.  
3 730.)

4       Sec. 1154.053. AFFIDAVIT OF GUARDIAN. The guardian of the  
5 estate shall attach to the inventory, appraisement, and list of  
6 claims the guardian's affidavit, subscribed and sworn to before an  
7 officer in the county authorized by law to administer oaths, that  
8 the inventory, appraisement, and list of claims are a true and  
9 complete statement of the property and claims of the estate of which  
10 the guardian has knowledge. (Tex. Prob. Code, Sec. 731.)

11       Sec. 1154.054. APPROVAL OR DISAPPROVAL BY THE COURT. (a)  
12 On the filing of the inventory, appraisement, and list of claims  
13 with the court clerk, the judge shall examine and approve or  
14 disapprove the inventory, appraisement, and list of claims.

15       (b) If the judge approves the inventory, appraisement, and  
16 list of claims, the judge shall enter an order to that effect.

17       (c) If the judge does not approve the inventory,  
18 appraisement, or list of claims, the judge:

19           (1) shall enter an order to that effect requiring the  
20 filing of another inventory, appraisement, or list of claims,  
21 whichever is not approved, within a period specified in the order  
22 not to exceed 20 days after the date the order is entered; and

23           (2) may, if considered necessary, appoint new  
24 appraisers. (Tex. Prob. Code, Sec. 733.)

25       Sec. 1154.055. FAILURE OF JOINT GUARDIANS TO FILE  
26 INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more than one  
27 guardian of the estate qualifies to serve, any one or more of the

guardians, on the neglect of the other guardians, may make and file an inventory, appraisalment, and list of claims.

(b) A guardian who neglects to make or file an inventory, appraisalment, and list of claims may not interfere with and does not have any power over the estate after another guardian makes and files an inventory, appraisalment, and list of claims.

(c) The guardian who files the inventory, appraisalment, and list of claims is entitled to the whole administration unless, not later than the 60th day after the date the guardian files the inventory, appraisalment, and list of claims, each of the delinquent guardians files with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent guardians and revoking those guardians' letters if:

- (1) an excuse is not filed; or
- (2) the court does not consider the filed excuse sufficient. (Tex. Prob. Code, Sec. 738.)

[Sections 1154.056-1154.100 reserved for expansion]

#### SUBCHAPTER C. CHANGES TO INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 1154.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS. If after the filing of the inventory, appraisalment, and list of claims the guardian of the estate acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisalment, and list of claims, the guardian shall promptly file with the court clerk a verified, full, and detailed supplemental inventory, appraisalment, and list of claims. (Tex. Prob. Code,

1 Sec. 734.)

2       Sec. 1154.102. ADDITIONAL INVENTORY AND APPRAISEMENT OR  
3 LIST OF CLAIMS. (a) On the written complaint of any interested  
4 person that property or claims of the estate have not been included  
5 in the filed inventory, appraisement, and list of claims, the  
6 guardian of the estate shall be cited to appear before the court in  
7 which the cause is pending and show cause why the guardian should  
8 not be required to make and file an additional inventory and  
9 appraisement or list of claims, or both.

10       (b) After hearing the complaint, if the court is satisfied  
11 of the truth of the complaint, the court shall enter an order  
12 requiring the guardian to make and file an additional inventory and  
13 appraisement or list of claims, or both. The additional inventory  
14 and appraisement or list of claims:

15               (1) must be made and filed in the same manner as the  
16 original inventory and appraisement or list of claims within the  
17 period prescribed by the court, not to exceed 20 days after the date  
18 of the order; and

19               (2) may include only property or claims not previously  
20 included in the inventory and appraisement or list of claims. (Tex.  
21 Prob. Code, Sec. 735.)

22       Sec. 1154.103. CORRECTION OF INVENTORY, APPRAISEMENT, OR  
23 LIST OF CLAIMS FOR ERRONEOUS OR UNJUST ITEM. (a) A person  
24 interested in an estate who considers an inventory, appraisement,  
25 or list of claims filed by the guardian of the estate to be  
26 erroneous or unjust in any particular form may:

27               (1) file a written complaint setting forth the alleged

1 erroneous or unjust item; and

2 (2) have the guardian cited to appear before the court  
3 and show cause why the item should not be corrected.

4 (b) On the hearing of the complaint, if the court is  
5 satisfied from the evidence that the inventory, appraisement, or  
6 list of claims is erroneous or unjust as alleged in the complaint,  
7 the court shall enter an order:

8 (1) specifying the erroneous or unjust item and the  
9 corrections to be made; and

10 (2) appointing an appraiser to make a new appraisement  
11 correcting the erroneous or unjust item and requiring the filing of  
12 the new appraisement not later than the 20th day after the date of  
13 the order.

14 (c) The court, on the court's own motion or a motion of the  
15 guardian of the estate, may also have a new appraisement made for  
16 the purposes described by this section. (Tex. Prob. Code, Sec.  
17 736.)

18 Sec. 1154.104. REAPPRAISEMENT. (a) A reappraisement made,  
19 filed, and approved by the court replaces the original  
20 appraisement. Not more than one reappraisement may be made.

21 (b) Notwithstanding Subsection (a), a person interested in  
22 an estate may object to a reappraisement regardless of whether the  
23 court has approved the reappraisement. If the court finds that the  
24 reappraisement is erroneous or unjust, the court shall appraise the  
25 property on the basis of the evidence before the court. (Tex. Prob.  
26 Code, Sec. 737.)

27 [Sections 1154.105-1154.150 reserved for expansion]

SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS  
EVIDENCE

Sec. 1154.151. USE OF INVENTORY, APPRAISEMENT, AND LIST OF  
CLAIMS AS EVIDENCE. Each inventory, appraisalment, and list of  
claims that has been made, filed, and approved in accordance with  
law; the record of the inventory, appraisalment, and list of claims;  
or a copy of an original or the record that has been certified under  
the seal of the county court affixed by the clerk:

(1) may be given in evidence in any court of this state  
in any suit by or against the guardian of the estate; and

(2) is not conclusive for or against the guardian of  
the estate if it is shown that:

(A) any property or claim of the estate is not  
shown in the inventory, appraisalment, or list of claims; or

(B) the value of the property or claim of the  
estate exceeded the value shown in the appraisalment or list of  
claims. (Tex. Prob. Code, Sec. 739.)

CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

SUBCHAPTER A. COMPENSATION OF GUARDIANS IN GENERAL

Sec. 1155.001. DEFINITIONS

Sec. 1155.002. COMPENSATION FOR CERTAIN GUARDIANS OF

THE PERSON

Sec. 1155.003. COMPENSATION FOR GUARDIAN OF THE ESTATE

Sec. 1155.004. CONSIDERATIONS IN AUTHORIZING

COMPENSATION

Sec. 1155.005. MAXIMUM AGGREGATE COMPENSATION

1 Sec. 1155.006. MODIFICATION OF UNREASONABLY LOW  
2 COMPENSATION; AUTHORIZATION FOR  
3 PAYMENT OF ESTIMATED QUARTERLY  
4 COMPENSATION  
5 Sec. 1155.007. REDUCTION OR ELIMINATION OF ESTIMATED  
6 QUARTERLY COMPENSATION  
7 Sec. 1155.008. DENIAL OF COMPENSATION  
8 [Sections 1155.009-1155.050 reserved for expansion]  
9 SUBCHAPTER B. COMPENSATION FOR PROFESSIONAL SERVICES  
10 Sec. 1155.051. COMPENSATION FOR PROFESSIONAL SERVICES  
11 IN GENERAL  
12 Sec. 1155.052. ATTORNEY SERVING AS GUARDIAN AND  
13 PROVIDING RELATED LEGAL SERVICES  
14 Sec. 1155.053. COMPENSATION FOR SERVICES TO RECOVER  
15 PROPERTY  
16 [Sections 1155.054-1155.100 reserved for expansion]  
17 SUBCHAPTER C. EXPENSES  
18 Sec. 1155.101. REIMBURSEMENT OF EXPENSES IN GENERAL  
19 Sec. 1155.102. REIMBURSEMENT OF EXPENSES FOR  
20 COLLECTION OF CLAIM OR DEBT  
21 Sec. 1155.103. EXPENSE CHARGES: REQUIREMENTS  
22 [Sections 1155.104-1155.150 reserved for expansion]  
23 SUBCHAPTER D. COSTS IN GENERAL  
24 Sec. 1155.151. COST OF PROCEEDING IN GUARDIANSHIP  
25 MATTER  
26 Sec. 1155.152. CERTAIN COSTS ADJUDGED AGAINST GUARDIAN  
27 [Sections 1155.153-1155.200 reserved for expansion]

SUBCHAPTER E. COMPENSATION AND COSTS IN GUARDIANSHIPS FOR CERTAIN

MEDICAL ASSISTANCE RECIPIENTS

Sec. 1155.201. DEFINITIONS

Sec. 1155.202. COMPENSATION AND COSTS PAYABLE UNDER

MEDICAL ASSISTANCE PROGRAM

CHAPTER 1155. COMPENSATION, EXPENSES, AND COURT COSTS

SUBCHAPTER A. COMPENSATION OF GUARDIANS IN GENERAL

Sec. 1155.001. DEFINITIONS. In this subchapter:

(1) "Gross income" does not include United States Department of Veterans Affairs or social security benefits received by a ward.

(2) "Money paid out" does not include any money loaned, invested, or paid over on the settlement of a guardianship or a tax-motivated gift made by a ward. (Tex. Prob. Code, Sec. 665(h).)

Sec. 1155.002. COMPENSATION FOR CERTAIN GUARDIANS OF THE PERSON. (a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the ward's gross income.

(b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose. (Tex. Prob. Code, Secs. 665(a), (g).)

Sec. 1155.003. COMPENSATION FOR GUARDIAN OF THE ESTATE.



1 (a) The guardian of an estate is entitled to reasonable  
2 compensation on application to the court at the time the court  
3 approves an annual or final accounting filed by the guardian under  
4 this title.

5 (b) A fee of five percent of the gross income of the ward's  
6 estate and five percent of all money paid out of the estate, subject  
7 to the award of an additional amount under Section 1155.006(a)  
8 following a review under Section 1155.006(a)(1), is considered  
9 reasonable under this section if the court finds that the guardian  
10 has taken care of and managed the estate in compliance with the  
11 standards of this title. (Tex. Prob. Code, Sec. 665(b).)

12 Sec. 1155.004. CONSIDERATIONS IN AUTHORIZING COMPENSATION.  
13 In determining whether to authorize compensation for a guardian  
14 under this subchapter, the court shall consider:

- 15 (1) the ward's monthly income from all sources; and  
16 (2) whether the ward receives medical assistance under  
17 the state Medicaid program. (Tex. Prob. Code, Sec. 665(a-1).)

18 Sec. 1155.005. MAXIMUM AGGREGATE COMPENSATION. Except as  
19 provided by Section 1155.006(a) for a fee the court determines is  
20 unreasonably low, the aggregate fee of the guardian of the person  
21 and guardian of the estate may not exceed an amount equal to five  
22 percent of the gross income of the ward's estate plus five percent  
23 of all money paid out of the estate. (Tex. Prob. Code, Sec.  
24 665(f).)

25 Sec. 1155.006. MODIFICATION OF UNREASONABLY LOW  
26 COMPENSATION; AUTHORIZATION FOR PAYMENT OF ESTIMATED QUARTERLY  
27 COMPENSATION. (a) On application of an interested person or on the

1 court's own motion, the court may:

2 (1) review and modify the amount of compensation  
3 authorized under Section 1155.002(a) or 1155.003 if the court finds  
4 that the amount is unreasonably low when considering the services  
5 provided as guardian; and

6 (2) authorize compensation for the guardian in an  
7 estimated amount the court finds reasonable, to be paid on a  
8 quarterly basis before the guardian files an annual or final  
9 accounting, if the court finds that delaying the payment of  
10 compensation until the guardian files an accounting would create a  
11 hardship for the guardian.

12 (b) A finding of unreasonably low compensation may not be  
13 established under Subsection (a) solely because the amount of  
14 compensation is less than the usual and customary charges of the  
15 person or entity serving as guardian. (Tex. Prob. Code, Secs.  
16 665(c), (d) (part).)

17 Sec. 1155.007. REDUCTION OR ELIMINATION OF ESTIMATED  
18 QUARTERLY COMPENSATION. (a) A court that authorizes payment of  
19 estimated quarterly compensation under Section 1155.006(a) may  
20 later reduce or eliminate the guardian's compensation if, on review  
21 of an annual or final accounting or otherwise, the court finds that  
22 the guardian:

23 (1) received compensation in excess of the amount  
24 permitted under this subchapter;

25 (2) has not adequately performed the duties required  
26 of a guardian under this title; or

27 (3) has been removed for cause.

1           (b) If a court reduces or eliminates a guardian's  
2 compensation as provided by Subsection (a), the guardian and the  
3 surety on the guardian's bond are liable to the guardianship estate  
4 for any excess compensation received. (Tex. Prob. Code, Secs.  
5 665(d) (part), (d-1).)

6           Sec. 1155.008. DENIAL OF COMPENSATION. On application of  
7 an interested person or on the court's own motion, the court may  
8 wholly or partly deny a fee authorized under this subchapter if:

9                 (1) the court finds that the guardian has not  
10 adequately performed the duties required of a guardian under this  
11 title; or

12                (2) the guardian has been removed for cause. (Tex.  
13 Prob. Code, Sec. 665(e).)

14           [Sections 1155.009-1155.050 reserved for expansion]

15           SUBCHAPTER B. COMPENSATION FOR PROFESSIONAL SERVICES

16           Sec. 1155.051. COMPENSATION FOR PROFESSIONAL SERVICES IN  
17 GENERAL. (a) The court shall order the payment of a fee set by the  
18 court as compensation to any attorneys, mental health  
19 professionals, and interpreters appointed under this title to be  
20 taxed as costs in the case.

21           (b) If after examining a proposed ward's assets the court  
22 determines the proposed ward is unable to pay for services provided  
23 by an attorney, a mental health professional, or an interpreter  
24 appointed under this title, as applicable, the county is  
25 responsible for the cost of those services. (Tex. Prob. Code, Sec.  
26 665A.)

27           Sec. 1155.052. ATTORNEY SERVING AS GUARDIAN AND PROVIDING

1 RELATED LEGAL SERVICES. (a) Notwithstanding any other provision  
2 of this chapter or Section 665B, an attorney who serves as guardian  
3 and who also provides legal services in connection with the  
4 guardianship is not entitled to compensation for the guardianship  
5 services or payment of attorney's fees for the legal services from  
6 the ward's estate or other funds available for that purpose unless  
7 the attorney files with the court a detailed description of the  
8 services performed that identifies which of the services provided  
9 were guardianship services and which were legal services.

10 (b) An attorney described by Subsection (a) is not entitled  
11 to payment of attorney's fees for guardianship services that are  
12 not legal services.

13 (c) The court shall set the compensation of an attorney  
14 described by Subsection (a) for the performance of guardianship  
15 services in accordance with Subchapter A. The court shall set  
16 attorney's fees for an attorney described by Subsection (a) for  
17 legal services provided in accordance with Sections 1155.051,  
18 1155.101, and 665B. (Tex. Prob. Code, Sec. 665D.)

19 Sec. 1155.053. COMPENSATION FOR SERVICES TO RECOVER  
20 PROPERTY. (a) Subject only to the approval of the court in which  
21 the estate is being administered and except as provided by  
22 Subsection (b), a guardian of an estate may convey or contract to  
23 convey a contingent interest in any property sought to be  
24 recovered, not to exceed one-third of the property for services of  
25 attorneys.

26 (b) A guardian of an estate may convey or contract to convey  
27 for services of attorneys a contingent interest that exceeds

1 one-third of the property sought to be recovered under this section  
2 only on the approval of the court in which the estate is being  
3 administered. The court must approve a contract entered into or  
4 conveyance made under this section before an attorney performs any  
5 legal services. A contract entered into or conveyance made in  
6 violation of this section is void unless the court ratifies or  
7 reforms the contract or documents relating to the conveyance to the  
8 extent necessary to cause the contract or conveyance to meet the  
9 requirements of this section.

10 (c) In approving a contract or conveyance under Subsection  
11 (a) or (b) for services of an attorney, the court shall consider:

12 (1) the time and labor that will be required, the  
13 novelty and difficulty of the questions to be involved, and the  
14 skill that will be required to perform the legal services properly;

15 (2) the fee customarily charged in the locality for  
16 similar legal services;

17 (3) the value of property recovered or sought to be  
18 recovered by the guardian under this section;

19 (4) the benefits to the estate that the attorney will  
20 be responsible for securing; and

21 (5) the experience and ability of the attorney who  
22 will be performing the services. (Tex. Prob. Code, Secs. 665C(a),  
23 (b), (c).)

24 [Sections 1155.054-1155.100 reserved for expansion]

25 SUBCHAPTER C. EXPENSES

26 Sec. 1155.101. REIMBURSEMENT OF EXPENSES IN GENERAL. A  
27 guardian is entitled to reimbursement from the guardianship estate

1 for all necessary and reasonable expenses incurred in performing  
2 any duty as a guardian, including reimbursement for the payment of  
3 reasonable attorney's fees necessarily incurred by the guardian in  
4 connection with the management of the estate or any other  
5 guardianship matter. (Tex. Prob. Code, Sec. 666.)

6       Sec. 1155.102. REIMBURSEMENT OF EXPENSES FOR COLLECTION OF  
7 CLAIM OR DEBT. On satisfactory proof to the court, a guardian of an  
8 estate is entitled to all necessary and reasonable expenses  
9 incurred by the guardian in collecting or attempting to collect a  
10 claim or debt owed to the estate or in recovering or attempting to  
11 recover property to which the estate has title or a claim. (Tex.  
12 Prob. Code, Sec. 665C(d).)

13       Sec. 1155.103. EXPENSE CHARGES: REQUIREMENTS. All expense  
14 charges shall be:

15               (1) in writing, showing specifically each item of  
16 expense and the date of the expense;

17               (2) verified by affidavit of the guardian;

18               (3) filed with the clerk; and

19               (4) paid only if the payment is authorized by court  
20 order. (Tex. Prob. Code, Sec. 667.)

21       [Sections 1155.104-1155.150 reserved for expansion]

22                       SUBCHAPTER D. COSTS IN GENERAL

23       Sec. 1155.151. COST OF PROCEEDING IN GUARDIANSHIP MATTER.

24 (a) Except as provided by Subsection (b), the cost of the proceeding  
25 in a guardianship matter, including the cost of the guardian ad  
26 litem or court visitor, shall be paid out of the guardianship  
27 estate, or the cost of the proceeding shall be paid out of the

1 county treasury if the estate is insufficient to pay the cost, and  
2 the court shall issue the judgment accordingly.

3 (b) An applicant for the appointment of a guardian under  
4 this title shall pay the cost of the proceeding if the court denies  
5 the application based on the recommendation of a court  
6 investigator. (Tex. Prob. Code, Sec. 669.)

7 Sec. 1155.152. CERTAIN COSTS ADJUDGED AGAINST GUARDIAN. If  
8 costs are incurred because a guardian neglects to perform a  
9 required duty or is removed for cause, the guardian and the sureties  
10 on the guardian's bond are liable for:

11 (1) any costs of removal and other additional costs  
12 incurred that are not expenditures authorized under this title; and

13 (2) reasonable attorney's fees incurred in:

14 (A) removing the guardian; or

15 (B) obtaining compliance regarding any statutory  
16 duty the guardian has neglected. (Tex. Prob. Code, Sec. 668.)

17 [Sections 1155.153-1155.200 reserved for expansion]

18 SUBCHAPTER E. COMPENSATION AND COSTS IN GUARDIANSHIPS FOR CERTAIN

19 MEDICAL ASSISTANCE RECIPIENTS

20 Sec. 1155.201. DEFINITIONS. In this subchapter:

21 (1) "Applied income" means the portion of the earned  
22 and unearned income of a recipient of medical assistance, or if  
23 applicable the recipient and the recipient's spouse, that is paid  
24 under the medical assistance program to a nursing home in which the  
25 recipient resides.

26 (2) "Medical assistance" has the meaning assigned by  
27 Section 32.003, Human Resources Code. (Tex. Prob. Code, Sec.

670(a).)

Sec. 1155.202. COMPENSATION AND COSTS PAYABLE UNDER MEDICAL ASSISTANCE PROGRAM. (a) Notwithstanding any other provision of this title and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be paid under the medical assistance program:

(1) compensation to the guardian in an amount not to exceed \$175 per month;

(2) costs directly related to establishing or terminating the guardianship, not to exceed \$1,000 except as provided by Subsection (b); and

(3) other administrative costs related to the guardianship, not to exceed \$1,000 during any three-year period.

(b) Costs ordered to be paid under Subsection (a)(2) may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed \$1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court. (Tex. Prob. Code, Secs. 670(b), (c).)

## CHAPTER 1156. EDUCATION AND MAINTENANCE ALLOWANCES PAID FROM

### WARD'S ESTATE

#### SUBCHAPTER A. ALLOWANCES FOR WARD

Sec. 1156.001. APPLICATION FOR ALLOWANCE

Sec. 1156.002. COURT DETERMINATION OF ALLOWANCE AMOUNT

Sec. 1156.003. COURT ORDER SETTING ALLOWANCE



1 Sec. 1156.004. EXPENDITURES EXCEEDING ALLOWANCE

2 [Sections 1156.005-1156.050 reserved for expansion]

3 SUBCHAPTER B. ALLOWANCES FOR WARD'S FAMILY

4 Sec. 1156.051. CERTAIN ALLOWANCES PROHIBITED WHEN

5 PARENT IS GUARDIAN OF MINOR WARD

6 Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE OR

7 DEPENDENT

8 CHAPTER 1156. EDUCATION AND MAINTENANCE ALLOWANCES PAID FROM

9 WARD'S ESTATE

10 SUBCHAPTER A. ALLOWANCES FOR WARD

11 Sec. 1156.001. APPLICATION FOR ALLOWANCE. (a) Subject to  
12 Section 1156.051, if a monthly allowance for a ward was not ordered  
13 in the court's order appointing a guardian, the guardian of the  
14 estate of the ward shall file with the court an application  
15 requesting a monthly allowance to be spent from the income and  
16 corpus of the ward's estate for:

17 (1) the education and maintenance of the ward; and

18 (2) the maintenance of the ward's property.

19 (b) The guardian must file the application not later than  
20 the 30th day after the date the guardian qualifies as guardian or  
21 the date specified by the court, whichever is later.

22 (c) The application must clearly separate amounts requested  
23 for the ward's education and maintenance from amounts requested for  
24 maintenance of the ward's property. (Tex. Prob. Code, Secs. 776(a),  
25 (a-1).)

26 Sec. 1156.002. COURT DETERMINATION OF ALLOWANCE AMOUNT. In  
27 determining the amount of the monthly allowance for the ward and the

ward's property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the reasonably anticipated regular education and maintenance expenses of the ward and maintenance expenses of the ward's property. (Tex. Prob. Code, Sec. 776(a-2) (part).)

Sec. 1156.003. COURT ORDER SETTING ALLOWANCE. (a) The court's order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward's property.

(b) If different persons have the guardianship of the person and of the estate of a ward, the court's order setting a monthly allowance must specify:

(1) the amount, if any, set by the court for the ward's education and maintenance that the guardian of the estate shall pay; and

(2) the amount, if any, that the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the ward's education and maintenance.

(c) If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled by court order to make the payment after the guardian is cited to appear.

(d) An order setting a monthly allowance does not affect the guardian's duty to account for expenditures of the allowance in the annual account required by Subchapter A, Chapter 1163. (Tex. Prob. Code, Secs. 776(a-2) (part), (a-3).)

Sec. 1156.004. EXPENDITURES EXCEEDING ALLOWANCE. If a

1 guardian in good faith has spent money from the income and corpus of  
2 the estate of the ward for the ward's support and maintenance and  
3 the expenditures exceed the monthly allowance authorized by the  
4 court, the guardian shall file a motion with the court requesting  
5 approval of the expenditures. The court may approve the excess  
6 expenditures if:

7 (1) the expenditures were made when it was not  
8 convenient or possible for the guardian to first secure court  
9 approval;

10 (2) the proof is clear and convincing that the  
11 expenditures were reasonable and proper;

12 (3) the court would have granted authority in advance  
13 to make the expenditures; and

14 (4) the ward received the benefits of the  
15 expenditures. (Tex. Prob. Code, Sec. 776(b).)

16 [Sections 1156.005-1156.050 reserved for expansion]

17 SUBCHAPTER B. ALLOWANCES FOR WARD'S FAMILY

18 Sec. 1156.051. CERTAIN ALLOWANCES PROHIBITED WHEN PARENT IS  
19 GUARDIAN OF MINOR WARD. (a) Except as provided by Subsection (b), a  
20 parent who is the guardian of the person of a ward who is 17 years of  
21 age or younger may not use the income or the corpus from the ward's  
22 estate for the ward's support, education, or maintenance.

23 (b) A court with proper jurisdiction may authorize the  
24 guardian of the person to spend the income or the corpus from the  
25 ward's estate to support, educate, or maintain the ward if the  
26 guardian presents to the court clear and convincing evidence that  
27 the ward's parents are unable without unreasonable hardship to pay

1 for all of the expenses related to the ward's support. (Tex. Prob.  
2 Code, Sec. 777.)

3 Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE OR DEPENDENT.

4 (a) Subject to Section 1156.051 and on application to the court,  
5 the court may order the guardian of the estate of a ward to spend  
6 money from the ward's estate for the education and maintenance of  
7 the ward's spouse or dependent.

8 (b) In determining whether to order the expenditure of money  
9 from a ward's estate for the ward's spouse or dependent, as  
10 appropriate, under this section, the court shall consider:

11 (1) the circumstances of the ward, the ward's spouse,  
12 and the ward's dependents;

13 (2) the ability and duty of the ward's spouse to  
14 support himself or herself and the ward's dependent;

15 (3) the size of the ward's estate;

16 (4) a beneficial interest the ward or the ward's spouse  
17 or dependent has in a trust; and

18 (5) an existing estate plan, including a trust or  
19 will, that provides a benefit to the ward's spouse or dependent.

20 (c) A person who makes an application to the court under  
21 this section shall mail notice of the application by certified mail  
22 to all interested persons. (Tex. Prob. Code, Sec. 776A.)

23 CHAPTER 1157. PRESENTMENT AND PAYMENT OF CLAIMS

24 SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST

25 GUARDIANSHIP ESTATE IN GENERAL

26 Sec. 1157.001. PRESENTMENT OF CLAIM TO GUARDIAN OF THE  
27 ESTATE

1 Sec. 1157.002. PRESENTMENT OF CLAIM TO CLERK  
2 Sec. 1157.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM  
3 Sec. 1157.004. AFFIDAVIT AUTHENTICATING CLAIM FOR  
4 MONEY IN GENERAL  
5 Sec. 1157.005. AFFIDAVIT AUTHENTICATING CLAIM OF  
6 CORPORATION OR BY CERTAIN OTHER  
7 REPRESENTATIVES  
8 Sec. 1157.006. LOST OR DESTROYED EVIDENCE CONCERNING  
9 CLAIM  
10 Sec. 1157.007. WAIVER OF CERTAIN DEFECTS OF FORM OR  
11 CLAIMS OF INSUFFICIENCY  
12 Sec. 1157.008. EFFECT ON STATUTES OF LIMITATION OF  
13 FILING OF OR SUIT ON CLAIM  
14 [Sections 1157.009-1157.050 reserved for expansion]  
15 SUBCHAPTER B. ACTION ON CLAIMS  
16 Sec. 1157.051. ALLOWANCE OR REJECTION OF CLAIM  
17 Sec. 1157.052. FAILURE TO ENDORSE OR ATTACH MEMORANDUM  
18 OR ALLOW OR REJECT CLAIM  
19 Sec. 1157.053. CLAIM ENTERED ON CLAIM DOCKET  
20 Sec. 1157.054. CONTEST OF CLAIM  
21 Sec. 1157.055. COURT'S ACTION ON CLAIM  
22 Sec. 1157.056. HEARING ON CERTAIN CLAIMS  
23 Sec. 1157.057. COURT ORDER REGARDING ACTION ON CLAIM  
24 Sec. 1157.058. APPEAL OF COURT'S ACTION ON CLAIM  
25 Sec. 1157.059. ALLOWANCE AND APPROVAL PROHIBITED  
26 WITHOUT AFFIDAVIT

1 Sec. 1157.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
2 CIRCUMSTANCES  
3 Sec. 1157.061. ALLOWING BARRED CLAIM PROHIBITED; COURT  
4 DISAPPROVAL  
5 Sec. 1157.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR  
6 DESTROYED EVIDENCE VOID  
7 Sec. 1157.063. SUIT ON REJECTED CLAIM  
8 Sec. 1157.064. PRESENTMENT OF CLAIM PREREQUISITE FOR  
9 JUDGMENT  
10 Sec. 1157.065. JUDGMENT IN SUIT ON REJECTED CLAIM  
11 [Sections 1157.066-1157.100 reserved for expansion]  
12 SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES  
13 Sec. 1157.101. PAYMENT OF APPROVED OR ESTABLISHED  
14 CLAIM  
15 Sec. 1157.102. PAYMENT OF UNAUTHENTICATED CLAIM  
16 Sec. 1157.103. PRIORITY OF PAYMENT OF CLAIMS  
17 Sec. 1157.104. PAYMENT OF PROCEEDS FROM SALE OF  
18 PROPERTY SECURING DEBT  
19 Sec. 1157.105. CLAIMANT'S PETITION FOR ALLOWANCE AND  
20 PAYMENT OF CLAIM  
21 Sec. 1157.106. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY  
22 CERTAIN CLAIMS  
23 Sec. 1157.107. PAYMENT OF COURT COSTS RELATING TO  
24 CLAIM  
25 Sec. 1157.108. LIABILITY FOR NONPAYMENT OF CLAIM  
26 [Sections 1157.109-1157.150 reserved for expansion]

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS

Sec. 1157.151. OPTION TO TREAT CLAIM AS MATURED

SECURED CLAIM OR PREFERRED DEBT AND

LIEN

Sec. 1157.152. PREFERRED DEBT AND LIEN

Sec. 1157.153. PAYMENT OF MATURITIES ON PREFERRED DEBT

AND LIEN

[Sections 1157.154-1157.200 reserved for expansion]

SUBCHAPTER E. CLAIMS INVOLVING GUARDIANS

Sec. 1157.201. CLAIM BY GUARDIAN

Sec. 1157.202. PURCHASE OF CLAIM BY GUARDIAN

PROHIBITED

CHAPTER 1157. PRESENTMENT AND PAYMENT OF CLAIMS

SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST

GUARDIANSHIP ESTATE IN GENERAL

Sec. 1157.001. PRESENTMENT OF CLAIM TO GUARDIAN OF THE ESTATE. A claim may be presented to the guardian of the estate at any time if:

(1) the estate has not been closed; and

(2) suit on the claim has not been barred by the general statutes of limitation. (Tex. Prob. Code, Sec. 786(a) (part).)

Sec. 1157.002. PRESENTMENT OF CLAIM TO CLERK. (a) A claim may also be presented by depositing the claim with the clerk with vouchers and the necessary exhibits and affidavit attached to the claim. On receiving a claim deposited under this subsection, the clerk shall advise the guardian of the estate or the guardian's

1 attorney of the deposit of the claim by a letter mailed to the  
2 guardian's last known address.

3 (b) A claim deposited under Subsection (a) is presumed to be  
4 rejected if the guardian fails to act on the claim on or before the  
5 30th day after the date the claim is filed.

6 (c) Failure of the clerk to give the notice required under  
7 Subsection (a) does not affect the validity of the presentment or  
8 the presumption of rejection of the claim because the guardian does  
9 not act on the claim within the 30-day period prescribed by  
10 Subsection (b). (Tex. Prob. Code, Sec. 795.)

11 Sec. 1157.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM. If  
12 the instrument evidencing or supporting a claim provides for  
13 attorney's fees, the claimant may include as a part of the claim the  
14 portion of the attorney's fees the claimant has paid or contracted  
15 to pay to an attorney to prepare, present, and collect the claim.  
16 (Tex. Prob. Code, Sec. 794.)

17 Sec. 1157.004. AFFIDAVIT AUTHENTICATING CLAIM FOR MONEY IN  
18 GENERAL. (a) Except as provided by Sections 1157.005 and 1157.102,  
19 a claim for money against an estate must be supported by an  
20 affidavit that states:

21 (1) that the claim is just;

22 (2) that all legal offsets, payments, and credits  
23 known to the affiant have been allowed; and

24 (3) if the claim is not founded on a written instrument  
25 or account, the facts on which the claim is founded.

26 (b) A photostatic copy of an exhibit or voucher necessary to  
27 prove a claim under this section may be offered with and attached to



1 the claim instead of attaching the original. (Tex. Prob. Code, Sec.  
2 788 (part).)

3 Sec. 1157.005. AFFIDAVIT AUTHENTICATING CLAIM OF  
4 CORPORATION OR BY CERTAIN OTHER REPRESENTATIVES. (a) The cashier,  
5 treasurer, or managing official of a corporation shall make the  
6 affidavit required to authenticate a claim of the corporation.

7 (b) In an affidavit made by an officer of a corporation, or  
8 by an executor, administrator, guardian, trustee, assignee, agent,  
9 or attorney, it is sufficient to state that the affiant has made  
10 diligent inquiry and examination and believes the claim is just and  
11 that all legal offsets, payments, and credits made known to the  
12 affiant have been allowed. (Tex. Prob. Code, Sec. 791.)

13 Sec. 1157.006. LOST OR DESTROYED EVIDENCE CONCERNING CLAIM.  
14 If evidence of a claim is lost or destroyed, the claimant or the  
15 claimant's representative may make an affidavit to the fact of the  
16 loss or destruction. The affidavit must state:

- 17 (1) the amount, date, and nature of the claim;  
18 (2) the due date of the claim;  
19 (3) that the claim is just;  
20 (4) that all legal offsets, payments, and credits  
21 known to the affiant have been allowed; and  
22 (5) that the claimant is still the owner of the claim.  
23 (Tex. Prob. Code, Sec. 790 (part).)

24 Sec. 1157.007. WAIVER OF CERTAIN DEFECTS OF FORM OR CLAIMS  
25 OF INSUFFICIENCY. A defect of form or a claim of insufficiency of a  
26 presented exhibit or voucher is considered waived by the guardian  
27 of the estate unless a written objection to the form, exhibit, or

1 voucher is:

2 (1) made not later than the 30th day after the date the  
3 claim is presented; and

4 (2) filed with the county clerk. (Tex. Prob. Code,  
5 Sec. 789.)

6 Sec. 1157.008. EFFECT ON STATUTES OF LIMITATION OF FILING  
7 OF OR SUIT ON CLAIM. The general statutes of limitation are tolled  
8 by:

9 (1) filing a claim that is legally allowed and  
10 approved; or

11 (2) bringing a suit on a rejected and disapproved  
12 claim not later than the 90th day after the date the claim is  
13 rejected or disapproved. (Tex. Prob. Code, Sec. 787.)

14 [Sections 1157.009-1157.050 reserved for expansion]

15 SUBCHAPTER B. ACTION ON CLAIMS

16 Sec. 1157.051. ALLOWANCE OR REJECTION OF CLAIM. A guardian  
17 of the estate shall, not later than the 30th day after the date an  
18 authenticated claim against the guardianship estate is presented to  
19 the guardian or filed with the clerk as provided by this chapter,  
20 endorse on or attach to the claim a memorandum signed by the  
21 guardian stating:

22 (1) the date of presentation or filing of the claim;  
23 and

24 (2) whether the guardian allows or rejects the claim,  
25 or, if the guardian allows or rejects a part of the claim, the  
26 portion of the claim the guardian allows or rejects. (Tex. Prob.  
27 Code, Sec. 796.)

1           Sec. 1157.052. FAILURE TO ENDORSE OR ATTACH MEMORANDUM OR  
2 ALLOW OR REJECT CLAIM. The failure of a guardian of the estate to  
3 endorse on or attach to a claim presented to the guardian the  
4 memorandum required by Section 1157.051 or, not later than the 30th  
5 day after the date a claim is presented, to allow or reject the  
6 claim or portion of the claim constitutes a rejection of the claim.  
7 If the claim is later established by suit:

8                   (1) the costs shall be taxed against the guardian,  
9 individually; or

10                   (2) the guardian may be removed as in other cases of  
11 removal on the written complaint of any person interested in the  
12 claim after personal service of citation, hearing, and proof.  
13 (Tex. Prob. Code, Sec. 797.)

14           Sec. 1157.053. CLAIM ENTERED ON CLAIM DOCKET. After a claim  
15 against a ward's estate has been presented to and allowed by the  
16 guardian of the estate, wholly or partly, the claim must be filed  
17 with the county clerk of the proper county. The clerk shall enter  
18 the claim on the claim docket. (Tex. Prob. Code, Sec. 798.)

19           Sec. 1157.054. CONTEST OF CLAIM. (a) A person interested  
20 in a ward may, at any time before the court has acted on a claim,  
21 appear and object in writing to the approval of the claim or any  
22 part of the claim.

23                   (b) If a person objects under Subsection (a):

24                           (1) the parties are entitled to process for witnesses;  
25 and

26                           (2) the court shall hear evidence and render judgment  
27 as in ordinary suits. (Tex. Prob. Code, Sec. 799(a).)

1           Sec. 1157.055. COURT'S ACTION ON CLAIM. The court shall:

2                   (1) approve, wholly or partly, or reject a claim that  
3 has been allowed and entered on the claim docket for a period of 10  
4 days; and

5                   (2) concurrently classify the claim. (Tex. Prob.  
6 Code, Sec. 799(b).)

7           Sec. 1157.056. HEARING ON CERTAIN CLAIMS. (a) If a claim  
8 is properly authenticated and allowed, but the court is not  
9 satisfied that the claim is just, the court shall:

10                   (1) examine the claimant and the guardian of the  
11 estate under oath; and

12                   (2) hear other evidence necessary to determine the  
13 issue.

14           (b) If after the examination and hearing the court is not  
15 convinced that the claim is just, the court shall disapprove the  
16 claim. (Tex. Prob. Code, Sec. 799(c).)

17           Sec. 1157.057. COURT ORDER REGARDING ACTION ON CLAIM. (a)  
18 The court acting on a claim shall endorse on or attach to the claim a  
19 written memorandum that:

20                   (1) is dated and officially signed; and

21                   (2) states:

22                           (A) the exact action taken by the court on the  
23 claim, whether the claim is approved or disapproved, or is approved  
24 in part and rejected in part; and

25                           (B) the classification of the claim.

26           (b) An order under Subsection (a) has the effect of a final  
27 judgment. (Tex. Prob. Code, Sec. 799(d).)

1           Sec. 1157.058. APPEAL OF COURT'S ACTION ON CLAIM. If a  
2 claimant or any person interested in a ward is dissatisfied with the  
3 court's action on a claim, the claimant or interested person may  
4 appeal the action to the court of appeals in the manner other  
5 judgments of the county court in probate matters are appealed.  
6 (Tex. Prob. Code, Sec. 799(e).)

7           Sec. 1157.059. ALLOWANCE AND APPROVAL PROHIBITED WITHOUT  
8 AFFIDAVIT. Except as provided by Section 1157.102, a guardian of  
9 the estate may not allow, and the court may not approve, a claim for  
10 money against the estate unless the claim is supported by an  
11 affidavit that meets the applicable requirements of Sections  
12 1157.004 and 1157.005. (Tex. Prob. Code, Sec. 788 (part).)

13           Sec. 1157.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
14 CIRCUMSTANCES. A claim of an unsecured creditor for money that is  
15 not presented within the time prescribed by the notice of  
16 presentment permitted by Section 1153.004 is barred. (Tex. Prob.  
17 Code, Sec. 786(a) (part).)

18           Sec. 1157.061. ALLOWING BARRED CLAIM PROHIBITED; COURT  
19 DISAPPROVAL. A guardian of the estate may not allow a claim against  
20 a ward if a suit on the claim is barred by an applicable general  
21 statute of limitation. A claim against a ward that is allowed by  
22 the guardian shall be disapproved if the court is satisfied that the  
23 limitation has run. (Tex. Prob. Code, Sec. 786(b).)

24           Sec. 1157.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR  
25 DESTROYED EVIDENCE VOID. (a) Before a claim the evidence for which  
26 is lost or destroyed is approved, the claim must be proved by  
27 disinterested testimony taken in open court or by oral or written

1 deposition.

2 (b) The allowance or approval of a claim the evidence for  
3 which is lost or destroyed is void if the claim is:

4 (1) allowed or approved without the affidavit under  
5 Section 1157.006; or

6 (2) approved without satisfactory proof. (Tex. Prob.  
7 Code, Sec. 790 (part).)

8 Sec. 1157.063. SUIT ON REJECTED CLAIM. (a) A claim or part  
9 of a claim that has been rejected by the guardian of the estate is  
10 barred unless not later than the 90th day after the date of  
11 rejection the claimant commences suit on the claim in the court of  
12 original probate jurisdiction in which the guardianship is pending  
13 or in any other court of proper jurisdiction.

14 (b) In a suit commenced on the rejected claim, the  
15 memorandum endorsed on or attached to the claim is taken to be true  
16 without further proof unless denied under oath. (Tex. Prob. Code,  
17 Sec. 800 (part).)

18 Sec. 1157.064. PRESENTMENT OF CLAIM PREREQUISITE FOR  
19 JUDGMENT. (a) Except as provided by Subsection (b), a judgment may  
20 not be rendered in favor of a claimant on a claim for money that has  
21 not been:

22 (1) legally presented to the guardian of the estate of  
23 the ward; and

24 (2) wholly or partly rejected by the guardian or the  
25 court.

26 (b) Subsection (a) does not apply to a claim against the  
27 estate of a ward for delinquent ad valorem taxes that is being

administered in probate in a county other than the county in which the taxes were imposed. (Tex. Prob. Code, Sec. 801.)

Sec. 1157.065. JUDGMENT IN SUIT ON REJECTED CLAIM. No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:

(1) certified not later than the 30th day after the date of rendition, if the judgment is from a court other than the court of original probate jurisdiction;

(2) filed in the court in which the guardianship is pending;

(3) entered on the claim docket;

(4) classified by the court; and

(5) handled as if originally allowed and approved in due course of administration. (Tex. Prob. Code, Sec. 800 (part).)

[Sections 1157.066-1157.100 reserved for expansion]

#### SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

Sec. 1157.101. PAYMENT OF APPROVED OR ESTABLISHED CLAIM. Except as provided for payment of an unauthenticated claim at the risk of a guardian, a claim or any part of a claim for money against the estate of a ward may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction. (Tex. Prob. Code, Sec. 804.)

Sec. 1157.102. PAYMENT OF UNAUTHENTICATED CLAIM. (a) Subject to Subsection (b), a guardian of the estate may pay an unauthenticated claim against the ward's estate if the guardian believes the claim to be just.

(b) A guardian who pays a claim under Subsection (a) and the

1 sureties on the guardian's bond are liable for the amount of any  
2 payment of the claim if the court finds that the claim is not just.  
3 (Tex. Prob. Code, Sec. 792.)

4       Sec. 1157.103. PRIORITY OF PAYMENT OF CLAIMS. (a) Except  
5 as provided by Subsection (b), the guardian of the estate shall pay  
6 a claim against the ward's estate that has been allowed and approved  
7 or established by suit, as soon as practicable and in the following  
8 order:

9               (1) expenses for the care, maintenance, and education  
10 of the ward or the ward's dependents;

11               (2) funeral expenses of the ward and expenses of the  
12 ward's last illness, if the guardianship is kept open after the  
13 ward's death as provided under this title, except that any claim  
14 against the ward's estate that has been allowed and approved or  
15 established by suit before the ward's death shall be paid before the  
16 funeral expenses and expenses of the last illness;

17               (3) expenses of administration; and

18               (4) other claims against the ward or the ward's estate.

19       (b) If the estate is insolvent, the guardian shall give  
20 first priority to the payment of a claim relating to the  
21 administration of the guardianship. The guardian shall pay other  
22 claims against the ward's estate in the order prescribed by  
23 Subsection (a). (Tex. Prob. Code, Secs. 805(a), (b).)

24       Sec. 1157.104. PAYMENT OF PROCEEDS FROM SALE OF PROPERTY  
25 SECURING DEBT. (a) If a guardian of the estate has on hand the  
26 proceeds of a sale made to satisfy a mortgage or other lien and the  
27 proceeds or any part of the proceeds are not required for the



1 payment of any debts against the estate that have a preference over  
2 the mortgage or other lien, the guardian shall pay the proceeds to a  
3 holder of the mortgage or other lien.

4 (b) If the guardian fails to pay the proceeds as required by  
5 this section, the holder of a mortgage or other lien, on proof of  
6 the mortgage or other lien, may obtain an order from the court  
7 directing the payment of proceeds to be made. (Tex. Prob. Code,  
8 Sec. 808.)

9 Sec. 1157.105. CLAIMANT'S PETITION FOR ALLOWANCE AND  
10 PAYMENT OF CLAIM. A claimant whose claim has not been paid may:

11 (1) petition the court for determination of the claim  
12 at any time before the claim is barred by an applicable statute of  
13 limitations; and

14 (2) procure on due proof an order for the claim's  
15 allowance and payment from the estate. (Tex. Prob. Code, Sec.  
16 805(c).)

17 Sec. 1157.106. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY  
18 CERTAIN CLAIMS. (a) If there are insufficient assets to pay all  
19 claims of the same class, the claims in that class shall be paid pro  
20 rata, as directed by the court, and in the order directed.

21 (b) A guardian of the estate may not be allowed to pay any  
22 claims other than with the pro rata amount of the estate funds that  
23 have come into the guardian's possession, regardless of whether the  
24 estate is solvent or insolvent. (Tex. Prob. Code, Sec. 806.)

25 Sec. 1157.107. PAYMENT OF COURT COSTS RELATING TO CLAIM.  
26 All costs incurred in the probate court with respect to a claim are  
27 taxed as follows:

1           (1) if the claim is allowed and approved, the  
2 guardianship estate shall pay the costs;

3           (2) if the claim is allowed but disapproved, the  
4 claimant shall pay the costs;

5           (3) if the claim is rejected but established by suit,  
6 the guardianship estate shall pay the costs;

7           (4) if the claim is rejected but not established by  
8 suit, the claimant shall pay the costs; or

9           (5) in a suit to establish the claim after the claim is  
10 rejected in part, if the claimant fails to recover judgment for a  
11 greater amount than was allowed or approved for the claim, the  
12 claimant shall pay all costs. (Tex. Prob. Code, Sec. 802.)

13       Sec. 1157.108. LIABILITY FOR NONPAYMENT OF CLAIM. (a) A  
14 person or claimant, except the state treasury, entitled to payment  
15 from a guardianship estate of money the court orders to be paid is  
16 authorized to have execution issued against the property of the  
17 guardianship for the amount due, with interest and costs, if:

18           (1) a guardian of the estate fails to pay the money on  
19 demand;

20           (2) guardianship estate funds are available to make  
21 the payment; and

22           (3) the person or claimant makes an affidavit of the  
23 demand for payment and the guardian's failure to pay.

24       (b) The court may cite the guardian and the sureties on the  
25 guardian's bond to show cause why the guardian or sureties should  
26 not be held liable for the debt, interest, costs, or damages:

27           (1) on return of the execution under Subsection (a)

1 not satisfied; or

2 (2) on the affidavit of demand and failure to pay under  
3 Subsection (a).

4 (c) On the return of citation served under Subsection (b),  
5 the court shall render judgment against the cited guardian and  
6 sureties, in favor of the claim holder, if good cause why the  
7 guardian and sureties should not be held liable is not shown. The  
8 judgment must be for:

9 (1) the unpaid amount ordered to be paid or  
10 established by suit, with interest and costs; and

11 (2) damages on the amount neglected to be paid at the  
12 rate of five percent per month for each month, or fraction of a  
13 month, that the payment was neglected to be paid after demand for  
14 payment was made.

15 (d) Damages ordered under Subsection (c)(2) may be  
16 collected in any court of competent jurisdiction. (Tex. Prob. Code,  
17 Sec. 809.)

18 [Sections 1157.109-1157.150 reserved for expansion]

19 SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS

20 Sec. 1157.151. OPTION TO TREAT CLAIM AS MATURED SECURED  
21 CLAIM OR PREFERRED DEBT AND LIEN. (a) If a secured claim against a  
22 ward is presented, the claimant shall specify in the claim, in  
23 addition to all other matters required to be specified in the claim,  
24 whether the claim shall be:

25 (1) allowed and approved as a matured secured claim to  
26 be paid in due course of administration, in which case the claim  
27 shall be paid in that manner if allowed and approved; or

1           (2) allowed, approved, and fixed as a preferred debt  
2 and lien against the specific property securing the indebtedness  
3 and paid according to the terms of the contract that secured the  
4 lien, in which case the claim shall be so allowed and approved if it  
5 is a valid lien.

6           (b) Notwithstanding Subsection (a)(2), the guardian of the  
7 estate may pay a claim that the claimant specified as a claim to be  
8 allowed, approved, and fixed as a preferred debt and lien as  
9 described by Subsection (a)(2) before maturity if that payment is  
10 in the best interests of the estate.

11           (c) If a secured claim is not presented within the time  
12 provided by law, the claim shall be treated as a claim to be paid in  
13 accordance with Subsection (a)(2). (Tex. Prob. Code, Secs. 793(a),  
14 (b).)

15           Sec. 1157.152. PREFERRED DEBT AND LIEN. When a claim for a  
16 debt has been allowed and approved under Section 1157.151(a)(2):

17               (1) a further claim for the debt may not be made  
18 against other estate assets;

19               (2) the claim remains a preferred lien against the  
20 property securing the claim; and

21               (3) the property remains security for the debt in any  
22 distribution or sale of the property before final maturity and  
23 payment of the debt. (Tex. Prob. Code, Sec. 793(c).)

24           Sec. 1157.153. PAYMENT OF MATURITIES ON PREFERRED DEBT AND  
25 LIEN. (a) If, not later than the 12th month after the date letters  
26 of guardianship are granted, the property securing a debt for which  
27 a claim is allowed, approved, and fixed under Section

1 1157.151(a)(2) is not sold or distributed, the guardian of the  
2 estate shall:

3 (1) promptly pay all maturities that have accrued on  
4 the debt according to the terms of the maturities; and

5 (2) perform all the terms of any contract securing the  
6 maturities.

7 (b) If the guardian defaults in payment or performance under  
8 Subsection (a):

9 (1) on the motion of the claim holder, the court shall  
10 require the sale of the property subject to the unmatured part of  
11 the debt and apply the proceeds of the sale to the liquidation of  
12 the maturities; or

13 (2) at the claim holder's option, a motion may be made  
14 in the same manner as a motion under Subdivision (1) to require the  
15 sale of the property free of the lien and apply the proceeds to the  
16 payment of the whole debt. (Tex. Prob. Code, Sec. 793(d).)

17 [Sections 1157.154-1157.200 reserved for expansion]

18 SUBCHAPTER E. CLAIMS INVOLVING GUARDIANS

19 Sec. 1157.201. CLAIM BY GUARDIAN. (a) A claim that a  
20 guardian of the person or estate held against the ward at the time  
21 of the guardian's appointment, or that accrues after the  
22 appointment, shall be verified by affidavit as required in other  
23 cases and presented to the clerk of the court in which the  
24 guardianship is pending. The clerk shall enter the claim on the  
25 claim docket and the claim shall take the same course as other  
26 claims.

27 (b) A claim by a guardian that has been filed with the court

1 within the required period shall be entered on the claim docket and  
2 acted on by the court in the same manner as in other cases.

3 (c) An appeal from a judgment of the court acting on a claim  
4 under this section may be taken as in other cases. (Tex. Prob.  
5 Code, Sec. 803.)

6 Sec. 1157.202. PURCHASE OF CLAIM BY GUARDIAN PROHIBITED.

7 (a) A guardian may not purchase, for the guardian's own use or for  
8 any other purpose, a claim against the guardianship the guardian  
9 represents.

10 (b) On written complaint by a person interested in the  
11 guardianship estate and on satisfactory proof of a violation of  
12 Subsection (a), the court after citation and hearing shall enter an  
13 order canceling the claim described by Subsection (a). No part of  
14 the canceled claim may be paid out of the guardianship.

15 (c) The court may remove a guardian for a violation of this  
16 section. (Tex. Prob. Code, Sec. 807.)

17 CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 1158.001. COURT ORDER AUTHORIZING SALE

20 [Sections 1158.002-1158.050 reserved for expansion]

21 SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

22 Sec. 1158.051. SALE OF CERTAIN PERSONAL PROPERTY

23 REQUIRED

24 [Sections 1158.052-1158.100 reserved for expansion]

25 SUBCHAPTER C. SALE OF PERSONAL PROPERTY

26 Sec. 1158.101. ORDER FOR SALE

27 Sec. 1158.102. REQUIREMENTS FOR APPLICATION AND ORDER

1 Sec. 1158.103. SALE AT PUBLIC AUCTION  
2 Sec. 1158.104. SALE ON CREDIT  
3 Sec. 1158.105. REPORT; EVIDENCE OF TITLE  
4 [Sections 1158.106-1158.150 reserved for expansion]  
5 SUBCHAPTER D. SALE OF LIVESTOCK  
6 Sec. 1158.151. AUTHORITY FOR SALE  
7 Sec. 1158.152. CONTENTS OF APPLICATION; HEARING  
8 Sec. 1158.153. GRANT OF APPLICATION  
9 Sec. 1158.154. REPORT; PASSAGE OF TITLE  
10 Sec. 1158.155. COMMISSION MERCHANT CHARGES  
11 [Sections 1158.156-1158.200 reserved for expansion]  
12 SUBCHAPTER E. SALE OF MORTGAGED PROPERTY  
13 Sec. 1158.201. APPLICATION FOR SALE OF MORTGAGED  
14 PROPERTY  
15 Sec. 1158.202. CITATION  
16 Sec. 1158.203. ORDER  
17 [Sections 1158.204-1158.250 reserved for expansion]  
18 SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR SALE  
19 Sec. 1158.251. APPLICATION FOR ORDER OF SALE  
20 Sec. 1158.252. CONTENTS OF APPLICATION  
21 Sec. 1158.253. CITATION  
22 Sec. 1158.254. OPPOSITION TO SALE  
23 Sec. 1158.255. HEARING ON APPLICATION AND ANY  
24 OPPOSITION  
25 Sec. 1158.256. ORDER  
26 Sec. 1158.257. SALE FOR PAYMENT OF DEBTS  
27 [Sections 1158.258-1158.300 reserved for expansion]

SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE

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Sec. 1158.302. SALE ON CREDIT

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SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

Sec. 1158.351. APPLICABILITY OF SUBCHAPTER

Sec. 1158.352. APPLICATION AND ORDER FOR RECONVEYANCE

Sec. 1158.353. EXCHANGE FOR BONDS

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Sec. 1158.401. REQUIRED NOTICE

Sec. 1158.402. METHOD OF SALE

Sec. 1158.403. TIME AND PLACE OF SALE

Sec. 1158.404. CONTINUANCE OF SALE

Sec. 1158.405. FAILURE OF BIDDER TO COMPLY

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SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

Sec. 1158.451. MANNER OF SALE

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SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

Sec. 1158.501. AUTHORIZATION

Sec. 1158.502. PROCEDURE

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Sec. 1158.551. REPORT

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1 Sec. 1158.553. CONFIRMATION OF SALE WHEN BOND NOT  
2 REQUIRED  
3 Sec. 1158.554. SUFFICIENCY OF BOND  
4 Sec. 1158.555. INCREASED OR ADDITIONAL BOND NOT  
5 REQUIRED  
6 Sec. 1158.556. CONFIRMATION OR DISAPPROVAL ORDER  
7 Sec. 1158.557. DEED  
8 Sec. 1158.558. DELIVERY OF DEED  
9 Sec. 1158.559. DAMAGES; REMOVAL  
10 [Sections 1158.560-1158.600 reserved for expansion]  
11 SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE  
12 Sec. 1158.601. FAILURE TO APPLY FOR SALE  
13 Sec. 1158.602. COURT ORDER  
14 [Sections 1158.603-1158.650 reserved for expansion]  
15 SUBCHAPTER N. PURCHASE OF ESTATE PROPERTY BY GUARDIAN  
16 Sec. 1158.651. GENERAL PROHIBITION ON PURCHASE  
17 Sec. 1158.652. EXCEPTION: EXECUTORY CONTRACT  
18 Sec. 1158.653. EXCEPTION: BEST INTEREST OF ESTATE  
19 Sec. 1158.654. PURCHASE IN VIOLATION OF SUBCHAPTER  
20 [Sections 1158.655-1158.700 reserved for expansion]  
21 SUBCHAPTER O. PARTITION OF WARD'S INTEREST IN REAL ESTATE  
22 Sec. 1158.701. PARTITION BY AGREEMENT  
23 Sec. 1158.702. APPLICATION FOR APPROVAL OF PARTITION  
24 AGREEMENT  
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1 Sec. 1158.705. PARTITION WITHOUT COURT APPROVAL;

2 RATIFICATION OF PARTITION AGREEMENT

3 Sec. 1158.706. PARTITION BY SUIT

4 CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 1158.001. COURT ORDER AUTHORIZING SALE. (a) Except as  
7 provided by this chapter, any property of a ward may not be sold  
8 without a court order authorizing the sale.

9 (b) Except as otherwise specifically provided by this  
10 title, the court may order property of a ward to be sold for cash or  
11 on credit, at public auction or privately, as the court considers  
12 most advantageous to the estate. (Tex. Prob. Code, Sec. 811.)

13 [Sections 1158.002-1158.050 reserved for expansion]

14 SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

15 Sec. 1158.051. SALE OF CERTAIN PERSONAL PROPERTY REQUIRED.

16 (a) After approval of the inventory, appraisement, and list of  
17 claims, the guardian of the estate of a ward promptly shall apply  
18 for a court order to sell, at public auction or privately, for cash  
19 or on credit for a term not to exceed six months, all estate  
20 property that is liable to perish, waste, or deteriorate in value,  
21 or that will be an expense or disadvantage to the estate if kept.

22 (b) The following may not be included in a sale under  
23 Subsection (a):

24 (1) property exempt from forced sale;

25 (2) property that is the subject of a specific legacy;

26 and

27 (3) personal property necessary to carry on a farm,

1 ranch, factory, or other business that is thought best to operate.

2 (c) In determining whether to order the sale of an asset  
3 under Subsection (a), the court shall consider:

4 (1) the guardian's duty to take care of and manage the  
5 estate in the manner a person of ordinary prudence, discretion, and  
6 intelligence would manage the person's own affairs; and

7 (2) whether the asset constitutes an asset that a  
8 trustee is authorized to invest under Subchapter F, Chapter 113,  
9 Property Code, or Chapter 117, Property Code. (Tex. Prob. Code,  
10 Sec. 812.)

11 [Sections 1158.052-1158.100 reserved for expansion]

12 SUBCHAPTER C. SALE OF PERSONAL PROPERTY

13 Sec. 1158.101. ORDER FOR SALE. (a) Except as provided by  
14 Subsection (b), on the application of the guardian of the estate of  
15 a ward or any interested person, the court may order the sale of any  
16 estate personal property not required to be sold by Section  
17 1158.051, including livestock or growing or harvested crops, if the  
18 court finds that the sale of the property is in the best interests  
19 of the ward or the ward's estate to pay, from the proceeds of the  
20 sale:

21 (1) expenses of the care, maintenance, and education  
22 of the ward or the ward's dependents;

23 (2) expenses of administration;

24 (3) allowances;

25 (4) claims against the ward or the ward's estate; and

26 (5) if the guardianship is kept open after the death of  
27 the ward, the ward's funeral expenses and expenses of the ward's

1 last illness.

2 (b) The court may not order under this section the sale of  
3 exempt property. (Tex. Prob. Code, Sec. 813 (part).)

4 Sec. 1158.102. REQUIREMENTS FOR APPLICATION AND ORDER. To  
5 the extent possible, an application and order for the sale of estate  
6 personal property under Section 1158.101 must conform to the  
7 requirements under Subchapter F for an application and order for  
8 the sale of real estate. (Tex. Prob. Code, Sec. 813 (part).)

9 Sec. 1158.103. SALE AT PUBLIC AUCTION. Unless the court  
10 directs otherwise, before estate personal property is sold at  
11 public auction, notice must be:

12 (1) issued by the guardian of the estate; and

13 (2) posted in the manner notice is posted for original  
14 proceedings in probate. (Tex. Prob. Code, Sec. 815.)

15 Sec. 1158.104. SALE ON CREDIT. (a) Estate personal  
16 property may not be sold on credit at public auction for a term of  
17 more than six months from the date of sale.

18 (b) Estate personal property purchased on credit at public  
19 auction may not be delivered to the purchaser until the purchaser  
20 gives a note for the amount due, with good and solvent personal  
21 security. The requirement that security be provided may be waived  
22 if the property will not be delivered until the note, with interest,  
23 has been paid. (Tex. Prob. Code, Sec. 816.)

24 Sec. 1158.105. REPORT; EVIDENCE OF TITLE. (a) A sale of  
25 estate personal property shall be reported to the court. The laws  
26 regulating the confirmation or disapproval of a sale of real estate  
27 apply to the sale of personal property, except that a conveyance is

1 not required.

2 (b) The court's order confirming the sale of estate personal  
3 property:

4 (1) vests the right and title of the ward's estate in  
5 the purchaser who has complied with the terms of the sale; and

6 (2) is prima facie evidence that all requirements of  
7 the law in making the sale have been met.

8 (c) The guardian of the estate, on request, may issue a bill  
9 of sale without warranty to the purchaser of estate personal  
10 property as evidence of title. The expense of the bill of sale if  
11 requested must be paid by the purchaser. (Tex. Prob. Code, Sec.  
12 818.)

13 [Sections 1158.106-1158.150 reserved for expansion]

14 SUBCHAPTER D. SALE OF LIVESTOCK

15 Sec. 1158.151. AUTHORITY FOR SALE. (a) A guardian of the  
16 estate who has possession of livestock and who considers selling  
17 the livestock to be necessary or to the estate's advantage may, in  
18 addition to any other method provided by law for the sale of  
19 personal property, obtain authority from the court in which the  
20 estate is pending to sell the livestock through:

21 (1) a bonded livestock commission merchant; or

22 (2) a bonded livestock auction commission merchant.

23 (b) The court may authorize the sale of livestock in the  
24 manner described by Subsection (a) on a written and sworn  
25 application by the guardian or any person interested in the estate.  
26 (Tex. Prob. Code, Secs. 814(a), (b) (part).)

27 Sec. 1158.152. CONTENTS OF APPLICATION; HEARING. (a) An

1 application under Section 1158.151 must:

2 (1) describe the livestock sought to be sold; and

3 (2) state why granting the application is necessary or  
4 to the estate's advantage.

5 (b) The court:

6 (1) shall consider the application; and

7 (2) may hear evidence for or against the application,  
8 with or without notice, as the facts warrant. (Tex. Prob. Code,  
9 Sec. 814(b) (part).)

10 Sec. 1158.153. GRANT OF APPLICATION. If the court grants an  
11 application for the sale of livestock, the court shall:

12 (1) enter an order to that effect; and

13 (2) authorize delivery of the livestock to a  
14 commission merchant described by Section 1158.151(a) for sale in  
15 the regular course of business. (Tex. Prob. Code, Sec. 814(c)  
16 (part).)

17 Sec. 1158.154. REPORT; PASSAGE OF TITLE. The guardian of  
18 the estate shall promptly report to the court a sale of livestock,  
19 supported by a verified copy of the commission merchant's account  
20 of the sale. A court order of confirmation is not required to pass  
21 title to the purchaser of the livestock. (Tex. Prob. Code, Sec.  
22 814(c) (part).)

23 Sec. 1158.155. COMMISSION MERCHANT CHARGES. The commission  
24 merchant shall be paid the commission merchant's usual and  
25 customary charges, not to exceed five percent of the sale price, for  
26 the sale of the livestock. (Tex. Prob. Code, Sec. 814(c) (part).)

27 [Sections 1158.156-1158.200 reserved for expansion]

SUBCHAPTER E. SALE OF MORTGAGED PROPERTY

Sec. 1158.201. APPLICATION FOR SALE OF MORTGAGED PROPERTY.

On the filing of a written application, a creditor holding a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is pending an order requiring that the property securing the lien, or as much of the property as is necessary to satisfy the creditor's claim, be sold. (Tex. Prob. Code, Sec. 817 (part).)

Sec. 1158.202. CITATION. On the filing of an application under Section 1158.201, the clerk shall issue a citation requiring the guardian of the estate to appear and show cause why the application should not be granted. (Tex. Prob. Code, Sec. 817 (part).)

Sec. 1158.203. ORDER. The court may order the lien securing the claim of a creditor who files an application under Section 1158.201 to be discharged out of general estate assets or refinanced if the discharge or refinance of the lien appears to the court to be advisable. Otherwise, the court shall grant the application and order that the property securing the lien be sold at public or private sale, as the court considers best, as in an ordinary sale of real estate. (Tex. Prob. Code, Sec. 817 (part).)

[Sections 1158.204-1158.250 reserved for expansion]

SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR SALE

Sec. 1158.251. APPLICATION FOR ORDER OF SALE. An

application may be made to the court for an order to sell real property of a ward's estate if the sale appears necessary or

1   advisable to:

2               (1)   pay:

3                   (A)   expenses of administration, allowances, and  
4   claims against the ward or the ward's estate; and

5                   (B)   if the guardianship is kept open after the  
6   death of the ward, the ward's funeral expenses and expenses of the  
7   ward's last illness;

8               (2)   make up the deficiency if the income of a ward's  
9   estate, the personal property of the estate, and the proceeds of  
10   previous sales are insufficient to pay for the education and  
11   maintenance of the ward or to pay debts against the estate;

12               (3)   dispose of property of the ward's estate that  
13   consists wholly or partly of an undivided interest in real estate if  
14   considered in the best interests of the estate to sell the interest;

15               (4)   dispose of real estate of a ward, any part of which  
16   is nonproductive or does not produce sufficient revenue to make a  
17   fair return on the value of the real estate, if:

18                   (A)   the improvement of the real estate with a  
19   view to making the property productive is not considered  
20   advantageous or advisable; and

21                   (B)   the sale of the real estate and the  
22   investment of the money derived from that sale appears to be in the  
23   estate's best interests; or

24               (5)   conserve the ward's estate by selling mineral  
25   interest or royalties on minerals in place owned by the ward. (Tex.  
26   Prob. Code, Sec. 820.)

27               Sec. 1158.252.   CONTENTS OF APPLICATION.   An application for



1 the sale of real estate must:

2 (1) be in writing;

3 (2) describe:

4 (A) the real estate sought to be sold; or

5 (B) the interest in or part of the real estate  
6 sought to be sold; and

7 (3) be accompanied by an exhibit, verified by an  
8 affidavit, showing fully and in detail:

9 (A) the estate's condition;

10 (B) the charges and claims that have been  
11 approved or established by suit or that have been rejected and may  
12 be established later;

13 (C) the amount of each claim described by  
14 Paragraph (B);

15 (D) the estate property remaining on hand that is  
16 liable for the payment of the claims described by Paragraph (B); and

17 (E) any other facts showing the necessity for or  
18 advisability of the sale. (Tex. Prob. Code, Sec. 821.)

19 Sec. 1158.253. CITATION. On the filing of an application  
20 for the sale of real estate under Section 1158.251, accompanied by  
21 an exhibit described by Section 1158.252, the clerk shall issue a  
22 citation to all persons interested in the guardianship. The  
23 citation must:

24 (1) describe the real estate or the interest in or part  
25 of the real estate sought to be sold;

26 (2) inform the interested persons of the right under  
27 Section 1158.254 to file an opposition to the sale during the period

1 prescribed by the court in the citation; and

2 (3) be served by posting. (Tex. Prob. Code, Sec. 823.)

3 Sec. 1158.254. OPPOSITION TO SALE. During the period  
4 prescribed in a citation issued under Section 1158.253, a person  
5 interested in the guardianship may file:

6 (1) a written opposition to the sale; or

7 (2) an application for the sale of other estate  
8 property. (Tex. Prob. Code, Sec. 824.)

9 Sec. 1158.255. HEARING ON APPLICATION AND ANY OPPOSITION.

10 (a) The clerk of the court in which an application for an order of  
11 sale is filed shall immediately call to the judge's attention any  
12 opposition to the sale that is filed during the period prescribed in  
13 the citation issued under Section 1158.253. The court shall hold a  
14 hearing on the application if an opposition to the sale is filed  
15 during the period prescribed in the citation.

16 (b) A hearing on an application for an order of sale is not  
17 required under this section if no opposition to the application is  
18 filed during the period prescribed in the citation. The court may  
19 determine that a hearing on the application is necessary even if no  
20 opposition is filed during that period.

21 (c) If the court orders a hearing under Subsection (a) or  
22 (b), the court shall designate in writing a date and time for the  
23 hearing on the application and any opposition, together with the  
24 evidence pertaining to the application and any opposition. The  
25 clerk shall issue a notice of the date and time of the hearing to the  
26 applicant and to each person who files an opposition to the sale, if  
27 applicable.

1           (d) The judge, by entries on the docket, may continue a  
2 hearing held under this section from time to time until the judge is  
3 satisfied concerning the application. (Tex. Prob. Code, Sec.  
4 824A.)

5           Sec. 1158.256. ORDER. (a) The court shall order the sale  
6 of the property of the estate described in an application under  
7 Section 1158.251 if the court is satisfied that the sale is  
8 necessary or advisable. Otherwise, the court may deny the  
9 application and, if the court considers it best, may order the sale  
10 of other estate property the sale of which would be more  
11 advantageous to the estate.

12           (b) An order for the sale of real estate under this section  
13 must specify:

14                 (1) the property to be sold, including a description  
15 that identifies that property;

16                 (2) whether the property is to be sold at public  
17 auction or private sale and, if at public auction, the time and  
18 place of the sale;

19                 (3) the necessity or advisability of, and the purpose  
20 of, the sale;

21                 (4) except in a case in which a guardian of the estate  
22 was not required to give a general bond, that the court, after  
23 examining the general bond given by the guardian, finds that:

24                         (A) the bond is sufficient as required by law; or

25                         (B) the bond is insufficient;

26                 (5) if the court finds that the general bond is  
27 insufficient under Subdivision (4)(B), the amount of the necessary

1 or increased bond, as applicable;

2 (6) that the sale is to be made and the report returned  
3 in accordance with law; and

4 (7) the terms of the sale. (Tex. Prob. Code, Sec.  
5 825.)

6 Sec. 1158.257. SALE FOR PAYMENT OF DEBTS. Real property of  
7 a ward selected to be sold for the payment of expenses or claims  
8 must be that property the sale of which the court considers most  
9 advantageous to the guardianship. (Tex. Prob. Code, Sec. 819.)

10 [Sections 1158.258-1158.300 reserved for expansion]

11 SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE

12 Sec. 1158.301. PERMISSIBLE TERMS. Real estate of an estate  
13 may be sold for cash, or for part cash and part credit, or the equity  
14 in land securing an indebtedness may be sold subject to the  
15 indebtedness, or with an assumption of the indebtedness, at public  
16 or private sale, as appears to the court to be in the estate's best  
17 interests. (Tex. Prob. Code, Sec. 827(a) (part).)

18 Sec. 1158.302. SALE ON CREDIT. (a) The cash payment for  
19 real estate of an estate sold partly on credit may not be less than  
20 one-fifth of the purchase price. The purchaser shall execute a note  
21 for the deferred payments, payable in monthly, quarterly,  
22 semiannual, or annual installments, in amounts that appear to the  
23 court to be in the guardianship's best interests. The note must  
24 bear interest from the date at a rate of not less than four percent  
25 per year, payable as provided in the note.

26 (b) A note executed by a purchaser under Subsection (a) must  
27 be secured by a vendor's lien retained in the deed and in the note on

1 the property sold, and be additionally secured by a deed of trust on  
2 the property sold, with the usual provisions for foreclosure and  
3 sale on failure to make the payments provided in the deed and the  
4 note.

5 (c) At the election of the holder of a note executed by a  
6 purchaser under Subsection (a), default in the payment of principal  
7 or interest or any part of the payment when due matures the entire  
8 debt. (Tex. Prob. Code, Sec. 827(a) (part).)

9 [Sections 1158.303-1158.350 reserved for expansion]

10 SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

11 Sec. 1158.351. APPLICABILITY OF SUBCHAPTER. This  
12 subchapter applies only to real estate owned by an estate as a  
13 result of the foreclosure of a vendor's lien or mortgage belonging  
14 to the estate:

- 15 (1) by a judicial sale;  
16 (2) by a foreclosure suit;  
17 (3) through a sale under a deed of trust; or  
18 (4) by acceptance of a deed in cancellation of a lien  
19 or mortgage owned by the estate. (Tex. Prob. Code, Sec. 827(b)  
20 (part).)

21 Sec. 1158.352. APPLICATION AND ORDER FOR RECONVEYANCE. On  
22 proper application and proof, the court may dispense with the  
23 requirements for a credit sale prescribed by Section 1158.302 and  
24 order the reconveyance of foreclosed real estate to the former  
25 mortgage debtor or former owner if it appears to the court that:

- 26 (1) an application to redeem the real estate has been  
27 made by the former owner to a corporation or agency created by an

1 act of the United States Congress or of this state in connection  
2 with legislation for the relief of owners of mortgaged or  
3 encumbered homes, farms, ranches, or other real estate; and

4 (2) owning bonds of one of those federal or state  
5 corporations or agencies instead of the real estate would be in the  
6 estate's best interests. (Tex. Prob. Code, Sec. 827(b) (part).)

7 Sec. 1158.353. EXCHANGE FOR BONDS. (a) If a court orders  
8 the reconveyance of foreclosed real estate under Section 1158.352,  
9 vendor's lien notes shall be reserved for the total amount of the  
10 indebtedness due or for the total amount of bonds that the  
11 corporation or agency to which the application to redeem the real  
12 estate was submitted as described by Section 1158.352(1) is allowed  
13 to advance under the corporation's or agency's rules or  
14 regulations.

15 (b) On obtaining the order for reconveyance, it shall be  
16 proper for the guardian to endorse and assign the reserved vendor's  
17 lien notes over to any one of the corporations or agencies described  
18 by Section 1158.352(1) in exchange for bonds of that corporation or  
19 agency. (Tex. Prob. Code, Sec. 827(b) (part).)

20 [Sections 1158.354-1158.400 reserved for expansion]

21 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE

22 Sec. 1158.401. REQUIRED NOTICE. (a) Except as otherwise  
23 provided by this title, the guardian of the estate shall advertise a  
24 public sale of real estate of the estate by a notice published in  
25 the county in which the estate is pending, as provided by this title  
26 for publication of notices or citations. The notice must include a  
27 reference to:

- (1) the order of sale;
- (2) the time, place, and required terms of sale; and
- (3) a brief description of the real estate to be sold.

(b) The reference described by Subsection (a)(1) is not required to contain field notes, but if the real estate to be sold is rural property, the reference must include:

- (1) the name of the original survey of the real estate;
- (2) the number of acres the real estate consists of;
- (3) the location of the real estate in the county; and
- (4) the name by which the real estate is generally

known. (Tex. Prob. Code, Sec. 828(a).)

Sec. 1158.402. METHOD OF SALE. A public sale of real estate of an estate shall be made at public auction to the highest bidder. (Tex. Prob. Code, Sec. 828(b).)

Sec. 1158.403. TIME AND PLACE OF SALE. (a) Except as provided by Subsection (c), a public sale of real estate of an estate shall be made at:

- (1) the courthouse door in the county in which the guardianship proceedings are pending; or
- (2) another place in that county at which sales of real estate are specifically authorized to be made.

(b) The sale must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed.

(c) If the court considers it advisable, the court may order the sale to be made in the county in which the real estate is located, in which event notice shall be published both in that

1 county and in the county in which the proceedings are pending.  
2 (Tex. Prob. Code, Sec. 828(c).)

3 Sec. 1158.404. CONTINUANCE OF SALE. (a) A public sale of  
4 real estate of an estate that is not completed on the day advertised  
5 may be continued from day to day by an oral public announcement of  
6 the continuance made at the conclusion of the sale each day.

7 (b) A continued sale must occur within the hours prescribed  
8 by Section 1158.403(b).

9 (c) The continuance of a sale under this section shall be  
10 shown in the report of the sale made to the court. (Tex. Prob. Code,  
11 Sec. 828(d).)

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

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

- 20 (1) 10 percent of the amount of the bid; and  
21 (2) the amount of any deficiency in price on the second  
22 sale.

23 (c) The guardian shall recover the amounts under Subsection  
24 (b) by suit in any court in the county in which the sale was made  
25 that has jurisdiction over the amount claimed. (Tex. Prob. Code,  
26 Sec. 828(e).)

27 [Sections 1158.406-1158.450 reserved for expansion]



SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

Sec. 1158.451. MANNER OF SALE. A private sale of real estate of the estate shall be made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required. (Tex. Prob. Code, Sec. 829.)

[Sections 1158.452-1158.500 reserved for expansion]

SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

Sec. 1158.501. AUTHORIZATION. The guardian may sell and convey easements and rights-of-way on, under, and over the land of a guardianship estate that is being administered under court order, regardless of whether the sale proceeds are required to pay charges or claims against the estate, or for other lawful purposes. (Tex. Prob. Code, Sec. 830 (part).)

Sec. 1158.502. PROCEDURE. The procedure for the sale of an easement or right-of-way authorized under Section 1158.501 is the same as the procedure provided by law for a sale of real property of a ward at private sale. (Tex. Prob. Code, Sec. 830 (part).)

[Sections 1158.503-1158.550 reserved for expansion]

SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE

Sec. 1158.551. REPORT. A sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date the sale is made. The report must:

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

(2) include:

(A) the date of the order of sale;

(B) a description of the property sold;

(C) the time and place of sale;

(D) the purchaser's name;

(E) the amount for which each parcel of property or interest in the parcel of property was sold;

(F) the terms of the sale;

(G) whether the sale was made at public auction or privately; and

(H) whether the purchaser is ready to comply with the order of sale; and

(3) be noted on the guardianship docket. (Tex. Prob. Code, Sec. 832.)

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

(1) inquire into the manner in which the sale was made;

(2) hear evidence in support of or against the report;

and

(3) determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given. (Tex. Prob. Code, Sec. 834 (part).)

Sec. 1158.553. CONFIRMATION OF SALE WHEN BOND NOT REQUIRED. If the guardian of the estate of a ward is not required by Subtitle D to give a general bond, the court may confirm the sale of estate real property in the manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law. (Tex. Prob. Code, Sec. 833 (part).)

1       Sec. 1158.554. SUFFICIENCY OF BOND. (a) If the guardian of  
2 an estate is required by Subtitle D to give a general bond, before  
3 the court confirms any sale of real estate, the court shall  
4 determine whether the bond is sufficient to protect the estate  
5 after the sale proceeds are received.

6       (b) If the court finds that the general bond is sufficient,  
7 the court may confirm the sale as provided by Section 1158.556(a).

8       (c) If the court finds that the general bond is  
9 insufficient, the court may not confirm the sale until the general  
10 bond is increased to the amount required by the court, or an  
11 additional bond is given, and approved by the court.

12       (d) An increase in the amount of the general bond, or the  
13 additional bond, as applicable under Subsection (c), must be equal  
14 to the sum of:

- 15               (1) the amount for which the real estate is sold; and  
16               (2) any additional amount the court finds necessary  
17 and sets for the estate's protection. (Tex. Prob. Code, Sec. 833  
18 (part).)

19       Sec. 1158.555. INCREASED OR ADDITIONAL BOND NOT REQUIRED.  
20 Notwithstanding Sections 1158.554(c) and (d), if the real estate  
21 sold is encumbered by a lien to secure a claim against the estate  
22 and is sold to the owner or holder of the secured claim in full  
23 payment, liquidation, and satisfaction of the claim, an increased  
24 general bond or additional bond may not be required except for the  
25 amount of any cash paid to the guardian of the estate in excess of  
26 the amount necessary to pay, liquidate, and satisfy the claim in  
27 full. (Tex. Prob. Code, Sec. 833 (part).)

1           Sec. 1158.556. CONFIRMATION OR DISAPPROVAL ORDER. (a) If  
2 the court is satisfied that a sale reported under Section 1158.551  
3 was for a fair price, was properly made, and was in conformity with  
4 law, and the court has approved any increased or additional bond  
5 that the court found necessary to protect the estate, the court  
6 shall enter an order:

7                   (1) confirming the sale;

8                   (2) showing conformity with the provisions of this  
9 chapter relating to the sale;

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

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

14           (b) If the court is not satisfied that the sale was for a  
15 fair price, was properly made, and was in conformity with law, the  
16 court shall issue an order setting aside the sale and ordering a new  
17 sale to be made, if necessary.

18           (c) The court's action in confirming or disapproving a  
19 report of a sale has the effect of a final judgment. Any person  
20 interested in the guardianship estate or in the sale is entitled to  
21 have an order entered under this section reviewed as in other final  
22 judgments in probate proceedings. (Tex. Prob. Code, Sec. 834  
23 (part).)

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

27                   (1) vests in the purchaser all right and title of the

1 estate to, and all interest of the estate in, the property; and

2 (2) is prima facie evidence that the sale has met all  
3 applicable requirements of law. (Tex. Prob. Code, Sec. 835.)

4 Sec. 1158.558. DELIVERY OF DEED. (a) After the court has  
5 confirmed a sale and one purchaser has complied with the terms of  
6 the sale, the guardian of the estate shall execute and deliver to  
7 the purchaser a proper deed conveying the property.

8 (b) If the sale is made partly on credit:

9 (1) the vendor's lien securing a purchase money note  
10 must be expressly retained in the deed and may not be waived; and

11 (2) before actual delivery of the deed to the  
12 purchaser, the purchaser shall execute and deliver to the guardian  
13 of the estate a vendor's lien note, with or without personal  
14 sureties as ordered by the court, and a deed of trust or mortgage on  
15 the property as additional security for the payment of the note.

16 (c) On completion of the transaction, the guardian of the  
17 estate shall promptly file and record the deed of trust or mortgage  
18 in the appropriate records in the county in which the land is  
19 located. (Tex. Prob. Code, Sec. 836.)

20 Sec. 1158.559. DAMAGES; REMOVAL. (a) If the guardian of  
21 the estate neglects to comply with Section 1158.558, including to  
22 file the deed of trust securing a lien in the proper county, the  
23 guardian and the sureties on the guardian's bond shall, after  
24 complaint and citation, be held liable for the use of the estate and  
25 for all damages resulting from the guardian's neglect, and the  
26 court may remove the guardian.

27 (b) Damages under this section may be recovered in a court

1 of competent jurisdiction. (Tex. Prob. Code, Sec. 837.)

2 [Sections 1158.560-1158.600 reserved for expansion]

3 SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

4 Sec. 1158.601. FAILURE TO APPLY FOR SALE. If the guardian  
5 of the estate of a ward neglects to apply for an order to sell  
6 sufficient property to pay charges and claims against the estate  
7 that have been allowed and approved or established by suit, an  
8 interested person, on written application, may have the guardian  
9 cited to appear and make a full exhibit of the estate's condition  
10 and show cause why a sale of the property should not be ordered.  
11 (Tex. Prob. Code, Sec. 826 (part).)

12 Sec. 1158.602. COURT ORDER. On hearing an application  
13 under Section 1158.601, if the court is satisfied that a sale of  
14 estate property is necessary or advisable to satisfy the charges  
15 and claims described by Section 1158.601, the court shall enter an  
16 order of sale as provided by Section 1158.256. (Tex. Prob. Code,  
17 Sec. 826 (part).)

18 [Sections 1158.603-1158.650 reserved for expansion]

19 SUBCHAPTER N. PURCHASE OF ESTATE PROPERTY BY GUARDIAN

20 Sec. 1158.651. GENERAL PROHIBITION ON PURCHASE. Except as  
21 otherwise provided by Section 1158.652 or 1158.653, the guardian of  
22 the estate of a ward may not purchase, directly or indirectly, any  
23 estate property sold by the guardian or any co-representative of  
24 the guardian. (Tex. Prob. Code, Sec. 831(a).)

25 Sec. 1158.652. EXCEPTION: EXECUTORY CONTRACT. The guardian  
26 of the estate of a ward may purchase estate property in compliance  
27 with the terms of a written executory contract signed by the ward

1 before the ward became incapacitated, including:

- 2 (1) a contract for deed;
- 3 (2) an earnest money contract;
- 4 (3) a buy/sell agreement; and
- 5 (4) a stock purchase or redemption agreement. (Tex.  
6 Prob. Code, Sec. 831(b).)

7 Sec. 1158.653. EXCEPTION: BEST INTEREST OF ESTATE. (a) The  
8 guardian of the estate may purchase estate property on the court's  
9 determination that the sale is in the estate's best interest.

10 (b) In the case of an application filed by the guardian of  
11 the estate of a ward, the court shall appoint an attorney ad litem  
12 to represent the ward with respect to the sale.

13 (c) The court may require notice for a sale made under this  
14 section. (Tex. Prob. Code, Sec. 831(c).)

15 Sec. 1158.654. PURCHASE IN VIOLATION OF SUBCHAPTER. (a) If  
16 the guardian of the estate of a ward purchases estate property in  
17 violation of this subchapter, a person interested in the estate may  
18 file a written complaint with the court in which the guardianship  
19 proceedings are pending.

20 (b) On service of citation on the guardian on a complaint  
21 filed under Subsection (a) and after hearing and proof, the court  
22 shall:

- 23 (1) declare the sale void;
- 24 (2) set aside the sale; and
- 25 (3) order the reconveyance of the property to the  
26 estate.

27 (c) The court shall adjudge against the guardian all costs

1 of the sale, protest, and suit, if found necessary. (Tex. Prob.  
2 Code, Sec. 831(d).)

3 [Sections 1158.655-1158.700 reserved for expansion]

4 SUBCHAPTER O. PARTITION OF WARD'S INTEREST IN REAL ESTATE

5 Sec. 1158.701. PARTITION BY AGREEMENT. (a) The guardian of  
6 the estate of a ward may agree to a partition of real estate in which  
7 the ward owns an interest in common with one or more other part  
8 owners if, in the opinion of the guardian, it is in the best  
9 interests of the ward's estate to partition the real estate.

10 (b) An agreement under Subsection (a) is subject to the  
11 approval of the court in which the guardianship proceeding is  
12 pending. (Tex. Prob. Code, Sec. 853(a).)

13 Sec. 1158.702. APPLICATION FOR APPROVAL OF PARTITION  
14 AGREEMENT. (a) When a guardian has reached an agreement with the  
15 other part owners on how to partition real estate as described by  
16 Section 1158.701, the guardian shall file with the court in which  
17 the guardianship proceedings are pending an application to have the  
18 agreement approved by the court.

19 (b) The application must:

20 (1) describe the real estate to be divided;

21 (2) state why it is in the best interests of the ward's  
22 estate to partition the real estate; and

23 (3) show that the proposed partition agreement is fair  
24 and just to the ward's estate. (Tex. Prob. Code, Sec. 853(b).)

25 Sec. 1158.703. HEARING. (a) The county clerk shall  
26 immediately call to the attention of the judge of the court in which  
27 the guardianship proceeding is pending the filing of an application



1 required by Section 1158.702. The judge shall designate a day to  
2 hear the application.

3 (b) The application must remain on file at least 10 days  
4 before any orders are entered.

5 (c) The judge may continue a hearing held under this section  
6 from time to time until the judge is satisfied concerning the  
7 application. (Tex. Prob. Code, Sec. 853(c).)

8 Sec. 1158.704. ORDER. If the judge is satisfied that the  
9 proposed partition of the real estate is in the best interests of  
10 the ward's estate, the court shall enter an order approving the  
11 partition and directing the guardian to execute the necessary  
12 agreement for the purpose of implementing the order and partition.  
13 (Tex. Prob. Code, Sec. 853(d).)

14 Sec. 1158.705. PARTITION WITHOUT COURT APPROVAL;  
15 RATIFICATION OF PARTITION AGREEMENT. (a) If a guardian, without  
16 court approval as provided by this subchapter, executes or intends  
17 to execute an agreement to partition any real estate in which the  
18 ward has an interest, the guardian shall file with the court in  
19 which the guardianship proceedings are pending an application for  
20 the approval and ratification of the partition agreement.

21 (b) The application must:

22 (1) refer to the agreement in a manner in which the  
23 court can fully understand the nature of the partition and the real  
24 estate being divided; and

25 (2) state that, in the opinion of the guardian, the  
26 agreement is fair and just to the ward's estate and is in the best  
27 interests of the estate.

1 (c) On the filing of an application under Subsection (a),  
2 the court shall hold a hearing on the application as provided by  
3 Section 1158.703. The court shall enter an order ratifying and  
4 approving the partition agreement if the court is of the opinion  
5 that the partition is:

6 (1) fairly made; and

7 (2) in the best interests of the ward's estate.

8 (d) On ratification and approval, the partition is  
9 effective and binding as if originally executed after a court  
10 order. (Tex. Prob. Code, Sec. 853(e).)

11 Sec. 1158.706. PARTITION BY SUIT. (a) The guardian of the  
12 estate of a ward may bring a suit in the court in which the  
13 guardianship proceeding is pending for the partition of any real  
14 estate that the ward owns in common with one or more other part  
15 owners if the guardian is of the opinion that it is in the best  
16 interests of the ward's estate that the real estate be partitioned.

17 (b) The court may enter an order partitioning the real  
18 estate to the owner of the real estate, if after hearing the suit,  
19 the court is satisfied that the partition of the real estate is  
20 necessary. (Tex. Prob. Code, Sec. 853(f).)

21 CHAPTER 1159. RENTING ESTATE PROPERTY

22 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

23 Sec. 1159.001. RENTING ESTATE PROPERTY WITHOUT COURT

24 ORDER

25 Sec. 1159.002. RENTING ESTATE PROPERTY WITH COURT

26 ORDER

27 Sec. 1159.003. ESTATE PROPERTY RENTED ON CREDIT

1 Sec. 1159.004. CONDITION OF RETURNED ESTATE PROPERTY

2 Sec. 1159.005. COMPLAINT FOR FAILURE TO RENT

3 [Sections 1159.006-1159.050 reserved for expansion]

4 SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

5 Sec. 1159.051. REPORTS CONCERNING RENTALS

6 Sec. 1159.052. COURT ACTION ON REPORT

7 CHAPTER 1159. RENTING ESTATE PROPERTY

8 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

9 Sec. 1159.001. RENTING ESTATE PROPERTY WITHOUT COURT ORDER.

10 (a) The guardian of an estate, without a court order, may rent any  
11 of the estate property for one year or less, at public auction or  
12 privately, as is considered to be in the best interests of the  
13 estate.

14 (b) On the sworn complaint of any person interested in the  
15 estate, the court shall require a guardian of the estate who,  
16 without a court order, rents estate property to account to the  
17 estate for the reasonable value of the rent of the property, to be  
18 ascertained by the court on satisfactory evidence. (Tex. Prob.  
19 Code, Secs. 839, 840.)

20 Sec. 1159.002. RENTING ESTATE PROPERTY WITH COURT ORDER.

21 (a) The guardian of an estate may file a written application with  
22 the court setting forth the property the guardian seeks to rent. If  
23 the proposed rental period is one year or more, the guardian of the  
24 estate shall file a written application with the court setting  
25 forth the property the guardian seeks to rent.

26 (b) If the court finds that granting an application filed  
27 under Subsection (a) is in the interests of the estate, the court

1 shall grant the application and issue an order that:

2 (1) describes the property to be rented; and

3 (2) states whether the property will be rented at  
4 public auction or privately, whether for cash or on credit, and if  
5 on credit, the extent of the credit and the period for which the  
6 property may be rented.

7 (c) If, under Subsection (b), the court orders property to  
8 be rented at public auction, the court shall prescribe whether  
9 notice of the auction shall be published or posted. (Tex. Prob.  
10 Code, Sec. 841.)

11 Sec. 1159.003. ESTATE PROPERTY RENTED ON CREDIT. (a)  
12 Possession of estate property rented on credit may not be delivered  
13 until the renter executes and delivers to the guardian of the estate  
14 a note with good personal security for the amount of the rent. If  
15 the property is delivered without the guardian receiving the  
16 required security, the guardian and the sureties on the guardian's  
17 bond are liable for the full amount of the rent.

18 (b) Subsection (a) does not apply to a rental that is paid in  
19 installments in advance of the period to which the installments  
20 relate. (Tex. Prob. Code, Sec. 843.)

21 Sec. 1159.004. CONDITION OF RETURNED ESTATE PROPERTY. (a)  
22 Estate property that is rented must be returned to the estate's  
23 possession in as good a condition, except for reasonable wear and  
24 tear, as when the property was rented.

25 (b) The guardian of the estate shall:

26 (1) ensure that rented estate property is returned in  
27 the condition required by Subsection (a);

1           (2) report to the court any damage to, or loss or  
2 destruction of, estate property rented under this chapter; and

3           (3) ask the court for the authority to take any  
4 necessary action.

5           (c) A guardian who fails to act as required by this section  
6 and the sureties on the guardian's bond are liable to the estate for  
7 any loss or damage suffered as a result of the guardian's failure.  
8 (Tex. Prob. Code, Sec. 844.)

9           Sec. 1159.005. COMPLAINT FOR FAILURE TO RENT. (a) A person  
10 interested in a guardianship may:

11           (1) file a written and sworn complaint in the court in  
12 which the estate is pending; and

13           (2) have the guardian of the estate cited to appear and  
14 show cause why the guardian did not rent any estate property.

15           (b) The court, on hearing the complaint, shall issue an  
16 order that is in the best interests of the estate. (Tex. Prob.  
17 Code, Sec. 842.)

18           [Sections 1159.006-1159.050 reserved for expansion]

19           SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

20           Sec. 1159.051. REPORTS CONCERNING RENTALS. (a) A guardian  
21 of an estate who rents estate property with an appraised value of  
22 \$3,000 or more, not later than the 30th day after the date of the  
23 rental, shall file with the court a sworn and written report  
24 stating:

25           (1) the property rented and the property's appraised  
26 value;

27           (2) the date the property was rented and whether the

1 rental occurred at public auction or privately;

2 (3) the name of the person renting the property;

3 (4) the rental amount;

4 (5) whether the rental was for cash or on credit; and

5 (6) if the rental was on credit, the length of time,  
6 the terms, and the security received for the credit.

7 (b) A guardian of an estate who rents estate property with  
8 an appraised value of less than \$3,000 may report the rental in the  
9 next annual or final account that must be filed as required by law.  
10 (Tex. Prob. Code, Sec. 845.)

11 Sec. 1159.052. COURT ACTION ON REPORT. (a) After the fifth  
12 day after the date the report of the rental is filed, the court  
13 shall:

14 (1) examine the report; and

15 (2) by order approve and confirm the rental if the  
16 court finds the rental just and reasonable.

17 (b) If the court disapproves the rental, the guardianship is  
18 not bound and the court may order another offering for rent of the  
19 property in the same manner and subject to the provisions of this  
20 chapter.

21 (c) If the court approves the rental and it later appears  
22 that, by reason of the fault of the guardian of the estate, the  
23 property was not rented for the property's reasonable value, the  
24 court shall have the guardian and the sureties on the guardian's  
25 bond appear and show cause why the reasonable value of the rental of  
26 the property should not be adjudged against the guardian or  
27 sureties. (Tex. Prob. Code, Sec. 846.)

CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1160.001. DEFINITIONS

[Sections 1160.002-1160.050 reserved for expansion]

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Sec. 1160.051. AUTHORIZATION FOR LEASING OF MINERALS

Sec. 1160.052. LEASE APPLICATION

Sec. 1160.053. SCHEDULING OF HEARING ON APPLICATION;

CONTINUANCE

Sec. 1160.054. NOTICE OF HEARING ON APPLICATION

Sec. 1160.055. REQUIREMENTS REGARDING ORDER AND NOTICE

MANDATORY

Sec. 1160.056. HEARING ON APPLICATION; ORDER

Sec. 1160.057. MAKING OF LEASE ON GRANTING OF

APPLICATION

Sec. 1160.058. BOND REQUIREMENTS

Sec. 1160.059. TERM OF LEASE BINDING

Sec. 1160.060. AMENDMENT OF LEASE REGARDING EFFECT OF

SHUT-IN GAS WELL

[Sections 1160.061-1160.100 reserved for expansion]

SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

Sec. 1160.101. AUTHORIZATION FOR LEASING OF MINERALS

AT PRIVATE SALE

Sec. 1160.102. ACTION OF COURT IF PUBLIC ADVERTISING

NOT REQUIRED

[Sections 1160.103-1160.150 reserved for expansion]

SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

Sec. 1160.151. AUTHORIZATION FOR POOLING OR  
UNITIZATION

Sec. 1160.152. POOLING OR UNITIZATION APPLICATION

Sec. 1160.153. NOTICE NOT REQUIRED

Sec. 1160.154. HEARING ON APPLICATION

Sec. 1160.155. ACTION OF COURT AND CONTENTS OF ORDER

[Sections 1160.156-1160.200 reserved for expansion]

SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED  
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Sec. 1160.201. AUTHORIZATION FOR EXECUTION OF CERTAIN  
INSTRUMENTS

[Sections 1160.202-1160.250 reserved for expansion]

SUBCHAPTER F. PROCEDURE IF GUARDIAN OF ESTATE NEGLECTS TO APPLY FOR  
AUTHORITY

Sec. 1160.251. APPLICATION TO SHOW CAUSE

Sec. 1160.252. HEARING ON APPLICATION

Sec. 1160.253. ORDER

Sec. 1160.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF  
ORDER

CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1160.001. DEFINITIONS. In this chapter:

(1) "Gas" includes all liquid hydrocarbons in the  
gaseous phase in the reservoir.

(2) "Land" includes minerals or an interest in  
minerals in place.



1           (3) "Mineral development" includes exploration for,  
2 whether by geophysical or other means, drilling for, mining for,  
3 development of, operations in connection with, production of, and  
4 saving of oil, other liquid hydrocarbons, gas, gaseous elements,  
5 sulphur, metals, and all other minerals, whether solid or  
6 otherwise.

7           (4) "Property" includes land, minerals in place,  
8 whether solid, liquid, or gaseous, and an interest of any kind in  
9 the property, including a royalty interest, owned by an estate.  
10 (Tex. Prob. Code, Sec. 847(a); New.)

11           [Sections 1160.002-1160.050 reserved for expansion]

12           SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

13           Sec. 1160.051. AUTHORIZATION FOR LEASING OF MINERALS. (a)  
14 The court in which a guardianship proceeding is pending may  
15 authorize the guardian, acting solely under a court order, to make,  
16 execute, and deliver a lease, with or without a unitization clause  
17 or pooling provision, providing for the exploration for and  
18 development and production of oil, other liquid hydrocarbons, gas,  
19 metals and other solid minerals, and other minerals, or any of those  
20 minerals in place, belonging to the estate.

21           (b) A lease authorized by Subsection (a) must be made and  
22 entered into under and in conformity with this subchapter. (Tex.  
23 Prob. Code, Secs. 847(b), (c).)

24           Sec. 1160.052. LEASE APPLICATION. (a) The guardian of the  
25 estate shall file with the court a written application for  
26 authority to lease estate property for mineral exploration and  
27 development, with or without a pooling provision or unitization

1 clause.

2 (b) The lease application must:

3 (1) describe the property fully enough by reference to  
4 the amount of acreage, the survey name or number, or the abstract  
5 number, or by another method that adequately identifies the  
6 property and the property's location in the county in which the  
7 property is located;

8 (2) specify the interest thought to be owned by the  
9 estate, if less than the whole, but request authority to include all  
10 of the interest owned by the estate if that is the intention; and

11 (3) set out the reasons the estate property described  
12 in the application should be leased.

13 (c) The lease application is not required to set out or  
14 suggest:

15 (1) the name of any proposed lessee; or

16 (2) the terms, provisions, or form of any desired  
17 lease. (Tex. Prob. Code, Sec. 847(d).)

18 Sec. 1160.053. SCHEDULING OF HEARING ON APPLICATION;  
19 CONTINUANCE. (a) Immediately after the filing of a lease  
20 application under Section 1160.052, the county clerk shall call the  
21 filing of the application to the court's attention. The judge shall  
22 promptly make and enter a brief order designating the time and place  
23 for hearing the application.

24 (b) If the hearing is not held at the time originally  
25 designated by the court or by a timely continuance order entered,  
26 the hearing shall be continued automatically without further notice  
27 to the same time on the following day, other than Sundays and

1 holidays on which the county courthouse is officially closed, and  
2 from day to day until the lease application is finally acted on and  
3 disposed of by court order. Notice of an automatic continuance is  
4 not required. (Tex. Prob. Code, Sec. 847(e).)

5       Sec. 1160.054. NOTICE OF HEARING ON APPLICATION. (a) At  
6 least 10 days before the date set for the hearing on a lease  
7 application filed under Section 1160.052, excluding the date of  
8 notice and the date set for the hearing, the guardian of the estate  
9 shall give notice of the hearing by:

10           (1) publishing the notice in one issue of a newspaper  
11 of general circulation in the county in which the proceeding is  
12 pending; or

13           (2) if there is no newspaper in the county, posting the  
14 notice or having the notice posted.

15       (b) If the notice is published, the date of notice is the  
16 date printed on the newspaper.

17       (c) The notice must:

18           (1) be dated;

19           (2) be directed to all persons interested in the  
20 estate;

21           (3) state the date on which the lease application was  
22 filed;

23           (4) describe briefly the property sought to be leased;

24           (5) specify the fractional interest sought to be  
25 leased if less than the entire interest in the tract identified; and

26           (6) state the time and place designated by the judge  
27 for the hearing. (Tex. Prob. Code, Sec. 847(f).)

1           Sec. 1160.055. REQUIREMENTS REGARDING ORDER AND NOTICE  
2 MANDATORY. A court order authorizing any act to be performed in  
3 accordance with a lease application filed under Section 1160.052 is  
4 void in the absence of:

5                 (1) a written order originally designating a time and  
6 place for the hearing;

7                 (2) a notice issued by the guardian of the estate in  
8 compliance with the order; and

9                 (3) proof of publication or posting of the notice as  
10 required under Section 1160.054. (Tex. Prob. Code, Sec. 847(g).)

11           Sec. 1160.056. HEARING ON APPLICATION; ORDER. (a) At the  
12 time and place designated for the hearing under Section  
13 1160.053(a), or at the time to which the hearing is continued as  
14 provided by Section 1160.053(b), the judge shall:

15                 (1) hear a lease application filed under Section  
16 1160.052; and

17                 (2) require proof as to the necessity or advisability  
18 of leasing for mineral development the property described in the  
19 application and the notice.

20           (b) The judge shall enter an order authorizing one or more  
21 leases affecting and covering the property or portions of property  
22 described in the lease application, with or without pooling  
23 provisions or unitization clauses, and with or without cash  
24 consideration if considered by the court to be in the best interest  
25 of the estate, if the judge is satisfied that:

26                 (1) the application is in proper form;

27                 (2) notice has been given in the manner and for the

1 time required by law;

2 (3) proof of necessity or advisability of leasing is  
3 sufficient; and

4 (4) the application should be granted.

5 (c) The order must contain:

6 (1) the name of the lessee;

7 (2) any actual cash consideration to be paid by the  
8 lessee;

9 (3) a finding that the requirements of Subsection (b)  
10 have been satisfied; and

11 (4) one of the following findings:

12 (A) a finding that the guardian of the estate is  
13 exempt by law from giving a bond; or

14 (B) if the guardian of the estate is required to  
15 give a bond, a finding as to whether the guardian's general bond on  
16 file is sufficient to protect the personal property on hand,  
17 including any cash bonus to be paid.

18 (d) If the court finds the general bond insufficient to meet  
19 the requirements of Subsection (c)(4)(B), the order must show the  
20 amount of increased or additional bond required to cover the  
21 deficiency.

22 (e) A complete exhibit copy, either written or printed, of  
23 each authorized lease must be set out in, attached to, incorporated  
24 by reference in, or made part of the order. The exhibit copy must  
25 show:

26 (1) the name of the lessee;

27 (2) the date of the lease;

1           (3) an adequate description of the property being  
2 leased;

3           (4) any delay rental to be paid to defer commencement  
4 of operations; and

5           (5) all other authorized terms and provisions.

6           (f) If the date of a lease does not appear in the exhibit  
7 copy of the lease or in the order, the date of the order is  
8 considered for all purposes to be the date of the lease.

9           (g) If the name or address of a depository bank for  
10 receiving rental is not shown in the exhibit copy of a lease, the  
11 guardian of the estate may insert the name or address, or cause the  
12 name or address to be inserted, in the lease at the time of the  
13 lease's execution or at any other time agreeable to the lessee or  
14 the lessee's successors or assigns. (Tex. Prob. Code, Secs.  
15 847(h), (i).)

16           Sec. 1160.057. MAKING OF LEASE ON GRANTING OF APPLICATION.

17           (a) If on the hearing of a lease application filed under Section  
18 1160.052 the court grants the application, the guardian of the  
19 estate may make the lease, as evidenced by the exhibit copies, in  
20 accordance with the order.

21           (b) The lease must be made not later than the 30th day after  
22 the date of the order unless an extension is granted by the court on  
23 a sworn application showing good cause.

24           (c) It is not necessary for the judge to make an order  
25 confirming the lease. (Tex. Prob. Code, Sec. 847(j) (part).)

26           Sec. 1160.058. BOND REQUIREMENTS. (a) Unless the guardian  
27 of the estate is not required to give a general bond, a lease for

1 which a cash consideration is required, although ordered, executed,  
2 and delivered, is not valid:

3 (1) unless the order authorizing the lease makes a  
4 finding with respect to the general bond; and

5 (2) if the general bond has been found insufficient,  
6 until:

7 (A) the bond has been increased or an additional  
8 bond given with the sureties required by law, as required by the  
9 order; and

10 (B) the increased or additional bond has been  
11 approved by the judge and filed with the clerk of the court in which  
12 the proceeding is pending.

13 (b) If two or more leases of different land are authorized  
14 by the same order, the general bond shall be increased or additional  
15 bonds given to cover all of the leases. (Tex. Prob. Code, Sec.  
16 847(j) (part).)

17 Sec. 1160.059. TERM OF LEASE BINDING. A lease executed and  
18 delivered in compliance with this subchapter is valid and binding  
19 on the property or interest owned by the estate and covered by the  
20 lease for the full term provided by the lease, subject only to the  
21 lease's terms and conditions, even if the primary term extends  
22 beyond the date the estate is closed in accordance with law. For  
23 the lease to be valid and binding under this subchapter, the  
24 authorized primary term of the lease may not exceed five years,  
25 subject to the lease terms and provisions extending the lease  
26 beyond the primary term by:

27 (1) paying production;

1           (2) bona fide drilling or reworking operations,  
2 whether in or on the same well or wells or an additional well or  
3 wells without a cessation of operations of more than 60 consecutive  
4 days before production has been restored or obtained; or

5           (3) a shut-in gas well. (Tex. Prob. Code, Sec.  
6 847(k).)

7           Sec. 1160.060. AMENDMENT OF LEASE REGARDING EFFECT OF  
8 SHUT-IN GAS WELL. (a) An oil, gas, and mineral lease executed by a  
9 guardian of an estate under this chapter or former Chapter XIII,  
10 Texas Probate Code, may be amended by an instrument that provides  
11 that a shut-in gas well on the land covered by the lease or on land  
12 pooled with all or part of the land covered by the lease continues  
13 the lease in effect after the lease's five-year primary term.

14           (b) The guardian of the estate, with court approval, shall  
15 execute the instrument according to the terms and conditions  
16 prescribed in the instrument. (Tex. Prob. Code, Sec. 847(m).)

17           [Sections 1160.061-1160.100 reserved for expansion]

18           SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

19           Sec. 1160.101. AUTHORIZATION FOR LEASING OF MINERALS AT  
20 PRIVATE SALE. (a) Notwithstanding the mandatory requirements for  
21 setting a time and place for hearing a lease application under  
22 Subchapter B and the issuance, service, and return of notice, the  
23 court may authorize the making of oil, gas, and mineral leases at a  
24 private sale without public notice or advertising if, in the  
25 court's opinion, facts are set out in the application sufficient to  
26 show that it would be more advantageous to the estate that a lease  
27 be made privately and without compliance with those mandatory



1 requirements.

2 (b) Leases authorized under this subchapter may include  
3 pooling provisions or unitization clauses as in other cases. (Tex.  
4 Prob. Code, Sec. 848(a).)

5 Sec. 1160.102. ACTION OF COURT IF PUBLIC ADVERTISING NOT  
6 REQUIRED. (a) At any time after the fifth day and before the 11th  
7 day after the filing date of an application to lease at a private  
8 sale and without an order setting the hearing time and place, the  
9 court shall:

10 (1) hear the application;

11 (2) inquire into the manner in which the proposed  
12 lease has been or will be made; and

13 (3) hear evidence for or against the application.

14 (b) If the court is satisfied that the lease has been or will  
15 be made for a fair and sufficient consideration and on fair terms  
16 and has been or will be properly made in conformity with law, the  
17 court shall enter an order authorizing the execution of the lease  
18 without the necessity of advertising, notice, or citation. The  
19 order must comply in all other respects with the requirements  
20 essential to the validity of mineral leases set out in Subchapter B  
21 as if advertising or notice were required.

22 (c) An order that confirms a lease made at a private sale  
23 does not need to be issued. A lease made at a private sale is not  
24 valid until any increased or additional bond required by the court  
25 has been approved by the court and filed with the court clerk.  
26 (Tex. Prob. Code, Sec. 848(b).)

27 [Sections 1160.103-1160.150 reserved for expansion]

SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

Sec. 1160.151. AUTHORIZATION FOR POOLING OR UNITIZATION.

(a) If an existing lease on property owned by an estate being administered does not adequately provide for pooling or unitization, the court in which the proceeding is pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals or any one or more of them owned by the estate to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interests of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are considered for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit continues in effect in its entirety as long as:

(A) oil, gas, or other minerals subject to the

1 agreement are produced in paying quantities from any part of the  
2 pooled or unitized area;

3 (B) operations are conducted as provided in the  
4 lease on any part of the pooled or unitized area; or

5 (C) there is a shut-in gas well on any part of the  
6 pooled or unitized area, if the presence of the shut-in gas well is  
7 a ground for continuation of the lease under the terms of the lease;

8 (3) the production allocated by the agreement to each  
9 tract included in a pool or unit shall, when produced, be considered  
10 for all purposes to have been produced from the tract by a well  
11 drilled on the tract;

12 (4) the royalties provided for on production from any  
13 tract or portion of a tract within the pool or unit shall be paid  
14 only on that portion of the production allocated to the tract in  
15 accordance with the agreement;

16 (5) the dry gas, before or after extraction of  
17 hydrocarbons, may be returned to a formation underlying any land or  
18 leases committed to the agreement, and that royalties are not  
19 required to be paid on the gas returned; and

20 (6) gas obtained from other sources or another tract  
21 of land may be injected into a formation underlying any land or  
22 lease committed to the agreement, and that royalties are not  
23 required to be paid on the gas injected when the gas is produced  
24 from the unit. (Tex. Prob. Code, Secs. 849(a), (b).)

25 Sec. 1160.152. POOLING OR UNITIZATION APPLICATION. (a)  
26 The guardian of the estate shall file with the county clerk of the  
27 county in which the guardianship proceeding is pending a written

1 application for authority to:

2 (1) enter into a pooling or unitization agreement  
3 supplementing, amending, or otherwise relating to any existing  
4 lease covering property owned by the estate; or

5 (2) commit royalties or other interests in minerals,  
6 whether or not subject to a lease, to a pooling or unitization  
7 agreement.

8 (b) The pooling or unitization application must also:

9 (1) sufficiently describe the property as required in  
10 an original lease application;

11 (2) describe briefly the lease to which the interest  
12 of the estate is subject; and

13 (3) set out the reasons the proposed agreement  
14 concerning the property should be entered into.

15 (c) A copy of the proposed agreement must be attached to the  
16 pooling or unitization application and made a part of the  
17 application by reference.

18 (d) The agreement may not be recorded in the judge's  
19 guardianship docket.

20 (e) Immediately after the pooling or unitization  
21 application is filed, the clerk shall call the application to the  
22 judge's attention. (Tex. Prob. Code, Sec. 849(c).)

23 Sec. 1160.153. NOTICE NOT REQUIRED. Notice by advertising,  
24 citation, or otherwise of the filing of a pooling or unitization  
25 application under Section 1160.152 is not required. (Tex. Prob.  
26 Code, Sec. 849(d).)

27 Sec. 1160.154. HEARING ON APPLICATION. (a) The judge may

1 hold a hearing on a pooling or unitization application filed under  
2 Section 1160.152 at any time agreeable to the parties to the  
3 proposed agreement.

4 (b) The judge shall hear evidence and determine to the  
5 judge's satisfaction whether it is in the best interests of the  
6 estate that the proposed agreement be authorized.

7 (c) The hearing may be continued from day to day and from  
8 time to time as the court finds necessary. (Tex. Prob. Code, Sec.  
9 849(e).)

10 Sec. 1160.155. ACTION OF COURT AND CONTENTS OF ORDER. (a)  
11 The court shall enter an order setting out the court's findings and  
12 authorizing execution of the proposed pooling or unitization  
13 agreement, with or without payment of cash consideration according  
14 to the agreement, if the court finds that:

15 (1) the pool or unit to which the agreement relates  
16 will be operated in a manner that protects correlative rights or  
17 prevents the physical or economic waste of oil, liquid  
18 hydrocarbons, gas, gaseous elements, or other minerals subject to  
19 the pool or unit;

20 (2) it is in the best interests of the estate that the  
21 agreement be executed; and

22 (3) the agreement conforms substantially with the  
23 permissible provisions of Section 1160.151.

24 (b) If cash consideration is to be paid for the pooling or  
25 unitization agreement, the court shall make a finding as to the  
26 necessity of increased or additional bond as a finding is made in  
27 the making of leases on payment of the cash bonus for the lease. The

1 agreement is not valid until any required increased or additional  
2 bond has been approved by the judge and filed with the clerk.

3 (c) If the effective date of the pooling or unitization  
4 agreement is not stipulated in the agreement, the effective date of  
5 the agreement is the date of the court's order. (Tex. Prob. Code,  
6 Sec. 849(f).)

7 [Sections 1160.156-1160.200 reserved for expansion]

8 SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED  
9 WITHOUT COURT ORDER

10 Sec. 1160.201. AUTHORIZATION FOR EXECUTION OF CERTAIN  
11 INSTRUMENTS. As to any mineral lease or pooling or unitization  
12 agreement, executed on behalf of an estate before September 1,  
13 1993, pursuant to provisions, or executed by a former owner of land,  
14 minerals, or royalty affected by the lease or agreement, the  
15 guardian of the estate being administered, without further court  
16 order and without consideration, may execute:

- 17 (1) division orders;  
18 (2) transfer orders;  
19 (3) instruments of correction;  
20 (4) instruments designating depository banks for the  
21 receipt of delay rentals or shut-in gas well royalty to accrue or  
22 become payable under the terms of the lease; or  
23 (5) similar instruments relating to the lease or  
24 agreement and the property covered by the lease or agreement. (Tex.  
25 Prob. Code, Sec. 850.)

26 [Sections 1160.202-1160.250 reserved for expansion]

SUBCHAPTER F. PROCEDURE IF GUARDIAN OF ESTATE NEGLECTS TO APPLY FOR  
AUTHORITY

Sec. 1160.251. APPLICATION TO SHOW CAUSE. If a guardian of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or authority to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the guardian cited to show cause why it is not in the best interests of the estate to make the lease or enter into an agreement. (Tex. Prob. Code, Sec. 851 (part).)

Sec. 1160.252. HEARING ON APPLICATION. (a) The county clerk shall immediately call the filing of an application under Section 1160.251 to the attention of the judge of the court in which the guardianship proceeding is pending.

(b) The judge shall set a time and place for a hearing on the application, and the guardian of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 1160.251 should not be ordered. (Tex. Prob. Code, Sec. 851 (part).)

Sec. 1160.253. ORDER. On a hearing conducted under Section 1160.252 and if satisfied from the evidence that it would be in the best interests of the estate, the court shall enter an order requiring the guardian of the estate to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as

appropriate. (Tex. Prob. Code, Sec. 851 (part).)

Sec. 1160.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF ORDER. After entry of an order under Section 1160.253, the procedures prescribed with respect to an original lease application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, shall be followed. (Tex. Prob. Code, Sec. 851 (part).)

CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1161.001. GUARDIAN'S DUTY TO KEEP ESTATE INVESTED

Sec. 1161.002. STANDARD FOR MANAGEMENT AND INVESTMENT OF ESTATE

Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR INVESTMENT

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7 Sec. 1161.101. DEFINITION

8 Sec. 1161.102. AUTHORITY TO INVEST IN CERTAIN  
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11 Sec. 1161.104. PROCEDURE FOR INVESTING IN INSURANCE OR  
12 ANNUITIES

13 Sec. 1161.105. CONTINUATION OF PREEXISTING POLICIES OR  
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15 Sec. 1161.106. CONTROL AND OWNERSHIP OF POLICIES OR  
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18 SUBCHAPTER D. INVESTMENTS IN REAL ESTATE

19 Sec. 1161.151. AUTHORITY TO INVEST IN REAL ESTATE;  
20 PROCEDURE AND REQUIREMENTS

21 Sec. 1161.152. COURT AUTHORIZATION TO MAKE INVESTMENTS

22 Sec. 1161.153. COURT APPROVAL OF CONTRACTS REQUIRED

23 [Sections 1161.154-1161.200 reserved for expansion]

24 SUBCHAPTER E. LOANS AND SECURITY FOR LOANS

25 Sec. 1161.201. INAPPLICABILITY OF SUBCHAPTER

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27 Sec. 1161.203. LOAN REQUIREMENTS

1 Sec. 1161.204. GUARDIAN'S DUTY TO REPORT LOAN TO COURT

2 Sec. 1161.205. GUARDIAN'S LIABILITY

3 CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 1161.001. GUARDIAN'S DUTY TO KEEP ESTATE INVESTED.

6 (a) The guardian of the estate shall invest any funds and assets of  
7 a ward's estate available for investment except:

8 (1) if the court orders otherwise under this chapter;

9 or

10 (2) as provided by Subsection (b).

11 (b) The guardian of the estate is not required to invest  
12 funds that are immediately necessary for the education, support,  
13 and maintenance of the ward or any others the ward supports as  
14 provided by this title. (Tex. Prob. Code, Sec. 854(a).)

15 Sec. 1161.002. STANDARD FOR MANAGEMENT AND INVESTMENT OF  
16 ESTATE. (a) In acquiring, investing, reinvesting, exchanging,  
17 retaining, selling, supervising, and managing a ward's estate, a  
18 guardian of the estate shall exercise the judgment and care under  
19 the circumstances then prevailing that a person of ordinary  
20 prudence, discretion, and intelligence exercises in the management  
21 of the person's own affairs, considering the probable income from,  
22 probable increase in value of, and safety of the person's capital.  
23 The guardian shall also consider all other relevant factors,  
24 including:

25 (1) the anticipated costs of supporting the ward;

26 (2) the ward's age, education, current income, ability  
27 to earn additional income, net worth, and liabilities;

1           (3) the nature of the ward's estate; and

2           (4) any other resources reasonably available to the  
3 ward.

4           (b) In determining whether a guardian of the estate has  
5 exercised the standard of investment required by this section with  
6 respect to an investment decision, the court shall, absent fraud or  
7 gross negligence, consider the investment of all the estate assets  
8 over which the guardian has management or control, rather than  
9 considering the prudence of only a single investment made by the  
10 guardian. (Tex. Prob. Code, Secs. 855(a), (a-1).)

11          Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR  
12 INVESTMENT. A guardian of the estate is considered to have  
13 exercised the standard required by Section 1161.002(a) with respect  
14 to investing the ward's estate if the guardian invests in the  
15 following:

16           (1) bonds or other obligations of the United States;

17           (2) tax-supported bonds of this state;

18           (3) except as limited by Sections 1161.004(b) and (c),  
19 tax-supported bonds of a county, district, political subdivision,  
20 or municipality in this state;

21           (4) if the payment of the shares or share accounts is  
22 insured by the Federal Deposit Insurance Corporation, shares or  
23 share accounts of:

24           (A) a state savings and loan association or  
25 savings bank that has its main office or a branch office in this  
26 state; or

27           (B) a federal savings and loan association or

1 savings bank that has its main office or a branch office in this  
2 state;

3 (5) collateral bonds that:

4 (A) are issued by a company incorporated under  
5 the laws of this state that has a paid-in capital of \$1 million or  
6 more;

7 (B) are a direct obligation of the company; and

8 (C) are specifically secured by first mortgage  
9 real estate notes or other securities pledged with a trustee; or

10 (6) interest-bearing time deposits that may be  
11 withdrawn on or before one year after demand in a bank that does  
12 business in this state, if the payment of the time deposits is  
13 insured by the Federal Deposit Insurance Corporation. (Tex. Prob.  
14 Code, Sec. 855(b).)

15 Sec. 1161.004. RESTRICTIONS ON INVESTMENT IN CERTAIN BONDS.

16 (a) In this section, "net funded debt" means the total funded debt  
17 less sinking funds on hand.

18 (b) A guardian of the estate may purchase the bonds of a  
19 county, district, or political subdivision other than a  
20 municipality only if the net funded debt of the county, district, or  
21 political subdivision that issues the bonds does not exceed 10  
22 percent of the assessed value of taxable property in the county,  
23 district, or political subdivision.

24 (c) A guardian of the estate may purchase the bonds of a  
25 municipality only if the net funded debt of the municipality does  
26 not exceed 10 percent of the assessed value of taxable property in  
27 the municipality less that part of the debt incurred for

1 acquisition or improvement of revenue-producing utilities, the  
2 revenue of which is not pledged to support other obligations of the  
3 municipality.

4 (d) Subsections (b) and (c) do not apply to bonds issued for  
5 road purposes in this state under Section 52, Article III, Texas  
6 Constitution, that are supported by a tax unlimited as to rate or  
7 amount. (Tex. Prob. Code, Secs. 855(c), (d), (e), (f).)

8 Sec. 1161.005. MODIFICATION OR ELIMINATION OF DUTY OR  
9 STANDARD. On a showing by clear and convincing evidence that the  
10 action is in the best interests of the ward and the ward's estate,  
11 the court may modify or eliminate:

12 (1) the duty of the guardian of the estate to keep the  
13 estate invested; or

14 (2) the standard required by Section 1161.002(a) with  
15 regard to investments of estate assets. (Tex. Prob. Code, Sec.  
16 855(g).)

17 Sec. 1161.006. RETENTION OF CERTAIN ASSETS. (a) Without  
18 court approval a guardian of the estate may retain until the first  
19 anniversary of the date of receipt any property received into the  
20 guardianship estate at the estate's inception or added to the  
21 estate by gift, devise, inheritance, mutation, or increase, without  
22 regard to diversification of investments and without liability for  
23 any depreciation or loss resulting from the retention.

24 (b) The guardian shall care for and manage the retained  
25 assets as a person of ordinary prudence, discretion, and  
26 intelligence would in caring for and managing the person's own  
27 affairs.

1           (c) On application and a hearing, the court may issue an  
2 order authorizing the guardian to continue retaining the property  
3 after the period prescribed by Subsection (a) if the retention is an  
4 element of the guardian's investment plan as provided by Subchapter  
5 B. (Tex. Prob. Code, Sec. 855A.)

6           Sec. 1161.007. HEARING TO PROTECT ESTATE. (a) The court  
7 may, on the court's own motion or on written request of a person  
8 interested in the guardianship, cite the guardian of the estate to  
9 appear and show cause why the estate is not invested or not properly  
10 invested.

11           (b) Except as provided by Subsection (d), at any time after  
12 giving notice to all parties, the court may conduct a hearing to  
13 protect the estate.

14           (c) On the hearing of the court's motion or a request made  
15 under this section, the court shall issue an order the court  
16 considers to be in the ward's best interests.

17           (d) The court may not hold a final hearing on whether the  
18 estate is properly invested until the 31st day after the date the  
19 guardian is originally cited to appear under Subsection (a).

20           (e) The court may appoint a guardian ad litem for the  
21 limited purpose of representing the ward's best interests with  
22 respect to the investment of the ward's property at a hearing under  
23 this section. (Tex. Prob. Code, Secs. 854(b), (c).)

24           Sec. 1161.008. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY.

25           (a) In addition to any other remedy authorized by law, if the  
26 guardian of the estate fails to invest or lend estate assets in the  
27 manner provided by this chapter, the guardian and the guardian's

surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this chapter.

(b) In addition to the liability under Subsection (a), the guardian and the guardian's surety are liable for attorney's fees, litigation expenses, and costs related to a proceeding brought to enforce this section. (Tex. Prob. Code, Sec. 863.)

[Sections 1161.009-1161.050 reserved for expansion]

SUBCHAPTER B. PROCEDURE FOR MAKING INVESTMENTS OR LOANS OR  
RETAINING ESTATE ASSETS

Sec. 1161.051. PROCEDURE IN GENERAL. (a) Not later than the 180th day after the date the guardian of the estate qualifies as guardian or another date specified by the court, the guardian shall:

(1) invest estate assets according to Section 1161.003; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i);

1 (iii) declare that one or more estate  
2 assets must be retained, despite being underproductive with respect  
3 to income or overall return; or

4 (iv) loan estate funds, invest in real  
5 estate or make other investments, or purchase a life, term, or  
6 endowment insurance policy or an annuity contract; or

7 (B) modifying or eliminating the guardian's duty  
8 to invest the estate.

9 (b) The court may approve an investment plan under  
10 Subsection (a)(2) without a hearing. (Tex. Prob. Code, Secs.  
11 855B(a), (a-1).)

12 Sec. 1161.052. COURT ACTION. (a) If the court determines  
13 that the action requested in the application is in the best  
14 interests of the ward and the ward's estate, the court shall issue  
15 an order:

16 (1) granting the authority requested in the  
17 application; or

18 (2) modifying or eliminating the guardian's duty to  
19 keep the estate invested.

20 (b) An order under Subsection (a) must state in reasonably  
21 specific terms:

22 (1) the nature of the investment, investment plan, or  
23 other action requested in the application and authorized by the  
24 court, including any authority to invest in and sell securities in  
25 accordance with the investment plan's objectives;

26 (2) when an investment must be reviewed and  
27 reconsidered by the guardian; and



1           (3) whether the guardian must report the guardian's  
2 review and recommendations to the court.

3           (c) A citation or notice is not necessary to invest in or  
4 sell securities under an investment plan authorized by the court  
5 under this section. (Tex. Prob. Code, Secs. 855B(b), (e).)

6           Sec. 1161.053. APPLICABILITY OF PROCEDURE TO CERTAIN  
7 ASSETS. The fact that an account or other asset is the subject of a  
8 specific or general gift under a ward's will, if any, or that a ward  
9 has funds, securities, or other property held with a right of  
10 survivorship does not prevent:

11           (1) the guardian of the estate from taking possession  
12 and control of the asset or closing the account; or

13           (2) the court from authorizing an action or modifying  
14 or eliminating a duty with respect to the possession, control, or  
15 investment of the account or other asset. (Tex. Prob. Code, Sec.  
16 855B(c).)

17           Sec. 1161.054. INAPPLICABILITY OF PROCEDURE TO CERTAIN  
18 ASSETS. (a) The procedure prescribed by this subchapter does not  
19 apply if a different procedure is prescribed for an investment or  
20 sale by a guardian.

21           (b) A guardian of the estate is not required to follow the  
22 procedure prescribed by this subchapter with respect to an  
23 investment or sale that is specifically authorized by other law.  
24 (Tex. Prob. Code, Sec. 855B(d).)

25           [Sections 1161.055-1161.100 reserved for expansion]

26           SUBCHAPTER C. INVESTMENTS IN CERTAIN INSURANCE OR ANNUITIES

27           Sec. 1161.101. DEFINITION. In this subchapter, "authorized

1 life insurance company" means a stock or mutual legal reserve life  
2 insurance company that:

3 (1) is licensed by the Texas Department of Insurance  
4 to transact the business of life insurance in this state; and

5 (2) maintains the legal reserve required by the laws  
6 of this state. (Tex. Prob. Code, Sec. 857(a).)

7 Sec. 1161.102. AUTHORITY TO INVEST IN CERTAIN INSURANCE OR  
8 ANNUITIES. Subject to this subchapter, the guardian of the estate  
9 may invest in life, term, or endowment insurance policies, in  
10 annuity contracts, or in both, issued by an authorized life  
11 insurance company or administered by the Department of Veterans  
12 Affairs. (Tex. Prob. Code, Sec. 857(b).)

13 Sec. 1161.103. INVESTMENT REQUIREMENTS. (a) An insurance  
14 policy in which the guardian of the estate invests must be issued on  
15 the life of:

16 (1) the ward;

17 (2) the ward's parent, spouse, child, sibling, or  
18 grandparent; or

19 (3) another person in whose life the ward may have an  
20 insurable interest.

21 (b) The ward must be the annuitant in the annuity contract  
22 in which the guardian of the estate invests.

23 (c) Only the ward, the ward's estate, or the ward's parent,  
24 spouse, child, sibling, or grandparent may be a beneficiary of the  
25 insurance policy or of the death benefit of the annuity contract.

26 (d) The insurance policy or annuity contract may not be  
27 amended or changed during the ward's life and disability, except on

1 application to and order of the court. (Tex. Prob. Code, Secs.  
2 857(d), (e), (g).)

3 Sec. 1161.104. PROCEDURE FOR INVESTING IN INSURANCE OR  
4 ANNUITIES. (a) Before the guardian of the estate may invest in  
5 life, term, or endowment insurance policies, in annuity contracts,  
6 or in both, the guardian must first apply to the court for an order  
7 that authorizes the investment.

8 (b) The application must include a report that shows:

9 (1) in detail the estate's financial condition on the  
10 date the application is filed;

11 (2) the name and address of the authorized life  
12 insurance company from which the insurance policy or annuity  
13 contract is to be purchased and that:

14 (A) the company is licensed by the Texas  
15 Department of Insurance to transact that business in this state on  
16 the date the application is filed; or

17 (B) the policy or contract is administered by the  
18 Department of Veterans Affairs;

19 (3) a statement of:

20 (A) the face amount and plan of the insurance  
21 policy sought to be purchased; and

22 (B) the amount, frequency, and duration of the  
23 annuity payments to be provided by the annuity contract sought to be  
24 purchased;

25 (4) a statement of the amount, frequency, and duration  
26 of the premiums required by the insurance policy or annuity  
27 contract; and

1           (5) a statement of the cash value of the insurance  
2 policy or annuity contract at the policy's or contract's  
3 anniversary nearest the ward's 21st birthday, assuming that all  
4 premiums to the anniversary are paid and that there is no  
5 indebtedness against the policy or contract incurred in accordance  
6 with its terms.

7           (c) If satisfied by the application and the evidence  
8 presented at the hearing that it is in the ward's interests to grant  
9 the application, the court shall enter an order granting the  
10 application. (Tex. Prob. Code, Secs. 857(c), (i).)

11       Sec. 1161.105. CONTINUATION OF PREEXISTING POLICIES OR  
12 ANNUITIES. (a) A life, term, or endowment insurance policy or an  
13 annuity contract owned by the ward when a proceeding for the  
14 appointment of a guardian of the estate is commenced may be  
15 continued in full effect if it is shown that:

16           (1) the company issuing the policy or contract is an  
17 authorized life insurance company; or

18           (2) the policy or contract is administered by the  
19 Department of Veterans Affairs.

20       (b) All future premiums for an insurance policy or annuity  
21 contract described by Subsection (a) may be paid out of surplus  
22 funds of the ward's estate.

23       (c) The guardian of the estate must apply to the court for an  
24 order to:

25           (1) continue the policy, the contract, or both  
26 according to the existing terms of the policy or contract; or

27           (2) modify the policy or contract to fit any new

1 developments affecting the ward's welfare.

2 (d) Before the court grants an application filed under  
3 Subsection (c), the guardian must file a report in the court that  
4 shows in detail the financial condition of the ward's estate on the  
5 date the application is filed. (Tex. Prob. Code, Sec. 857(h).)

6 Sec. 1161.106. CONTROL AND OWNERSHIP OF POLICIES OR  
7 ANNUITIES. (a) Control of an insurance policy or an annuity  
8 contract and of the incidents of ownership in the policy or contract  
9 is vested in the guardian of the estate during the ward's life and  
10 disability.

11 (b) A right, benefit, or interest that accrues under an  
12 insurance policy or annuity contract subject to this subchapter  
13 becomes the ward's exclusive property when the ward's disability is  
14 terminated. (Tex. Prob. Code, Secs. 857(f), (j).)

15 [Sections 1161.107-1161.150 reserved for expansion]

16 SUBCHAPTER D. INVESTMENTS IN REAL ESTATE

17 Sec. 1161.151. AUTHORITY TO INVEST IN REAL ESTATE;  
18 PROCEDURE AND REQUIREMENTS. (a) The guardian of the estate may  
19 invest estate assets in real estate if:

20 (1) the guardian believes that the investment is in  
21 the ward's best interests;

22 (2) there are on hand sufficient additional assets to  
23 provide a return sufficient to provide for:

24 (A) the education, support, and maintenance of  
25 the ward and others the ward supports, if applicable; and

26 (B) the maintenance, insurance, and taxes on the  
27 real estate in which the guardian wishes to invest;

1           (3) the guardian files a written application with the  
2 court requesting a court order authorizing the guardian to make the  
3 desired investment and stating the reasons why, in the guardian's  
4 opinion, the investment would be for the ward's benefit; and

5           (4) the court issues an order authorizing the  
6 investment as provided by this subchapter.

7           (b) If the ward's money is invested in real estate, the  
8 title to the real estate shall be made to the ward. The guardian  
9 shall inventory, appraise, manage, and account for the real estate  
10 as the guardian does with other real estate of the ward. (Tex.  
11 Prob. Code, Secs. 860(a), (d).)

12           Sec. 1161.152. COURT AUTHORIZATION TO MAKE INVESTMENTS.

13           (a) If the guardian of the estate files an application under this  
14 subchapter, the judge shall investigate as necessary to obtain all  
15 the facts concerning the investment.

16           (b) Subject to Subsection (c), on the hearing of the  
17 application, the court shall issue an order that authorizes the  
18 guardian to make the investment if the court is satisfied that the  
19 investment benefits the ward. The order must specify the  
20 investment to be made and contain other directions the court  
21 considers advisable.

22           (c) The judge may not issue an opinion or order on the  
23 application until after the 10th day after the date the application  
24 is filed. (Tex. Prob. Code, Sec. 860(b).)

25           Sec. 1161.153. COURT APPROVAL OF CONTRACTS REQUIRED. (a)

26 If a contract is made for the investment of money in real estate  
27 under a court order, the guardian of the estate shall report the

1 contract in writing to the court.

2 (b) The court shall inquire fully into the contract. If  
3 satisfied that the investment will benefit the ward's estate and  
4 that the title of the real estate is valid and unencumbered, the  
5 court may approve the contract and authorize the guardian to pay  
6 money in performance of the contract.

7 (c) The guardian may not pay any money on the contract until  
8 the contract is approved by a court order to that effect. (Tex.  
9 Prob. Code, Sec. 860(c).)

10 [Sections 1161.154-1161.200 reserved for expansion]

11 SUBCHAPTER E. LOANS AND SECURITY FOR LOANS

12 Sec. 1161.201. INAPPLICABILITY OF SUBCHAPTER. This  
13 subchapter does not apply to an investment in a debenture, bond, or  
14 other publicly traded debt security. (Tex. Prob. Code, Sec.  
15 858(h).)

16 Sec. 1161.202. AUTHORITY TO MAKE LOANS. (a) If, at any  
17 time, the guardian of the estate has on hand money belonging to the  
18 ward in an amount that provides a return that is more than is  
19 necessary for the education, support, and maintenance of the ward  
20 and others the ward supports, if applicable, the guardian may lend  
21 the money for a reasonable interest rate.

22 (b) The guardian of the estate is considered to have  
23 obtained a reasonable interest rate for a loan for purposes of  
24 Subsection (a) if the interest rate is at least equal to 120 percent  
25 of the applicable short-term, midterm, or long-term interest rate  
26 under Section 7520, Internal Revenue Code of 1986, for the month  
27 during which the loan was made. (Tex. Prob. Code, Secs. 858(a)

1 (part), (b).)

2 Sec. 1161.203. LOAN REQUIREMENTS. (a) Except as provided  
3 by Subsection (b), the guardian of the estate shall take as  
4 collateral the borrower's note for the money that is loaned,  
5 secured by:

6 (1) a mortgage with a power of sale on unencumbered  
7 real estate located in this state worth at least twice the amount of  
8 the note; or

9 (2) collateral notes secured by vendor's lien notes.

10 (b) The guardian may purchase vendor's lien notes if at  
11 least one-half has been paid in cash or its equivalent on the land  
12 for which the notes were given.

13 (c) Except as provided by Subsection (d), a guardian of the  
14 estate who lends estate money may not pay or transfer any money to  
15 consummate the loan until the guardian:

16 (1) submits to a reputable attorney for examination  
17 all bonds, notes, mortgages, abstracts, and other documents  
18 relating to the loan; and

19 (2) receives a written opinion from the attorney  
20 stating that the documents under Subdivision (1) are regular and  
21 that the title to relevant bonds, notes, or real estate is clear.

22 (d) A guardian of the estate may obtain a mortgagee's title  
23 insurance policy on any real estate loan instead of an abstract and  
24 attorney's opinion under Subsection (c).

25 (e) The borrower shall pay attorney's fees for any legal  
26 services required by Subsection (c). (Tex. Prob. Code, Secs.  
27 858(a) (part), (d), (e), (f), 861.)



1           Sec. 1161.204. GUARDIAN'S DUTY TO REPORT LOAN TO COURT. (a)  
2 Not later than the 30th day after the date the guardian of the  
3 estate loans money from the estate, the guardian shall file with the  
4 court a written report, accompanied and verified by an affidavit,  
5 stating fully the facts related to the loan.

6           (b) This section does not apply to a loan made in accordance  
7 with a court order. (Tex. Prob. Code, Secs. 858(g), 862.)

8           Sec. 1161.205. GUARDIAN'S LIABILITY. (a) Except as  
9 provided by Subsection (b), a guardian of the estate who loans  
10 estate money with the court's approval on security approved by the  
11 court is not personally liable if the borrower is unable to repay  
12 the money and the security fails.

13           (b) If the guardian committed fraud or was negligent in  
14 making or managing the loan, including in collecting the loan, the  
15 guardian and the guardian's surety are liable for the loss  
16 sustained by the guardianship estate as a result of the fraud or  
17 negligence. (Tex. Prob. Code, Sec. 858(c).)

18       CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

19                       SUBCHAPTER A. TAX-MOTIVATED GIFTS

20       Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE PLAN

21       Sec. 1162.002. ESTATE PLAN: CONTENTS AND MODIFICATION

22       Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT

23                       OF ESTATE PLAN

24       Sec. 1162.004. AUTHORITY TO MAKE PERIODIC GIFTS

25       Sec. 1162.005. APPLICATION FOR INSPECTION OF CERTAIN

26                       DOCUMENTS

27       Sec. 1162.006. NOTICE OF APPLICATION FOR INSPECTION

1 Sec. 1162.007. HEARING ON APPLICATION FOR INSPECTION;

2 INSPECTION

3 Sec. 1162.008. GUARDIAN AD LITEM

4 [Sections 1162.009-1162.050 reserved for expansion]

5 SUBCHAPTER B. CHARITABLE AND NONPROFIT GIFTS

6 Sec. 1162.051. APPLICATION TO MAKE GIFT

7 Sec. 1162.052. HEARING ON APPLICATION TO MAKE GIFT

8 Sec. 1162.053. ORDER AUTHORIZING GIFT

9 CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

10 SUBCHAPTER A. TAX-MOTIVATED GIFTS

11 Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE PLAN. On  
12 application of the guardian of the estate or any interested party,  
13 after the posting of notice and hearing, and on a showing that the  
14 ward will probably remain incapacitated during the ward's lifetime,  
15 the court may enter an order that authorizes the guardian to apply  
16 the principal or income of the ward's estate that is not required  
17 for the support of the ward or the ward's family during the ward's  
18 lifetime toward the establishment of an estate plan for the purpose  
19 of minimizing income, estate, inheritance, or other taxes payable  
20 out of the ward's estate. On the ward's behalf, the court may  
21 authorize the guardian to make gifts, outright or in trust, of the  
22 ward's personal property or real estate to or for the benefit of:

23 (1) an organization to which charitable contributions  
24 may be made under the Internal Revenue Code of 1986 and in which it  
25 is shown the ward would reasonably have an interest;

26 (2) the ward's spouse, descendant, or other person  
27 related to the ward by blood or marriage who is identifiable at the

1 time of the order;

2 (3) a devisee under the ward's last validly executed  
3 will, trust, or other beneficial instrument, if the instrument  
4 exists; and

5 (4) a person serving as guardian of the ward, if the  
6 person is eligible under Subdivision (2) or (3). (Tex. Prob. Code,  
7 Sec. 865(a).)

8 Sec. 1162.002. ESTATE PLAN: CONTENTS AND MODIFICATION. (a)  
9 The person making an application to the court under Section  
10 1162.001 shall:

11 (1) outline the proposed estate plan; and

12 (2) state all the benefits that are to be derived from  
13 the estate plan.

14 (b) The application must indicate that the planned  
15 disposition is consistent with the ward's intentions, if the ward's  
16 intentions can be ascertained. If the ward's intentions cannot be  
17 ascertained, the ward will be presumed to favor reduction in the  
18 incidence of the various forms of taxation and the partial  
19 distribution of the ward's estate as provided by Sections 1162.001  
20 and 1162.004.

21 (c) A subsequent modification of an approved estate plan may  
22 be made by similar application to the court. (Tex. Prob. Code,  
23 Secs. 865(b), (d).)

24 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF  
25 ESTATE PLAN. A person who makes an application to the court under  
26 Section 1162.001 shall mail notice of the application by certified  
27 mail to:

1           (1) all devisees under a will, trust, or other  
2 beneficial instrument relating to the ward's estate;

3           (2) the ward's spouse;

4           (3) the ward's dependents; and

5           (4) any other person as directed by the court. (Tex.  
6 Prob. Code, Sec. 865(e).)

7       Sec. 1162.004. AUTHORITY TO MAKE PERIODIC GIFTS. (a) In an  
8 order entered under Section 1162.001, the court may authorize the  
9 guardian to make, without subsequent application to or order of the  
10 court, gifts as provided by that section on an annual or other  
11 periodic basis if the court finds it to be in the best interest of  
12 the ward and the ward's estate.

13       (b) The court, on the court's own motion or on the motion of  
14 a person interested in the welfare of the ward, may modify or set  
15 aside an order entered under Subsection (a) if the court finds that  
16 the ward's financial condition has changed in such a manner that  
17 authorizing the guardian to make gifts of the estate on a continuing  
18 basis is no longer in the best interest of the ward and the ward's  
19 estate. (Tex. Prob. Code, Sec. 865(f).)

20       Sec. 1162.005. APPLICATION FOR INSPECTION OF CERTAIN  
21 DOCUMENTS. (a) On the filing of an application under Section  
22 1162.001 and for the purpose of establishing an estate plan under  
23 that section, the guardian of the ward's estate may apply to the  
24 court for an order to seek an in camera inspection of a copy of a  
25 will, codicil, trust, or other estate planning instrument of the  
26 ward as a means of obtaining access to the instrument.

27       (b) An application filed under this section must:

1           (1) be sworn to by the guardian;

2           (2) list each instrument requested for inspection; and

3           (3) state one or more reasons supporting the necessity  
4 to inspect each requested instrument for the purpose described by  
5 Subsection (a). (Tex. Prob. Code, Secs. 865A(a), (b).)

6           Sec. 1162.006. NOTICE OF APPLICATION FOR INSPECTION. (a) A  
7 person who files an application under Section 1162.005 shall send a  
8 copy of the application to:

9           (1) each person who has custody of an instrument  
10 listed in the application;

11           (2) the ward's spouse;

12           (3) the ward's dependents;

13           (4) all devisees under a will, trust, or other  
14 beneficial instrument relating to the ward's estate; and

15           (5) any other person as directed by the court.

16           (b) Notice required by Subsection (a) must be delivered by:

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

19           (2) certified mail to a person described by Subsection  
20 (a)(2), (3), (4), or (5). (Tex. Prob. Code, Secs. 865A(c), (d)  
21 (part).)

22           Sec. 1162.007. HEARING ON APPLICATION FOR INSPECTION;  
23 INSPECTION. (a) After the 10th day after the date on which the  
24 applicant complies with the notice requirement under Section  
25 1162.006, the applicant may request that a hearing be held on the  
26 application. Notice of the date, time, and place of the hearing  
27 must be given by the applicant to each person described by Section

1 1162.006(a)(1) when the court sets a date for a hearing on the  
2 application.

3 (b) After the conclusion of a hearing on the application for  
4 inspection and on a finding that good cause exists for an in camera  
5 inspection of a requested instrument, the court shall direct the  
6 person that has custody of the requested will, codicil, trust, or  
7 other estate planning instrument to deliver a copy of the  
8 instrument to the court for in camera inspection only. After  
9 conducting an in camera inspection of the instrument, the court, if  
10 good cause exists, shall release all or part of the instrument to  
11 the applicant only for the purpose described by Section  
12 1162.005(a).

13 (c) An attorney does not violate the attorney-client  
14 privilege solely by complying with a court order to release an  
15 instrument subject to this section and Sections 1162.005 and  
16 1162.006. Notwithstanding Section 22.004, Government Code, the  
17 supreme court may not amend or adopt rules in conflict with this  
18 subsection. (Tex. Prob. Code, Secs. 865A(d) (part), (e), (g).)

19 Sec. 1162.008. GUARDIAN AD LITEM. The court may appoint a  
20 guardian ad litem for the ward or an interested party at any stage  
21 of proceedings under this subchapter if it is considered advisable  
22 for the protection of the ward or the interested party. (Tex. Prob.  
23 Code, Secs. 865(c), 865A(f).)

24 [Sections 1162.009-1162.050 reserved for expansion]

25 SUBCHAPTER B. CHARITABLE AND NONPROFIT GIFTS

26 Sec. 1162.051. APPLICATION TO MAKE GIFT. The guardian of  
27 the estate may at any time file with the county clerk the guardian's

1 sworn, written application requesting from the court in which the  
2 guardianship is pending an order authorizing the guardian to  
3 contribute from the income of the ward's estate the specific amount  
4 of money stated in the application to one or more designated:

5 (1) corporations, trusts, or community chests, funds,  
6 or foundations, organized and operated exclusively for religious,  
7 charitable, scientific, literary, or educational purposes; or

8 (2) nonprofit federal, state, county, or municipal  
9 projects operated exclusively for public health or welfare. (Tex.  
10 Prob. Code, Sec. 866(a).)

11 Sec. 1162.052. HEARING ON APPLICATION TO MAKE GIFT. (a)  
12 The county clerk shall immediately call the filing of an  
13 application under Section 1162.051 to the attention of the judge of  
14 the court.

15 (b) The judge shall designate, by written order filed with  
16 the clerk, a day to hear the application. The application must  
17 remain on file for at least 10 days before the hearing is held.

18 (c) The judge may postpone or continue the hearing from time  
19 to time until the judge is satisfied concerning the application.  
20 (Tex. Prob. Code, Sec. 866(b).)

21 Sec. 1162.053. ORDER AUTHORIZING GIFT. On the conclusion  
22 of a hearing under Section 1162.052, the court may enter an order  
23 authorizing the guardian to make a contribution from the income of  
24 the ward's estate to a particular donee designated in the  
25 application and order if the court is satisfied and finds from the  
26 evidence that:

27 (1) the amount of the proposed contribution stated in

1 the application will probably not exceed 20 percent of the net  
2 income of the ward's estate for the current calendar year;

3 (2) the net income of the ward's estate for the current  
4 calendar year exceeds, or probably will exceed, \$25,000;

5 (3) the full amount of the contribution, if made, will  
6 probably be deductible from the ward's gross income in determining  
7 the net income of the ward under applicable federal income tax laws  
8 and rules;

9 (4) the condition of the ward's estate justifies a  
10 contribution in the proposed amount; and

11 (5) the proposed contribution is reasonable in amount  
12 and is for a worthy cause. (Tex. Prob. Code, Sec. 866(c).)

13 CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

14 SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS BY GUARDIAN OF THE  
15 ESTATE

16 Sec. 1163.001. INITIAL ANNUAL ACCOUNT OF ESTATE

17 Sec. 1163.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE  
18 CLOSED

19 Sec. 1163.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS  
20 ATTACHED TO ACCOUNT

21 Sec. 1163.004. METHOD OF PROOF FOR SECURITIES AND  
22 OTHER ASSETS

23 Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT  
24 REGARDING TAXES

25 Sec. 1163.006. WAIVER OF ACCOUNT FILING

26 [Sections 1163.007-1163.050 reserved for expansion]



SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

Sec. 1163.051. FILING AND CONSIDERATION OF ANNUAL  
ACCOUNT

Sec. 1163.052. CORRECTION AND APPROVAL OF ANNUAL  
ACCOUNT

Sec. 1163.053. ORDER FOR PAYMENT OF CLAIMS IN FULL

Sec. 1163.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS

[Sections 1163.055-1163.100 reserved for expansion]

SUBCHAPTER C. ANNUAL REPORT BY GUARDIAN OF THE PERSON

Sec. 1163.101. ANNUAL REPORT REQUIRED

Sec. 1163.102. REPORTING PERIOD

Sec. 1163.103. REPORT IN CASE OF DECEASED WARD

Sec. 1163.104. APPROVAL OF REPORT

Sec. 1163.105. ATTORNEY NOT REQUIRED

[Sections 1163.106-1163.150 reserved for expansion]

SUBCHAPTER D. PENALTIES

Sec. 1163.151. PENALTY FOR FAILURE TO FILE REQUIRED  
ACCOUNT, EXHIBIT, OR REPORT

CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS BY GUARDIAN OF THE  
ESTATE

Sec. 1163.001. INITIAL ANNUAL ACCOUNT OF ESTATE. (a) Not  
later than the 60th day after the first anniversary of the date the  
guardian of the estate of a ward qualifies, unless the court extends  
that period, the guardian shall file with the court an account  
consisting of a written exhibit made under oath that:

(1) lists all claims against the estate presented to

1 the guardian during the period covered by the account; and

2 (2) specifies:

3 (A) which claims have been:

4 (i) allowed by the guardian;

5 (ii) paid by the guardian; or

6 (iii) rejected by the guardian and the date  
7 the claims were rejected; and

8 (B) which claims have been the subject of a  
9 lawsuit and the status of that lawsuit.

10 (b) The account must:

11 (1) show all property that has come to the guardian's  
12 knowledge or into the guardian's possession that was not previously  
13 listed or inventoried as the ward's property;

14 (2) show any change in the ward's property that was not  
15 previously reported;

16 (3) provide a complete account of receipts and  
17 disbursements for the period covered by the account, including the  
18 source and nature of the receipts and disbursements, with separate  
19 listings for principal and income receipts;

20 (4) provide a complete, accurate, and detailed  
21 description of:

22 (A) the property being administered;

23 (B) the condition of the property and the use  
24 being made of the property; and

25 (C) if rented, the terms on which and the price  
26 for which the property was rented;

27 (5) show the cash balance on hand and the name and

1 location of the depository where the balance is kept;

2 (6) show any other cash held in a savings account or  
3 other manner that was deposited subject to court order and the name  
4 and location of the depository for that cash; and

5 (7) provide a detailed description of the personal  
6 property of the estate that shows how and where the property is held  
7 for safekeeping.

8 (c) For bonds, notes, and other securities, the description  
9 required by Subsection (b)(7) must include:

10 (1) the names of the obligor and obligee or, if payable  
11 to bearer, a statement that the bond, note, or other security is  
12 payable to bearer;

13 (2) the date of issue and maturity;

14 (3) the interest rate;

15 (4) the serial number or other identifying numbers;

16 (5) the manner in which the property is secured; and

17 (6) other information necessary to fully identify the  
18 bond, note, or other security. (Tex. Prob. Code, Sec. 741(a).)

19 Sec. 1163.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.

20 (a) A guardian of the estate shall file an annual account  
21 conforming to the essential requirements of Section 1163.001  
22 regarding changes in the estate assets occurring since the date the  
23 most recent previous account was filed.

24 (b) The annual account must be filed in a manner that allows  
25 the court or an interested person to ascertain the true condition of  
26 the estate, with respect to money, securities, and other property,  
27 by adding to the balances forwarded from the most recent previous

1 account the amounts received during the period covered by the  
2 account and subtracting the disbursements made during that period.

3 (c) The description of property sufficiently described in  
4 an inventory or previous account may be made in the annual account  
5 by reference to the property. (Tex. Prob. Code, Sec. 741(b).)

6 Sec. 1163.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS  
7 ATTACHED TO ACCOUNT. (a) The guardian of the estate shall attach  
8 to each annual account:

9 (1) a voucher for each item of credit claimed in the  
10 account or, to support the item in the absence of the voucher, other  
11 evidence satisfactory to the court;

12 (2) an official letter from the bank or other  
13 depository where the money on hand of the estate or ward is  
14 deposited that shows the amounts in general or special deposits;  
15 and

16 (3) proof of the existence and possession of:

17 (A) securities owned by the estate or shown by  
18 the account; and

19 (B) other assets held by a depository subject to  
20 court order.

21 (b) An original voucher submitted to the court may on  
22 application be returned to the guardian after approval of the  
23 annual account. (Tex. Prob. Code, Sec. 741(c) (part).)

24 Sec. 1163.004. METHOD OF PROOF FOR SECURITIES AND OTHER  
25 ASSETS. (a) The proof required by Section 1163.003(a)(3) must be  
26 by:

27 (1) an official letter from the bank or other

1 depository where the securities or other assets are held for  
2 safekeeping, and if the depository is the guardian, the official  
3 letter must be signed by a representative of the depository other  
4 than the depository verifying the annual account;

5 (2) a certificate of an authorized representative of a  
6 corporation that is surety on the guardian's bonds;

7 (3) a certificate of the clerk or a deputy clerk of a  
8 court of record in this state; or

9 (4) an affidavit of any other reputable person  
10 designated by the court on request of the guardian or other  
11 interested party.

12 (b) A certificate or affidavit described by Subsection (a)  
13 must:

14 (1) state that the affiant has examined the assets  
15 that the guardian exhibited to the affiant as assets of the estate  
16 for which the annual account is made;

17 (2) describe the assets by reference to the account or  
18 in another manner that sufficiently identifies the assets  
19 exhibited; and

20 (3) state the time and the place the assets were  
21 exhibited.

22 (c) Instead of attaching a certificate or an affidavit, the  
23 guardian may exhibit the securities to the judge of the court, who  
24 shall endorse on the annual account, or include in the judge's order  
25 with respect to the account, a statement that the securities shown  
26 to the judge as on hand were exhibited to the judge and that the  
27 securities were the same as those shown in the account, or note any

1 variance. If the securities are exhibited at a location other than  
2 where the securities are deposited for safekeeping, that exhibit is  
3 at the guardian's own expense and risk.

4 (d) The judge of the court may require:

5 (1) additional evidence of the existence and custody  
6 of the securities and other personal property as the judge  
7 considers proper; and

8 (2) the guardian at any time to exhibit the securities  
9 to the judge or another person designated by the judge at the place  
10 where the securities are held for safekeeping. (Tex. Prob. Code,  
11 Secs. 741(c) (part), (d).)

12 Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT  
13 REGARDING TAXES. (a) The guardian of the estate shall attach to an  
14 account 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; and

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.

25 (b) If on the filing of the account the guardian of the  
26 estate has failed on the ward's behalf to file a tax return or pay  
27 taxes due, the guardian shall attach to the account a description of

1 the taxes and the reasons for the guardian's failure to file the  
2 return or pay the taxes. (Tex. Prob. Code, Secs. 741(e), (f).)

3 Sec. 1163.006. WAIVER OF ACCOUNT FILING. If the ward's  
4 estate produces negligible or fixed income, the court may waive the  
5 filing of annual accounts and may permit the guardian to:

6 (1) receive all estate income and apply the income to  
7 the support, maintenance, and education of the ward; and

8 (2) account to the court for the estate income and  
9 corpus when the estate must be closed. (Tex. Prob. Code, Sec.  
10 741(g).)

11 [Sections 1163.007-1163.050 reserved for expansion]

12 SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

13 Sec. 1163.051. FILING AND CONSIDERATION OF ANNUAL ACCOUNT.

14 (a) The guardian of the estate shall file an annual account with the  
15 county clerk. The county clerk shall note the filing on the judge's  
16 docket.

17 (b) An annual account must remain on file for 10 days after  
18 the date the account is filed before being considered by the judge.  
19 After the expiration of that period, the judge shall consider the  
20 account and may continue the hearing on the account until fully  
21 advised on all account items.

22 (c) The court may not approve the annual account unless  
23 possession of cash, listed securities, or other assets held in  
24 safekeeping or on deposit under court order has been proven as  
25 required by law. (Tex. Prob. Code, Secs. 742(a), (b), (c), (d),  
26 (e).)

27 Sec. 1163.052. CORRECTION AND APPROVAL OF ANNUAL ACCOUNT.

1 (a) If an annual account is found to be incorrect, the account  
2 shall be corrected.

3 (b) The court by order shall approve an annual account that  
4 is corrected to the satisfaction of the court and shall act with  
5 respect to unpaid claims in accordance with Sections 1163.053 and  
6 1163.054. (Tex. Prob. Code, Sec. 742(f) (part).)

7 Sec. 1163.053. ORDER FOR PAYMENT OF CLAIMS IN FULL. After  
8 approval of an annual account as provided by Section 1163.052, if it  
9 appears to the court from the exhibit or other evidence that the  
10 estate is wholly solvent and that the guardian has sufficient funds  
11 to pay every claim against the estate, the court shall order  
12 immediate payment of all claims allowed and approved or established  
13 by judgment. (Tex. Prob. Code, Sec. 742(f) (part).)

14 Sec. 1163.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS. After  
15 approval of an annual account as provided by Section 1163.052, if it  
16 appears to the court from the account or other evidence that the  
17 funds on hand are not sufficient to pay all claims against the  
18 estate or if the estate is insolvent and the guardian has any funds  
19 on hand, the court shall order the funds to be applied:

20 (1) first to the payment of any unpaid claims having a  
21 preference in the order of their priority; and

22 (2) then to the pro rata payment of the other claims  
23 allowed and approved or established by final judgment, considering  
24 also:

25 (A) claims that were presented not later than the  
26 first anniversary of the date letters of guardianship were granted;  
27 and



1 (B) claims that are in litigation or on which a  
2 lawsuit may be filed. (Tex. Prob. Code, Sec. 742(f) (part).)

3 [Sections 1163.055-1163.100 reserved for expansion]

4 SUBCHAPTER C. ANNUAL REPORT BY GUARDIAN OF THE PERSON

5 Sec. 1163.101. ANNUAL REPORT REQUIRED. (a) Once each year  
6 for the duration of the guardianship, a guardian of the person shall  
7 file with the court a report that contains the information required  
8 by this section.

9 (b) The guardian of the person shall file a sworn, written  
10 report that shows each receipt and disbursement for:

- 11 (1) the support and maintenance of the ward;  
12 (2) when necessary, the education of the ward; and  
13 (3) when authorized by court order, the support and  
14 maintenance of the ward's dependents.

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

- 17 (1) the guardian's current name, address, and  
18 telephone number;  
19 (2) the ward's date of birth and current name, address,  
20 telephone number, and age;  
21 (3) a description of the type of home in which the ward  
22 resides, which shall be described as:

- 23 (A) the ward's own home;  
24 (B) a nursing home;  
25 (C) a guardian's home;  
26 (D) a foster home;  
27 (E) a boarding home;

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

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

(A) the length of time the ward has resided in the present home;

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

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

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

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

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

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

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

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

1 (i) a physician;  
2 (ii) a psychiatrist, psychologist, or other  
3 mental health care provider;  
4 (iii) a dentist;  
5 (iv) a social or other caseworker; or  
6 (v) any other individual who provided  
7 treatment;

8 (5) a description of the ward's activities during the  
9 past year, including recreational, educational, social, and  
10 occupational activities, or a statement that no activities were  
11 available or that the ward was unable or refused to participate in  
12 activities;

13 (6) the guardian's evaluation of:

14 (A) the ward's living arrangements as excellent,  
15 average, or below average, including an explanation if the  
16 conditions are below average;

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

19 (C) unmet needs of the ward;

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

23 (8) a statement indicating that the guardian has paid  
24 the bond premium for the next reporting period; and

25 (9) any additional information the guardian desires to  
26 share with the court regarding the ward, including:

27 (A) whether the guardian has filed for emergency

1 detention of the ward under Subchapter A, Chapter 573, Health and  
2 Safety Code; and

3 (B) if applicable, the number of times the  
4 guardian has filed for emergency detention and the dates of the  
5 applications for emergency detention. (Tex. Prob. Code, Secs.  
6 743(a), (b), (g) (part).)

7 Sec. 1163.102. REPORTING PERIOD. (a) Except as provided  
8 under Subsection (b), an annual report required by Section 1163.101  
9 must cover a 12-month reporting period that begins on the date or  
10 the anniversary of the date the guardian of the person qualifies to  
11 serve.

12 (b) The court may change a reporting period for purposes of  
13 this subchapter but may not extend a reporting period so that it  
14 covers more than 12 months.

15 (c) Each report is due not later than the 60th day after the  
16 date the reporting period ends. (Tex. Prob. Code, Secs. 743(g)  
17 (part), (h), (i).)

18 Sec. 1163.103. REPORT IN CASE OF DECEASED WARD. If the ward  
19 is deceased, the guardian of the person shall provide the court with  
20 the date and place of death, if known, instead of the information  
21 about the ward otherwise required to be provided in the annual  
22 report. (Tex. Prob. Code, Sec. 743(c).)

23 Sec. 1163.104. APPROVAL OF REPORT. (a) If the judge is  
24 satisfied that the facts stated in the report are true, the court  
25 shall approve the report.

26 (b) Unless the judge is satisfied that the facts stated in  
27 the report are true, the judge shall issue orders necessary for the

ward's best interests.

(c) The court on the court's own motion may waive the costs and fees related to the filing of a report approved under Subsection (a). (Tex. Prob. Code, Secs. 743(d), (e), (f).)

Sec. 1163.105. ATTORNEY NOT REQUIRED. A guardian of the person may complete and file the report required under this subchapter without the assistance of an attorney. (Tex. Prob. Code, Sec. 743(j).)

[Sections 1163.106-1163.150 reserved for expansion]

#### SUBCHAPTER D. PENALTIES

Sec. 1163.151. PENALTY FOR FAILURE TO FILE REQUIRED ACCOUNT, EXHIBIT, OR REPORT. (a) If a guardian does not file an account, an exhibit, a report of the guardian of the person, or another report required by this title, any person interested in the estate, on written complaint filed with the court clerk, or the court on the court's own motion, may have the guardian cited to appear and show cause why the guardian should not file the account, exhibit, or report.

(b) On hearing, the court may:

(1) order the guardian to file the account, exhibit, or report; and

(2) unless good cause is shown for the failure to file:

(A) revoke the guardian's letters of guardianship;

(B) fine the guardian in an amount not to exceed \$1,000; or

(C) revoke the guardian's letters of

guardianship and fine the guardian in an amount not to exceed \$1,000. (Tex. Prob. Code, Sec. 744.)

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

Sec. 1164.001. LIABILITY OF GUARDIAN

Sec. 1164.002. IMMUNITY OF GUARDIANSHIP PROGRAM

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

Sec. 1164.001. LIABILITY OF GUARDIAN. A person is not liable to a third person solely because the person has been appointed guardian of a ward under this title. (Tex. Prob. Code, Sec. 673.)

Sec. 1164.002. IMMUNITY OF GUARDIANSHIP PROGRAM. A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission was:

(1) wilfully wrongful;

(2) taken or made:

(A) with conscious indifference to or reckless disregard for the safety of the ward or another;

(B) in bad faith; or

(C) with malice; or

(3) grossly negligent. (Tex. Prob. Code, Sec. 674.)

[Chapters 1165-1200 reserved for expansion]

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF  
GUARDIANSHIP

CHAPTER 1201. EVALUATION OF GUARDIANSHIP

SUBCHAPTER A. REVIEW OF GUARDIANSHIP

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CHAPTER 1201. EVALUATION OF GUARDIANSHIP

SUBCHAPTER A. REVIEW OF GUARDIANSHIP

Sec. 1201.001. DETERMINING GUARDIAN'S PERFORMANCE OF  
DUTIES. The court shall use reasonable diligence to determine  
whether a guardian is performing all of the duties required of the  
guardian that relate to the guardian's ward. (Tex. Prob. Code, Sec.  
671(a).)

Sec. 1201.002. ANNUAL EXAMINATION OF GUARDIANSHIP; BOND OF  
GUARDIAN. (a) At least annually, the judge shall examine the  
well-being of each ward of the court and the solvency of the bond of  
the guardian of the ward's estate.

(b) If after examining the solvency of a guardian's bond as

1 provided by Subsection (a) the judge determines that the guardian's  
2 bond is not sufficient to protect the ward or the ward's estate, the  
3 judge shall require the guardian to execute a new bond.

4 (c) The judge shall notify the guardian and the sureties on  
5 the guardian's bond as provided by law. (Tex. Prob. Code, Secs.  
6 671(b), (c), (d) (part).)

7 Sec. 1201.003. JUDGE'S LIABILITY. A judge is liable on the  
8 judge's bond to those damaged if damage or loss results to a  
9 guardianship or ward because of the gross neglect of the judge to  
10 use reasonable diligence in the performance of the judge's duty  
11 under this subchapter. (Tex. Prob. Code, Sec. 671(d) (part).)

12 Sec. 1201.004. IDENTIFYING INFORMATION. (a) The court may  
13 request an applicant or court-appointed fiduciary to produce other  
14 information identifying an applicant, ward, or guardian, including  
15 a social security number, in addition to identifying information  
16 the applicant or fiduciary is required to produce under this title.

17 (b) The court shall maintain any information required under  
18 this section, and the information may not be filed with the clerk.  
19 (Tex. Prob. Code, Sec. 671(e).)

20 [Sections 1201.005-1201.050 reserved for expansion]

21 SUBCHAPTER B. ANNUAL DETERMINATION TO CONTINUE, MODIFY, OR

22 TERMINATE GUARDIANSHIP

23 Sec. 1201.051. APPLICABILITY. This subchapter does not  
24 apply to a guardianship that is created only because it is necessary  
25 for a person to have a guardian appointed to receive funds from a  
26 governmental source. (Tex. Prob. Code, Sec. 672(e).)

27 Sec. 1201.052. ANNUAL DETERMINATION. To determine whether



a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:

(1) shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993; and

(2) may review annually any other guardianship. (Tex. Prob. Code, Sec. 672(a).)

Sec. 1201.053. METHOD OF DETERMINATION. (a) In reviewing a guardianship under Section 1201.052, a statutory probate court may:

(1) review any report prepared by:

(A) a court investigator under Section 1054.153 or 1202.054;

(B) a guardian ad litem under Section 1202.054; or

(C) a court visitor under Section 1054.104;

(2) conduct a hearing; or

(3) review an annual account prepared under Subchapter A, Chapter 1163, or a report prepared under Subchapter C, Chapter 1163.

(b) A court that is not a statutory probate court may use any method to review a guardianship under Section 1201.052 that is determined appropriate by the court according to the court's caseload and available resources. (Tex. Prob. Code, Secs. 672(b), (c).)

Sec. 1201.054. FORM OF DETERMINATION. A determination under this subchapter must be in writing and filed with the clerk. (Tex. Prob. Code, Sec. 672(d).)

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

SUBCHAPTER A. TERMINATION AND SETTLEMENT OF GUARDIANSHIP

Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP

Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT

IS NO LONGER INCAPACITATED

[Sections 1202.003-1202.050 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S

CAPACITY OR MODIFICATION OF GUARDIANSHIP

Sec. 1202.051. APPLICATION AUTHORIZED

Sec. 1202.052. CONTENTS OF APPLICATION

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[Sections 1202.056-1202.100 reserved for expansion]

SUBCHAPTER C. REPRESENTATION OF WARD IN PROCEEDING FOR COMPLETE

RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

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FOR WARD

[Sections 1202.104-1202.150 reserved for expansion]

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GUARDIANSHIP

Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING

Sec. 1202.152. PHYSICIAN'S LETTER OR CERTIFICATE  
REQUIRED

Sec. 1202.153. FINDINGS REQUIRED

Sec. 1202.154. GENERAL REQUIREMENTS FOR ORDER

Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER  
RESTORING WARD'S CAPACITY

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MODIFYING GUARDIANSHIP

Sec. 1202.157. ADDITIONAL REQUIREMENTS FOR ORDER  
DISMISSING APPLICATION

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

SUBCHAPTER A. TERMINATION AND SETTLEMENT OF GUARDIANSHIP

Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP. (a)  
Unless otherwise discharged as provided by law, a guardian remains  
in office until the estate is closed.

(b) A guardianship shall be settled and closed when the  
ward:

(1) dies and, if the ward was married, the ward's  
spouse qualifies as survivor in community;

(2) is found by the court to have full capacity to care  
for himself or herself and to manage the ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to

1 receive funds due the ward from any governmental source.

2 (c) An order appointing a guardian or a successor guardian  
3 may specify a period of not more than one year during which a  
4 petition for adjudication that the ward no longer requires the  
5 guardianship may not be filed without special leave.

6 (d) A request for an order under this section may be made by  
7 informal letter to the court. A person who knowingly interferes  
8 with the transmission of the request to the court may be adjudged  
9 guilty of contempt of court.

10 (e) If a nonresident guardian of a nonresident ward  
11 qualifies as guardian under this title, any resident guardian's  
12 guardianship may be terminated. (Tex. Prob. Code, Sec. 694.)

13 Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT IS NO  
14 LONGER INCAPACITATED. (a) The powers of a person appointed to  
15 serve as the designated guardian of the person or estate, or both,  
16 of a minor child solely because of the incapacity of the minor's  
17 surviving parent and in accordance with Section 1104.053 and  
18 Subchapter D, Chapter 1104, terminate when a probate court enters  
19 an order finding that the surviving parent is no longer an  
20 incapacitated person.

21 (b) The powers of a person appointed to serve as the  
22 designated guardian of the person or estate, or both, of an adult  
23 individual solely because of the incapacity of the individual's  
24 surviving parent and in accordance with Section 1104.103 and  
25 Subchapter D, Chapter 1104, terminate when a probate court enters  
26 an order finding that the surviving parent is no longer an  
27 incapacitated person and reappointing the surviving parent as the

individual's guardian. (Tex. Prob. Code, Secs. 676(g), 677(e).)

[Sections 1202.003-1202.050 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S  
CAPACITY OR MODIFICATION OF GUARDIANSHIP

Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the guardian's powers or duties; and

(B) permitting the ward to care for himself or herself or to manage the ward's own financial affairs commensurate with the ward's ability. (Tex. Prob. Code, Sec. 694A(a).)

Sec. 1202.052. CONTENTS OF APPLICATION. An application filed under Section 1202.051 must be sworn to by the applicant and must state:

(1) the ward's name, sex, date of birth, and address;

1           (2) the name and address of any person serving as  
2 guardian of the person of the ward on the date the application is  
3 filed;

4           (3) the name and address of any person serving as  
5 guardian of the estate of the ward on the date the application is  
6 filed;

7           (4) the nature and description of the ward's  
8 guardianship;

9           (5) the specific areas of protection and assistance  
10 and any limitation of rights that exist;

11           (6) whether the relief being sought is:

12               (A) a restoration of the ward's capacity because  
13 the ward is no longer an incapacitated person;

14               (B) the granting of additional powers or duties  
15 to the guardian; or

16               (C) the limitation of powers granted to or duties  
17 performed by the guardian;

18           (7) if the relief being sought under the application  
19 is described by Subdivision (6)(B) or (C):

20               (A) the nature and degree of the ward's  
21 incapacity;

22               (B) the specific areas of protection and  
23 assistance to be provided to the ward and requested to be included  
24 in the court's order; and

25               (C) any limitation of the ward's rights requested  
26 to be included in the court's order;

27           (8) the approximate value and description of the

ward's property, including any compensation, pension, insurance, or allowance to which the ward is or may be entitled; and

(9) if the ward is 60 years of age or older, the names and addresses, to the best of the applicant's knowledge, of the ward's spouse, siblings, and children or, if there is no known spouse, sibling, or child, the names and addresses of the ward's next of kin. (Tex. Prob. Code, Sec. 694B.)

Sec. 1202.053. CITATION REQUIRED. When an application is filed under Section 1202.051, citation shall be served on:

(1) the ward's guardian; and

(2) the ward if the ward is not the applicant. (Tex. Prob. Code, Sec. 694A(d).)

Sec. 1202.054. INFORMAL REQUEST FOR ORDER BY WARD; INVESTIGATION AND REPORT. (a) A ward may request an order under Section 1202.051 by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(b) On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the ward's circumstances, including any circumstances alleged in the letter, to determine whether:

(1) the ward is no longer an incapacitated person; or

(2) a modification of the guardianship is necessary.

(c) The court investigator or guardian ad litem shall file with the court a report of the investigation's findings and conclusions. If the court investigator or guardian ad litem determines that it is in the best interest of the ward to terminate

1 or modify the guardianship, the court investigator or guardian ad  
2 litem shall file an application under Section 1202.051 on the  
3 ward's behalf.

4 (d) A guardian ad litem appointed under this section may  
5 also be appointed by the court to serve as attorney ad litem under  
6 Section 1202.101. (Tex. Prob. Code, Secs. 694A(b), (c).)

7 Sec. 1202.055. RESTRICTION ON SUBSEQUENT APPLICATION  
8 REGARDING CAPACITY OR MODIFICATION. A person may not reapply for  
9 complete restoration of a ward's capacity or modification of a  
10 ward's guardianship before the first anniversary of the date of the  
11 hearing on the last preceding application, except as otherwise  
12 provided by the court on good cause shown by the applicant. (Tex.  
13 Prob. Code, Sec. 694A(e).)

14 [Sections 1202.056-1202.100 reserved for expansion]

15 SUBCHAPTER C. REPRESENTATION OF WARD IN PROCEEDING FOR COMPLETE  
16 RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

17 Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM. The court  
18 shall appoint an attorney ad litem to represent a ward in a  
19 proceeding for the complete restoration of the ward's capacity or  
20 for the modification of the ward's guardianship. Unless otherwise  
21 provided by the court, the attorney ad litem shall represent the  
22 ward only for purposes of the restoration or modification  
23 proceeding. (Tex. Prob. Code, Secs. 694C(a), (b).)

24 Sec. 1202.102. COMPENSATION FOR ATTORNEY AD LITEM AND  
25 GUARDIAN AD LITEM. (a) An attorney ad litem appointed under  
26 Section 1202.101 is entitled to reasonable compensation for  
27 services in the amount set by the court to be taxed as costs in the



1 proceeding, regardless of whether the proceeding results in the  
2 restoration of the ward's capacity or a modification of the ward's  
3 guardianship.

4 (b) A guardian ad litem appointed in a proceeding involving  
5 the complete restoration of a ward's capacity or modification of a  
6 ward's guardianship is entitled to reasonable compensation, as  
7 provided by Section 1054.055(a), regardless of whether the  
8 proceeding results in the restoration of the ward's capacity or a  
9 modification of the ward's guardianship. (Tex. Prob. Code, Secs.  
10 694C(c), 694L.)

11 Sec. 1202.103. RETENTION AND COMPENSATION OF ATTORNEY FOR  
12 WARD. (a) A ward may retain an attorney for a proceeding involving  
13 the complete restoration of the ward's capacity or modification of  
14 the ward's guardianship.

15 (b) The court may order that compensation for services  
16 provided by an attorney retained under this section be paid from  
17 funds in the ward's estate only if the court finds that the attorney  
18 had a good faith belief that the ward had the capacity necessary to  
19 retain the attorney's services. (Tex. Prob. Code, Sec. 694K.)

20 [Sections 1202.104-1202.150 reserved for expansion]

21 SUBCHAPTER D. HEARING, EVIDENCE, AND ORDERS IN PROCEEDING FOR  
22 COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF  
23 GUARDIANSHIP

24 Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING. (a)  
25 At a hearing on an application filed under Section 1202.051, the  
26 court shall consider only evidence regarding the ward's mental or  
27 physical capacity at the time of the hearing that is relevant to the

1 complete restoration of the ward's capacity or modification of the  
2 ward's guardianship.

3 (b) The party who filed the application has the burden of  
4 proof at the hearing. (Tex. Prob. Code, Sec. 694D.)

5 Sec. 1202.152. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.

6 (a) The court may not grant an order completely restoring a ward's  
7 capacity or modifying a ward's guardianship under an application  
8 filed under Section 1202.051 unless the applicant presents to the  
9 court a written letter or certificate from a physician licensed in  
10 this state that is dated:

11 (1) not earlier than the 120th day before the date the  
12 application was filed; or

13 (2) after the date the application was filed but  
14 before the date of the hearing.

15 (b) A letter or certificate presented under Subsection (a)  
16 must:

17 (1) describe the nature and degree of incapacity,  
18 including the medical history if reasonably available, or state  
19 that, in the physician's opinion, the ward has the capacity to:

20 (A) provide food, clothing, and shelter for  
21 himself or herself;

22 (B) care for the ward's own physical health; and

23 (C) manage the ward's financial affairs;

24 (2) provide a medical prognosis specifying the  
25 estimated severity of any incapacity;

26 (3) state how or in what manner the ward's ability to  
27 make or communicate responsible decisions concerning himself or

1 herself is affected by the ward's physical or mental health;

2 (4) state whether any current medication affects the  
3 ward's demeanor or the ward's ability to participate fully in a  
4 court proceeding;

5 (5) describe the precise physical and mental  
6 conditions underlying a diagnosis of senility, if applicable; and

7 (6) include any other information required by the  
8 court.

9 (c) If the court determines it is necessary, the court may  
10 appoint the necessary physicians to examine the ward in the same  
11 manner and to the same extent as a ward is examined by a physician  
12 under Section 1101.103 or 1101.104. (Tex. Prob. Code, Sec. 694F.)

13 Sec. 1202.153. FINDINGS REQUIRED. (a) Before ordering the  
14 settlement and closing of a guardianship under an application filed  
15 under Section 1202.051, the court must find by a preponderance of  
16 the evidence that the ward is no longer partially or fully  
17 incapacitated.

18 (b) Before granting additional powers to the guardian or  
19 requiring the guardian to perform additional duties under an  
20 application filed under Section 1202.051, the court must find by a  
21 preponderance of the evidence that the current nature and degree of  
22 the ward's incapacity warrants a modification of the guardianship  
23 and that some or all of the ward's rights need to be further  
24 restricted.

25 (c) Before limiting the powers granted to or duties required  
26 to be performed by the guardian under an application filed under  
27 Section 1202.051, the court must find by a preponderance of the

evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored. (Tex. Prob. Code, Sec. 694E.)

Sec. 1202.154. GENERAL REQUIREMENTS FOR ORDER. (a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward's capacity or modify a ward's guardianship must state:

- (1) the guardian's name;
- (2) the ward's name; and
- (3) whether the type of guardianship being addressed at the proceeding is a:
  - (A) guardianship of the person;
  - (B) guardianship of the estate; or
  - (C) guardianship of both the person and the estate.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian. (Tex. Prob. Code, Sec. 694J.)

Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING WARD'S CAPACITY. If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify, in addition to the information required by Section 1202.154:

- (1) that the ward is no longer an incapacitated person;

1           (2) that there is no further need for a guardianship of  
2 the person or estate of the ward;

3           (3) if the ward's incapacity resulted from a mental  
4 condition, that the ward's mental capacity is completely restored;

5           (4) that the guardian is required to:

6                 (A) immediately settle the guardianship in  
7 accordance with this title; and

8                 (B) deliver all of the remaining guardianship  
9 estate to the ward; and

10           (5) that the clerk shall revoke letters of  
11 guardianship when the guardianship is finally settled and closed.  
12 (Tex. Prob. Code, Sec. 694G.)

13         Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING  
14 GUARDIANSHIP. If the court finds that a guardian's powers or duties  
15 should be expanded or limited, the order modifying the guardianship  
16 must contain findings of fact and specify, in addition to the  
17 information required by Section 1202.154:

18           (1) the specific powers, limitations, or duties of the  
19 guardian with respect to the care of the ward or the management of  
20 the ward's property, as appropriate;

21           (2) the specific areas of protection and assistance to  
22 be provided to the ward;

23           (3) any limitation of the ward's rights;

24           (4) if the ward's incapacity resulted from a mental  
25 condition, whether the ward retains the right to vote; and

26           (5) that the clerk shall modify the letters of  
27 guardianship to the extent applicable to conform to the order.

(Tex. Prob. Code, Sec. 694H.)

Sec. 1202.157. ADDITIONAL REQUIREMENTS FOR ORDER  
DISMISSING APPLICATION. If the court finds that a modification of  
the ward's guardianship is not necessary or that the ward's capacity  
has not been restored, the court shall dismiss the application and  
enter an order that contains findings of fact and specifies, in  
addition to the information required by Section 1202.154, that the  
guardian's powers, limitations, or duties with respect to the  
ward's care or the management of the ward's property remain  
unchanged. (Tex. Prob. Code, Sec. 694I.)

CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN;

APPOINTMENT OF SUCCESSOR

SUBCHAPTER A. RESIGNATION OF GUARDIAN

Sec. 1203.001. RESIGNATION APPLICATION

Sec. 1203.002. IMMEDIATE ACCEPTANCE OF RESIGNATION;

DISCHARGE AND RELEASE

Sec. 1203.003. DELIVERY OF ESTATE PROPERTY TO

SUCCESSOR GUARDIAN FOLLOWING

RESIGNATION

Sec. 1203.004. HEARING DATE; CITATION

Sec. 1203.005. HEARING

Sec. 1203.006. REQUIREMENTS FOR DISCHARGE

[Sections 1203.007-1203.050 reserved for expansion]

SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF GUARDIAN

Sec. 1203.051. REMOVAL WITHOUT NOTICE

Sec. 1203.052. REMOVAL WITH NOTICE

Sec. 1203.053. REMOVAL ORDER

1 Sec. 1203.054. DISCHARGE AND RELEASE FOLLOWING REMOVAL

2 Sec. 1203.055. DELIVERY OF ESTATE PROPERTY TO

3 SUCCESSOR GUARDIAN FOLLOWING REMOVAL

4 Sec. 1203.056. REMOVAL AND REINSTATEMENT OF GUARDIAN

5 UNDER CERTAIN CIRCUMSTANCES

6 Sec. 1203.057. REMOVAL OF JOINT GUARDIAN

7 [Sections 1203.058-1203.100 reserved for expansion]

8 SUBCHAPTER C. APPOINTMENT OF SUCCESSOR GUARDIAN; REVOCATION OF  
9 LETTERS

10 Sec. 1203.101. REQUIREMENTS FOR REVOCATION OF LETTERS

11 Sec. 1203.102. APPOINTMENT BECAUSE OF RESIGNATION,  
12 REMOVAL, OR DEATH

13 Sec. 1203.103. APPOINTMENT BECAUSE OF EXISTENCE OF  
14 PRIOR RIGHT

15 Sec. 1203.104. APPOINTMENT WHEN GUARDIAN NAMED IN WILL  
16 BECOMES AN ADULT

17 Sec. 1203.105. APPOINTMENT OF FORMERLY ILL OR ABSENT  
18 GUARDIAN NAMED IN WILL

19 Sec. 1203.106. APPOINTMENT WHEN WILL DISCOVERED AFTER  
20 GRANT OF LETTERS

21 Sec. 1203.107. APPOINTMENT ON REMOVAL OF LITIGATION  
22 CONFLICT

23 Sec. 1203.108. APPOINTMENT OF DEPARTMENT OF AGING AND  
24 DISABILITY SERVICES AS SUCCESSOR  
25 GUARDIAN

26 [Sections 1203.109-1203.150 reserved for expansion]

SUBCHAPTER D. SUCCESSOR GUARDIANS FOR WARDS OF GUARDIANSHIP

PROGRAMS OR GOVERNMENTAL ENTITIES

Sec. 1203.151. NOTICE OF AVAILABILITY OF SUCCESSOR  
GUARDIAN

Sec. 1203.152. DETERMINATION OF PROPOSED SUCCESSOR  
GUARDIAN'S QUALIFICATION TO SERVE

Sec. 1203.153. APPLICATION TO APPOINT SUCCESSOR  
GUARDIAN

[Sections 1203.154-1203.200 reserved for expansion]

SUBCHAPTER E. PROCEDURES AFTER RESIGNATION, REMOVAL, OR DEATH OF  
GUARDIAN

Sec. 1203.201. PAYMENT TO WARD WHILE OFFICE OF  
GUARDIAN IS VACANT

Sec. 1203.202. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR  
GUARDIAN

Sec. 1203.203. SUCCESSOR GUARDIAN TO RETURN INVENTORY,  
APPRAISEMENT, AND LIST OF CLAIMS

CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN;  
APPOINTMENT OF SUCCESSOR

SUBCHAPTER A. RESIGNATION OF GUARDIAN

Sec. 1203.001. RESIGNATION APPLICATION. A guardian of the  
estate or guardian of the person who wishes to resign the guardian's  
trust shall file a written application with the court clerk,  
accompanied by:

(1) in the case of a guardian of the estate, a complete  
and verified exhibit and final account showing the true condition  
of the guardianship estate entrusted to the guardian's care; or



1           (2)    in the case of a guardian of the person, a verified  
2 report containing the information required in the annual report  
3 required under Subchapter C, Chapter 1163, showing the condition of  
4 the ward entrusted to the guardian's care. (Tex. Prob. Code, Sec.  
5 760(a).)

6           Sec. 1203.002. IMMEDIATE ACCEPTANCE OF RESIGNATION;  
7 DISCHARGE AND RELEASE. (a) If the necessity exists, the court may  
8 immediately accept the resignation of a guardian and appoint a  
9 successor guardian as provided by Section 1203.102(b).

10          (b) The court may not discharge a person resigning as  
11 guardian of the estate whose resignation is accepted under  
12 Subsection (a), or release the person or the sureties on the  
13 person's bond, until a final order has been issued, or a final  
14 judgment has been rendered, on the final account required under  
15 Section 1203.001. (Tex. Prob. Code, Sec. 760(b) (part).)

16          Sec. 1203.003. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR  
17 GUARDIAN FOLLOWING RESIGNATION. The court at any time may order a  
18 resigning guardian who has any part of a ward's estate to deliver  
19 any part of the estate to a person who has been appointed and has  
20 qualified as successor guardian. (Tex. Prob. Code, Sec. 760(g).)

21          Sec. 1203.004. HEARING DATE; CITATION. (a) When an  
22 application to resign as guardian is filed under Section 1203.001,  
23 supported by the exhibit and final account or report required under  
24 that section, the court clerk shall bring the application to the  
25 judge's attention and the judge shall set a date for a hearing on  
26 the matter.

27          (b) After a hearing is set under Subsection (a), the clerk

1 shall issue a citation to all interested persons, showing:

2 (1) that an application that complies with Section  
3 1203.001 has been filed; and

4 (2) the time and place set for the hearing at which the  
5 interested persons may appear and contest the exhibit and final  
6 account or report supporting the application.

7 (c) Unless the court directs that the citation under  
8 Subsection (b) be published, the citation must be posted. (Tex.  
9 Prob. Code, Sec. 760(c).)

10 Sec. 1203.005. HEARING. (a) At the time set for the  
11 hearing under Section 1203.004, unless the court continues the  
12 hearing, and if the court finds that the citation required under  
13 that section has been properly issued and served, the court shall:

14 (1) examine the exhibit and final account or report  
15 required by Section 1203.001;

16 (2) hear all evidence for and against the exhibit,  
17 final account, or report; and

18 (3) if necessary, restate and audit and settle the  
19 exhibit, final account, or report.

20 (b) If the court is satisfied that the matters entrusted to  
21 the guardian applying to resign have been handled and accounted for  
22 in accordance with the law, the court shall:

23 (1) enter an order approving the exhibit and final  
24 account or report; and

25 (2) require that any estate property remaining in the  
26 applicant's possession be delivered to the person entitled by law  
27 to receive the property.

1 (c) A guardian of the person shall comply with all court  
2 orders concerning the guardian's ward. (Tex. Prob. Code, Sec.  
3 760(d).)

4 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A guardian  
5 applying to resign may not be discharged until:

6 (1) the resignation application has been heard;

7 (2) the exhibit and final account or report required  
8 under Section 1203.001 has been examined, settled, and approved;  
9 and

10 (3) the applicant has satisfied the court that the  
11 applicant has:

12 (A) delivered any estate property remaining in  
13 the applicant's possession; or

14 (B) complied with all court orders relating to  
15 the applicant's trust as guardian.

16 (b) When a guardian applying to resign has fully complied  
17 with the court orders, the court shall enter an order:

18 (1) accepting the resignation; and

19 (2) discharging the applicant and, if the applicant is  
20 under bond, the applicant's sureties. (Tex. Prob. Code, Secs.  
21 760(e), (f).)

22 [Sections 1203.007-1203.050 reserved for expansion]

23 SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF GUARDIAN

24 Sec. 1203.051. REMOVAL WITHOUT NOTICE. The court, on the  
25 court's own motion or on the motion of an interested person,  
26 including the ward, and without notice, may remove a guardian  
27 appointed under this title who:

1           (1) neglects to qualify in the manner and time  
2 required by law;

3           (2) fails to return, not later than the 30th day after  
4 the date the guardian qualifies, an inventory of the guardianship  
5 estate property and a list of claims that have come to the  
6 guardian's knowledge, unless that deadline is extended by court  
7 order;

8           (3) if required, fails to give a new bond within the  
9 period prescribed;

10          (4) is absent from the state for a consecutive period  
11 of three or more months without the court's permission, or removes  
12 from the state;

13          (5) cannot be served with notices or other processes  
14 because:

15                   (A) the guardian's whereabouts are unknown;

16                   (B) the guardian is eluding service; or

17                   (C) the guardian is a nonresident of this state  
18 who does not have a resident agent to accept service of process in  
19 any guardianship proceeding or other matter relating to the  
20 guardianship;

21          (6) subject to Section 1203.056(a):

22                   (A) has misapplied, embezzled, or removed from  
23 the state, or is about to misapply, embezzle, or remove from the  
24 state, any of the property entrusted to the guardian's care; or

25                   (B) has neglected or cruelly treated a ward; or

26          (7) has neglected to educate or maintain the ward as  
27 liberally as the means of the ward and the condition of the ward's

1 estate permit. (Tex. Prob. Code, Sec. 761(a).)

2       Sec. 1203.052. REMOVAL WITH NOTICE. (a) The court may  
3 remove a guardian on the court's own motion, or on the complaint of  
4 an interested person, after the guardian has been cited by personal  
5 service to answer at a time and place set in the notice, if:

6           (1) sufficient grounds appear to support a belief that  
7 the guardian has misapplied, embezzled, or removed from the state,  
8 or is about to misapply, embezzle, or remove from the state, any of  
9 the property entrusted to the guardian's care;

10          (2) the guardian fails to return any account or report  
11 that is required by law to be made;

12          (3) the guardian fails to obey a proper order of the  
13 court that has jurisdiction with respect to the performance of the  
14 guardian's duties;

15          (4) the guardian is proved to have been guilty of gross  
16 misconduct or mismanagement in the performance of the guardian's  
17 duties;

18          (5) the guardian:

19           (A) becomes incapacitated;

20           (B) is sentenced to the penitentiary; or

21           (C) from any other cause, becomes incapable of  
22 properly performing the duties of the guardian's trust;

23          (6) the guardian neglects or cruelly treats the ward;

24          (7) the guardian neglects to educate or maintain the  
25 ward as liberally as the means of the ward's estate and the ward's  
26 ability or condition permit;

27          (8) the guardian interferes with the ward's progress

1 or participation in programs in the community;

2 (9) the guardian fails to comply with the requirements  
3 of Subchapter G, Chapter 1104;

4 (10) the court determines that, because of the  
5 dissolution of the joint guardians' marriage, the termination of  
6 the guardians' joint appointment and the continuation of only one  
7 of the joint guardians as the sole guardian is in the best interest  
8 of the ward; or

9 (11) the guardian would be ineligible for appointment  
10 as a guardian under Subchapter H, Chapter 1104.

11 (b) In addition to the authority granted to the court under  
12 Subsection (a), the court may, on the complaint of the Guardianship  
13 Certification Board, remove a guardian who would be ineligible for  
14 appointment under Subchapter H, Chapter 1104, because of the  
15 guardian's failure to maintain the certification required under  
16 Subchapter F, Chapter 1104. The guardian shall be cited to appear  
17 and contest the request for removal under this subsection in the  
18 manner provided by Subsection (a). (Tex. Prob. Code, Secs. 761(c),  
19 (c-1).)

20 Sec. 1203.053. REMOVAL ORDER. An order removing a guardian  
21 shall:

22 (1) state the cause of the removal;

23 (2) require that, if the removed guardian has been  
24 personally served with citation, any letters of guardianship issued  
25 to the removed guardian be surrendered and that, regardless of  
26 whether the letters have been delivered, all the letters be  
27 canceled of record; and

(3) require the removed guardian to:

(A) deliver any estate property in the guardian's possession to the persons entitled to the property or to one who has been appointed and has qualified as successor guardian; and

(B) relinquish control of the ward's person as required in the order. (Tex. Prob. Code, Sec. 761(d).)

Sec. 1203.054. DISCHARGE AND RELEASE FOLLOWING REMOVAL. With respect to a person who is removed as guardian of the estate and whose successor is appointed without citation or notice as provided by Section 1203.102(b), the court may not discharge the person or release the person or the sureties on the person's bond until a final order has been issued or final judgment has been rendered on the guardian's final account. (Tex. Prob. Code, Sec. 761(f) (part).)

Sec. 1203.055. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR GUARDIAN FOLLOWING REMOVAL. The court at any time may order a person removed as guardian under this subchapter who has any part of a ward's estate to deliver any part of the estate to a person who has been appointed and has qualified as successor guardian. (Tex. Prob. Code, Sec. 761(g).)

Sec. 1203.056. REMOVAL AND REINSTATEMENT OF GUARDIAN UNDER CERTAIN CIRCUMSTANCES. (a) The court may remove a guardian under Section 1203.051(6)(A) or (B) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 10th day after the date the court signs the order of removal, a guardian who is removed under Section 1203.051(6)(A) or (B) may file an application with the court for a

1 hearing to determine whether the guardian should be reinstated.

2 (c) On the filing of an application under Subsection (b),  
3 the court clerk shall issue to the applicant, the ward, a person  
4 interested in the ward's welfare or estate, and, if applicable, a  
5 person who has control of the care and custody of the ward a notice  
6 stating:

7 (1) that an application for reinstatement has been  
8 filed;

9 (2) the name of the ward; and

10 (3) the name of the applicant for reinstatement.

11 (d) The notice required by Subsection (c) must cite all  
12 persons interested in the ward's welfare or estate to appear at the  
13 time and place stated in the notice if the persons wish to contest  
14 the application.

15 (e) If, at the conclusion of a hearing under this section,  
16 the court is satisfied by a preponderance of the evidence that the  
17 applicant did not engage in the conduct that directly led to the  
18 applicant's removal, the court shall:

19 (1) set aside any order appointing a successor  
20 guardian; and

21 (2) enter an order reinstating the applicant as  
22 guardian of the ward or estate.

23 (f) If the court sets aside the appointment of a successor  
24 guardian under this section, the court may require the successor  
25 guardian to prepare and file, under oath, an accounting of the  
26 estate and to detail the disposition the successor has made of the  
27 estate property. (Tex. Prob. Code, Secs. 761(b), 762.)





1 section without citation or notice if the court finds that a  
2 necessity exists for the immediate appointment. (Tex. Prob. Code,  
3 Secs. 695(a), 759(a), 760(b) (part), 761(f) (part).)

4       Sec. 1203.103. APPOINTMENT BECAUSE OF EXISTENCE OF PRIOR  
5 RIGHT. If letters of guardianship have been granted to a person and  
6 another person applies for letters, the previously issued letters  
7 shall be revoked, and letters shall be granted to the subsequent  
8 applicant if that applicant:

- 9               (1) is qualified;
- 10              (2) has a prior right to be appointed successor  
11 guardian; and
- 12              (3) has not waived that prior right. (Tex. Prob. Code,  
13 Sec. 759(b).)

14       Sec. 1203.104. APPOINTMENT WHEN GUARDIAN NAMED IN WILL  
15 BECOMES AN ADULT. (a) A person named as guardian in a will who was  
16 not an adult when the will was probated is entitled to have letters  
17 of guardianship that were granted to another person revoked and  
18 appropriate letters granted to the named guardian on proof that the  
19 named guardian has become an adult and is not otherwise  
20 disqualified from serving as a guardian.

21       (b) This subsection applies only if a will names two or more  
22 persons as guardian. A person named as a guardian in the will who  
23 was a minor when the will was probated may, on becoming an adult,  
24 qualify and receive letters of guardianship if:

- 25              (1) letters have been issued to the named guardians in  
26 the will who are adults; and
- 27              (2) the person is not otherwise disqualified from

1 receiving letters. (Tex. Prob. Code, Sec. 759(c).)

2       Sec. 1203.105. APPOINTMENT OF FORMERLY ILL OR ABSENT  
3 GUARDIAN NAMED IN WILL. (a) This section applies only to a person  
4 named as guardian in a will who was ill or absent from the state when  
5 the testator died or the will was proved and, as a result, could  
6 not:

7               (1) present the will for probate not later than the  
8 30th day after the testator's death; or

9               (2) accept and qualify as guardian not later than the  
10 20th day after the date the will was probated.

11       (b) A person to whom this section applies may accept and  
12 qualify as guardian not later than the 60th day after the date the  
13 person recovers from illness or returns to the state if proof is  
14 presented to the court that the person was ill or absent.

15       (c) If a person accepts and qualifies as guardian under  
16 Subsection (b) and letters of guardianship have been issued to  
17 another person, the other person's letters shall be revoked. (Tex.  
18 Prob. Code, Sec. 759(d).)

19       Sec. 1203.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT  
20 OF LETTERS. If, after letters of guardianship have been issued, it  
21 is discovered that the decedent left a lawful will, the letters  
22 shall be revoked and proper letters shall be issued to a person  
23 entitled to the letters. (Tex. Prob. Code, Sec. 759(e).)

24       Sec. 1203.107. APPOINTMENT ON REMOVAL OF LITIGATION  
25 CONFLICT. The court may appoint as successor guardian a spouse,  
26 parent, or child of a proposed ward who was disqualified from  
27 serving as guardian because of a litigation conflict under Section

1 1104.354(1) on the removal of the conflict that caused the  
2 disqualification if the spouse, parent, or child is otherwise  
3 qualified to serve as a guardian. (Tex. Prob. Code, Sec. 759(h).)

4 Sec. 1203.108. APPOINTMENT OF DEPARTMENT OF AGING AND  
5 DISABILITY SERVICES AS SUCCESSOR GUARDIAN. (a) In this section,  
6 "department" means the Department of Aging and Disability Services.

7 (b) The court may appoint the department as a successor  
8 guardian of the person or estate, or both, of a ward who has been  
9 adjudicated as totally incapacitated if:

10 (1) there is no less-restrictive alternative to  
11 continuation of the guardianship;

12 (2) there is no family member or other suitable  
13 person, including a guardianship program, willing and able to serve  
14 as the ward's successor guardian;

15 (3) the ward is located more than 100 miles from the  
16 court that created the guardianship;

17 (4) the ward has private assets or access to  
18 government benefits to pay for the ward's needs;

19 (5) the department is served with citation and a  
20 hearing is held regarding the department's appointment as proposed  
21 successor guardian; and

22 (6) the appointment of the department does not violate  
23 a limitation imposed by Subsection (c).

24 (c) The number of appointments under Subsection (b) is  
25 subject to an annual limit of 55. The appointments must be  
26 distributed equally or as equally as possible among the health and  
27 human services regions of this state. The department, at the

1 department's discretion, may establish a different distribution  
2 scheme to promote the efficient use and administration of  
3 resources.

4 (d) If the department is named as a proposed successor  
5 guardian in an application in which the department is not the  
6 applicant, citation must be issued and served on the department as  
7 provided by Section 1051.103(5). (Tex. Prob. Code, Secs. 695(c),  
8 (d), (e).)

9 [Sections 1203.109-1203.150 reserved for expansion]

10 SUBCHAPTER D. SUCCESSOR GUARDIANS FOR WARDS OF GUARDIANSHIP

11 PROGRAMS OR GOVERNMENTAL ENTITIES

12 Sec. 1203.151. NOTICE OF AVAILABILITY OF SUCCESSOR  
13 GUARDIAN. (a) If a guardianship program or governmental entity  
14 serving as a guardian for a ward under this title becomes aware of a  
15 family member or friend of the ward, or any other interested person,  
16 who is willing and able to serve as the ward's successor guardian,  
17 the program or entity shall notify the court in which the  
18 guardianship is pending of the individual's willingness and ability  
19 to serve.

20 (b) If, while serving as a guardian for a ward under this  
21 title, the Department of Aging and Disability Services becomes  
22 aware of a guardianship program or private professional guardian  
23 willing and able to serve as the ward's successor guardian, and the  
24 department is not aware of a family member or friend of the ward, or  
25 any other interested person, who is willing and able to serve in  
26 that capacity, the department shall notify the court in which the  
27 guardianship is pending of the guardianship program's or private

professional guardian's willingness and ability to serve. (Tex. Prob. Code, Secs. 695A(a), (a-1).)

Sec. 1203.152. DETERMINATION OF PROPOSED SUCCESSOR GUARDIAN'S QUALIFICATION TO SERVE. When the court is notified of the existence of a proposed successor guardian under Section 1203.151(a), or the court otherwise becomes aware of a family member, a friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this title as the ward's successor guardian. (Tex. Prob. Code, Sec. 695A(b).)

Sec. 1203.153. APPLICATION TO APPOINT SUCCESSOR GUARDIAN. (a) If the court finds under Section 1203.152 that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Subchapter H, Chapter 1104, and that the appointment is in the ward's best interests, the guardianship program or governmental entity serving as the ward's guardian or the court, on the court's own motion, may file an application to appoint the individual as the ward's successor guardian.

(b) Service of notice on an application filed under this section shall be made as directed by the court. (Tex. Prob. Code, Sec. 695A(c).)

[Sections 1203.154-1203.200 reserved for expansion]

SUBCHAPTER E. PROCEDURES AFTER RESIGNATION, REMOVAL, OR DEATH OF  
GUARDIAN

Sec. 1203.201. PAYMENT TO WARD WHILE OFFICE OF GUARDIAN IS  
VACANT. (a) A debtor, obligor, or payor may pay or tender money or  
another thing of value falling due to a ward while the office of  
guardian is vacant to the court clerk for the credit of the ward.

(b) Payment or tender under Subsection (a) discharges the  
debtor, obligor, or payor of the obligation for all purposes to the  
extent and purpose of the payment or tender.

(c) The court clerk shall issue a receipt for any payment or  
tender accepted under this section. (Tex. Prob. Code, Sec.  
759(g).)

Sec. 1203.202. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR  
GUARDIAN. (a) A successor guardian has the rights and powers and  
is subject to all the duties of the predecessor.

(b) A guardian who accepts appointment and qualifies after  
letters of guardianship have been granted on the estate shall:

- (1) succeed in like manner to the predecessor; and
- (2) administer the estate in like manner as if the  
guardian's administration were a continuation of the former  
administration.

(c) A successor guardian may:

- (1) make himself or herself, and be made, a party to a  
suit prosecuted by or against the successor's predecessor;
- (2) settle with the predecessor and receive and give a  
receipt for any portion of the estate property that remains in the  
successor's possession; or

1           (3) commence a suit on the bond or bonds of the  
2 predecessor, in the successor's own name and capacity, for all the  
3 estate property that:

4                   (A) came into the predecessor's possession; and

5                   (B) has not been accounted for by the  
6 predecessor. (Tex. Prob. Code, Secs. 695(b), 763, 764.)

7       Sec. 1203.203. SUCCESSOR GUARDIAN TO RETURN INVENTORY,  
8 APPRAISEMENT, AND LIST OF CLAIMS. (a) A successor guardian who has  
9 qualified to succeed a former guardian shall, in the manner  
10 required of an original appointee:

11           (1) make and return to the court an inventory,  
12 appraisal, and list of claims of the estate not later than the  
13 30th day after the date the successor qualifies; and

14           (2) return additional inventories, appraisements, and  
15 lists of claims.

16       (b) On the application of any person interested in the  
17 estate, the court shall, in an order appointing a successor  
18 guardian, appoint an appraiser as in an original appointment of a  
19 guardian. (Tex. Prob. Code, Sec. 765.)

20       CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

21           SUBCHAPTER A. TIME FOR SETTLEMENT OF GUARDIANSHIP

22       Sec. 1204.001. SETTLEMENT OF GUARDIANSHIP

23       Sec. 1204.002. APPOINTMENT OF ATTORNEY AD LITEM TO

24                   REPRESENT WARD IN FINAL SETTLEMENT

25                   UNDER CERTAIN CIRCUMSTANCES

26       [Sections 1204.003-1204.050 reserved for expansion]



SUBCHAPTER B. PAYMENT OF CERTAIN EXPENSES AND DEBTS

- Sec. 1204.051. FUNERAL ARRANGEMENTS AND OTHER DEBTS;  
ACCOUNT FOR FINAL SETTLEMENT ON  
COMPLAINT OF PERSONAL REPRESENTATIVE
- Sec. 1204.052. TAXES AND EXPENSES OF ADMINISTRATION;  
SALE OF ESTATE PROPERTY
- Sec. 1204.053. INHERITANCE TAXES; LIMITATION ON  
CLOSING ESTATE

[Sections 1204.054-1204.100 reserved for expansion]

SUBCHAPTER C. ACCOUNT FOR FINAL SETTLEMENT

- Sec. 1204.101. VERIFIED ACCOUNT REQUIRED
- Sec. 1204.102. CONTENTS OF ACCOUNT
- Sec. 1204.103. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT  
COMPUTATION
- Sec. 1204.104. GUARDIAN TO ACCOUNT FOR WARD'S LABOR OR  
SERVICES
- Sec. 1204.105. CITATION AND NOTICE ON PRESENTATION OF  
ACCOUNT
- Sec. 1204.106. EXAMINATION OF AND HEARING ON ACCOUNT
- Sec. 1204.107. ASSETS BECOMING DUE PENDING FINAL  
SETTLEMENT; RECEIPT AND DISCHARGE
- Sec. 1204.108. DELIVERY OF WARD'S PROPERTY IN  
POSSESSION OF GUARDIAN OF THE PERSON  
ON SETTLEMENT OF GUARDIANSHIP OF THE  
ESTATE
- Sec. 1204.109. DELIVERY OF REMAINING ESTATE PROPERTY

[Sections 1204.110-1204.150 reserved for expansion]

SUBCHAPTER D. CLOSING OF GUARDIANSHIP AND DISCHARGE OF GUARDIAN

Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE

PROPERTY REMAINS

Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY

ADMINISTERED

[Sections 1204.153-1204.200 reserved for expansion]

SUBCHAPTER E. FAILURE OF GUARDIAN TO ACT

Sec. 1204.201. FAILURE TO PRESENT FINAL ACCOUNT OR

REPORT

Sec. 1204.202. LIABILITY FOR FAILURE TO DELIVER ESTATE

PROPERTY

CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

SUBCHAPTER A. TIME FOR SETTLEMENT OF GUARDIANSHIP

Sec. 1204.001. SETTLEMENT OF GUARDIANSHIP. (a) A guardianship shall be settled and closed as provided by this section and Section 1202.001.

(b) A guardianship of the estate of a ward shall be settled when:

(1) the ward dies;

(2) a minor ward becomes an adult by:

(A) becoming 18 years of age;

(B) removal of disabilities of minority according to the law of this state; or

(C) marriage;

(3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;

(4) the spouse of a married ward has qualified as

1 survivor in community and the ward does not own separate property;

2 (5) the ward's estate is exhausted;

3 (6) the foreseeable income accruing to the ward or to  
4 the ward's estate is so negligible that maintaining the  
5 guardianship in force would be burdensome;

6 (7) all of the assets of the estate have been placed in  
7 a management trust under Chapter 1301 and the court determines that  
8 a guardianship for the ward is no longer necessary; or

9 (8) the court determines for any other reason that a  
10 guardianship for the ward is no longer necessary.

11 (c) In a case arising under Subsection (b)(6), the court may  
12 authorize the income to be paid to a parent, or other person who has  
13 acted as guardian of the ward, to assist in the maintenance of the  
14 ward and without liability to account to the court for the income.

15 (d) If the estate of a minor ward consists only of cash or  
16 cash equivalents in an amount of \$100,000 or less, the guardianship  
17 of the estate may be terminated and the assets paid to the county  
18 clerk of the county in which the guardianship proceeding is  
19 pending, and the clerk shall manage the funds as provided by Chapter  
20 1355.

21 (e) In the settlement of a guardianship of the estate, the  
22 court may appoint an attorney ad litem to represent the ward's  
23 interests and may allow the attorney reasonable compensation for  
24 services provided by the attorney out of the ward's estate. (Tex.  
25 Prob. Code, Sec. 745; New.)

26 Sec. 1204.002. APPOINTMENT OF ATTORNEY AD LITEM TO  
27 REPRESENT WARD IN FINAL SETTLEMENT UNDER CERTAIN CIRCUMSTANCES.

(a) The court may appoint an attorney ad litem to represent the ward's interest in the final settlement with the guardian if:

(1) the ward is deceased and there is no executor or administrator of the ward's estate;

(2) the ward is a nonresident; or

(3) the ward's residence is unknown.

(b) The court shall allow the attorney ad litem appointed under this section reasonable compensation out of the ward's estate for any services provided by the attorney. (Tex. Prob. Code, Sec. 755.)

[Sections 1204.003-1204.050 reserved for expansion]

SUBCHAPTER B. PAYMENT OF CERTAIN EXPENSES AND DEBTS

Sec. 1204.051. FUNERAL ARRANGEMENTS AND OTHER DEBTS; ACCOUNT FOR FINAL SETTLEMENT ON COMPLAINT OF PERSONAL REPRESENTATIVE. Before a guardianship of the person or estate of a ward is closed on the ward's death, the guardian may, subject to the court's approval, make all funeral arrangements and pay the funeral expenses and all other debts out of the deceased ward's estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the written complaint of the personal representative have the guardian of the deceased ward cited to appear and present an account for final settlement as provided by Section 1204.101. (Tex. Prob. Code, Sec. 746.)

Sec. 1204.052. TAXES AND EXPENSES OF ADMINISTRATION; SALE OF ESTATE PROPERTY. Notwithstanding any other provision of this title, a probate court in which proceedings to declare heirship are maintained may order:

(1) the guardian to pay any taxes or expenses of administering the estate; and

(2) the sale of property in the ward's estate, when necessary, to:

(A) pay the taxes or expenses of administering the estate; or

(B) distribute the estate among the heirs. (Tex. Prob. Code, Sec. 748.)

Sec. 1204.053. INHERITANCE TAXES; LIMITATION ON CLOSING ESTATE. If the guardian has been ordered to pay inheritance taxes under this code, a deceased ward's estate may not be closed unless the account for final settlement shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and property passing through the guardian's possession have been paid. (Tex. Prob. Code, Sec. 754.)

[Sections 1204.054-1204.100 reserved for expansion]

#### SUBCHAPTER C. ACCOUNT FOR FINAL SETTLEMENT

Sec. 1204.101. VERIFIED ACCOUNT REQUIRED. A guardian of the estate shall present to the court the guardian's verified account for final settlement when the guardianship of the estate is required to be settled. (Tex. Prob. Code, Sec. 749 (part).)

Sec. 1204.102. CONTENTS OF ACCOUNT. (a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:

(1) refer to the inventory without describing each item of property in detail; and

(2) refer to and adopt any guardianship proceeding

1 concerning sales, renting, leasing for mineral development, or any  
2 other transaction on behalf of the guardianship estate, including  
3 an exhibit, account, or voucher previously filed and approved,  
4 without restating the particular items.

5 (b) An account for final settlement shall be accompanied by  
6 proper vouchers supporting each item included in the account for  
7 which the guardian has not already accounted and, either by  
8 reference to any proceeding described by Subsection (a) or by a  
9 statement of the facts, must show:

10 (1) the property, rents, revenues, and profits  
11 received by the guardian, and belonging to the ward, during the term  
12 of the guardianship;

13 (2) the disposition made of the property, rents,  
14 revenues, and profits;

15 (3) any expenses and debts against the estate that  
16 remain unpaid;

17 (4) any estate property that remains in the guardian's  
18 possession;

19 (5) that the guardian has paid all required bond  
20 premiums;

21 (6) the tax returns the guardian has filed during the  
22 guardianship;

23 (7) the amount of taxes the ward owed during the  
24 guardianship that the guardian has paid;

25 (8) a complete account of the taxes the guardian has  
26 paid during the guardianship, including:

27 (A) the amount of the taxes;

(B) the date the guardian paid the taxes; and

(C) the name of the governmental entity to which the guardian paid the taxes;

(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes, including a reason for each delinquency; and

(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship. (Tex. Prob. Code, Sec. 749 (part).)

Sec. 1204.103. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT COMPUTATION. In the settlement of any of the accounts of the guardian of the estate, all debts due the estate that the court is satisfied could not have been collected by due diligence and that have not been collected shall be excluded from the computation. (Tex. Prob. Code, Sec. 756.)

Sec. 1204.104. GUARDIAN TO ACCOUNT FOR WARD'S LABOR OR SERVICES. (a) Subject to Subsection (b), the guardian of a ward shall account for:

(1) the reasonable value of labor or services provided by the ward; or

(2) the proceeds of labor or services provided by the ward.

(b) The guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward. (Tex. Prob. Code, Sec. 757.)

Sec. 1204.105. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On presentation of an account for final settlement by

1 a guardian of the estate of a ward, the county clerk shall issue  
2 citation to the persons and in the manner provided by this section.

3 (b) Citation issued under Subsection (a) must contain:

4 (1) a statement that an account for final settlement  
5 has been presented;

6 (2) the time and place the court will consider the  
7 account; and

8 (3) a statement requiring the person cited to appear  
9 and contest the account, if the person determines contesting the  
10 account is proper.

11 (c) Except as provided by Subsection (d) or (e), the county  
12 clerk shall:

13 (1) issue a citation to be personally served on a ward  
14 if:

15 (A) the ward is 14 years of age or older;

16 (B) the ward is a living resident of this state;

17 and

18 (C) the ward's residence is known;

19 (2) issue a citation to be personally served on the  
20 executor or administrator of a deceased ward's estate, if one has  
21 been appointed; and

22 (3) issue a citation to a ward or the ward's estate by  
23 publication, or by posting if directed by written court order, if:

24 (A) the ward's residence is unknown;

25 (B) the ward is not a resident of this state; or

26 (C) the ward is deceased and no representative of  
27 the ward's estate has been appointed and has qualified in this



1 state.

2 (d) The ward, in person or by attorney, may waive by writing  
3 filed with the county clerk the issuance and personal service of  
4 citation required by Subsection (c)(1).

5 (e) Service of citation is not required under Subsection  
6 (c)(2) if the executor or administrator is the same person as the  
7 guardian.

8 (f) The court may allow the waiver of notice of an account  
9 for final settlement in a guardianship proceeding.

10 (g) The court by written order shall require additional  
11 notice if the court considers the additional notice necessary.  
12 (Tex. Prob. Code, Sec. 751.)

13 Sec. 1204.106. EXAMINATION OF AND HEARING ON ACCOUNT. (a)  
14 On the court's satisfaction that citation has been properly served  
15 on all persons interested in the guardianship estate, the court  
16 shall examine the account for final settlement and the accompanying  
17 vouchers.

18 (b) After hearing all exceptions or objections to the  
19 account and evidence in support of or against the account, the court  
20 shall audit and settle the account and, if necessary, restate the  
21 account. (Tex. Prob. Code, Sec. 752(a).)

22 Sec. 1204.107. ASSETS BECOMING DUE PENDING FINAL  
23 SETTLEMENT; RECEIPT AND DISCHARGE. (a) This section does not apply  
24 to money or another thing of value held under Section 1105.153.

25 (b) Until the order of final discharge of the guardian is  
26 entered in the judge's guardianship docket, money or another thing  
27 of value falling due to the ward or the ward's estate while the

1 account for final settlement is pending may be paid or tendered to  
2 the emancipated ward, the guardian, or the personal representative  
3 of the deceased ward's estate. The ward, guardian, or personal  
4 representative to whom the money or other thing of value is paid or  
5 tendered shall issue a receipt for the money or other thing of  
6 value, and the obligor or payor is discharged of the obligation for  
7 all purposes. (Tex. Prob. Code, Sec. 753.)

8       Sec. 1204.108. DELIVERY OF WARD'S PROPERTY IN POSSESSION OF  
9 GUARDIAN OF THE PERSON ON SETTLEMENT OF GUARDIANSHIP OF THE ESTATE.

10 (a) If the guardianship of a ward is required to be settled as  
11 provided by Section 1204.001, the guardian of the person shall  
12 deliver all of the ward's property in the guardian's possession or  
13 control to the emancipated ward or other person entitled to the  
14 property. If the ward is deceased, the guardian shall deliver the  
15 property to the personal representative of the deceased ward's  
16 estate or other person entitled to the property.

17 (b) If none of the ward's property is in the guardian of the  
18 person's possession or control, the guardian shall, not later than  
19 the 60th day after the date the guardianship is required to be  
20 settled, file with the court a sworn affidavit that states:

21           (1) the reason the guardianship was terminated; and

22           (2) to whom the ward's property in the guardian's  
23 possession was delivered.

24 (c) The judge may issue orders as necessary for the best  
25 interests of the ward or the deceased ward's estate.

26 (d) This section does not discharge a guardian of the person  
27 from liability for breach of the guardian's fiduciary duties.

(Tex. Prob. Code, Sec. 747.)

Sec. 1204.109. DELIVERY OF REMAINING ESTATE PROPERTY. On final settlement of a guardianship estate, the court shall order that any part of the estate that remains in the guardian's possession be delivered to:

(1) the ward;

(2) the personal representative of the ward's estate, if the ward is deceased and a personal representative has been appointed; or

(3) any other person legally entitled to the estate.

(Tex. Prob. Code, Sec. 752(b).)

[Sections 1204.110-1204.150 reserved for expansion]

#### SUBCHAPTER D. CLOSING OF GUARDIANSHIP AND DISCHARGE OF GUARDIAN

Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE PROPERTY REMAINS. The court shall enter an order discharging a guardian from the guardian's trust and closing the guardianship estate if, on final settlement of the estate, none of the estate remains in the guardian's possession. (Tex. Prob. Code, Sec. 752(c).)

Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY ADMINISTERED. The court shall enter an order discharging a guardian of the estate from the guardian's trust and declaring the estate closed when:

(1) the guardian has fully administered the estate in accordance with this title and the court's orders;

(2) the guardian's account for final settlement has been approved; and

1           (3) the guardian has delivered all of the estate  
2 remaining in the guardian's possession to any person entitled to  
3 receive the estate. (Tex. Prob. Code, Sec. 752(d).)

4           [Sections 1204.153-1204.200 reserved for expansion]

5           SUBCHAPTER E. FAILURE OF GUARDIAN TO ACT

6           Sec. 1204.201. FAILURE TO PRESENT FINAL ACCOUNT OR REPORT.

7   (a) The court may, on the court's own motion, and shall, on the  
8 written complaint of the emancipated ward or anyone interested in  
9 the ward or the ward's estate, have the guardian who is charged with  
10 the duty of presenting a final account or report cited to appear and  
11 present the account or report within the time specified in the  
12 citation if the guardian failed or neglected to present the account  
13 or report at the proper time.

14   (b) If a written complaint has not been filed by anyone  
15 interested in the guardianship of the person or estate of a minor or  
16 deceased ward, on or after the third anniversary of the date the  
17 minor ward reaches the age of majority or the date the ward dies, as  
18 applicable, the court may remove the estate from the court's active  
19 docket without a final accounting and without appointing a  
20 successor personal representative.

21   (c) If a complaint has not been filed by anyone interested  
22 in the estate of a ward whose whereabouts are unknown to the court,  
23 on or after the fourth anniversary of the date the ward's  
24 whereabouts became unknown to the court, the court may remove the  
25 estate from the court's active docket without a final accounting  
26 and without appointing a successor personal representative. (Tex.  
27 Prob. Code, Sec. 750.)

1           Sec. 1204.202. LIABILITY FOR FAILURE TO DELIVER ESTATE  
2 PROPERTY.   (a)   On final settlement or termination of the  
3 guardianship of the estate, if the guardian neglects when legally  
4 demanded to deliver a portion of the estate or any funds or money in  
5 the guardian's possession ordered to be delivered to a person  
6 entitled to that property, the person may file with the court clerk  
7 a written complaint alleging:

8                   (1)   the fact of the neglect;

9                   (2)   the date of the person's demand; and

10                  (3)   other relevant facts.

11           (b)   After the filing of a complaint under Subsection (a),  
12 the court clerk shall issue a citation to be served personally on  
13 the guardian. The citation must:

14                   (1)   apprise the guardian of the complaint; and

15                   (2)   cite the guardian to appear before the court and  
16 answer, if the guardian desires, at a time designated in the  
17 citation.

18           (c)   If at the hearing the court finds that the citation was  
19 properly served and returned, and that the guardian is guilty of the  
20 neglect charged, the court shall enter an order to that effect.

21           (d)   If the court enters an order under Subsection (c), the  
22 guardian is liable to the person who filed the complaint under  
23 Subsection (a) for damages at the rate of 10 percent of the amount  
24 or appraised value of the money or estate withheld, per month, for  
25 each month or fraction of a month that the estate or money of a  
26 guardianship of the estate, or on termination of guardianship of  
27 the person, or funds is or has been withheld by the guardian after

the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction. (Tex. Prob. Code, Sec. 758.)

[Chapters 1205-1250 reserved for expansion]

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

CHAPTER 1251. TEMPORARY GUARDIANSHIPS

SUBCHAPTER A. APPOINTMENT OF TEMPORARY GUARDIAN GENERALLY

Sec. 1251.001. APPOINTMENT OF TEMPORARY GUARDIAN

Sec. 1251.002. NO PRESUMPTION OF INCAPACITY

Sec. 1251.003. APPLICATION

Sec. 1251.004. APPOINTMENT OF ATTORNEY

Sec. 1251.005. NOTICE OF APPLICATION

Sec. 1251.006. SCHEDULING OF HEARING

Sec. 1251.007. MOTION FOR DISMISSAL OF APPLICATION

Sec. 1251.008. RIGHTS OF PROPOSED WARD AT HEARING

Sec. 1251.009. APPEARANCE BY PROPOSED TEMPORARY

GUARDIAN IN CERTAIN CIRCUMSTANCES

Sec. 1251.010. ORDER APPOINTING TEMPORARY GUARDIAN

Sec. 1251.011. CERTAIN AGENCY AS TEMPORARY GUARDIAN

Sec. 1251.012. TEMPORARY GUARDIAN'S BOND

Sec. 1251.013. COURT COSTS

[Sections 1251.014-1251.050 reserved for expansion]

SUBCHAPTER B. TEMPORARY GUARDIANSHIP PENDING CHALLENGE OR CONTEST

OF CERTAIN GUARDIANSHIP APPLICATIONS

Sec. 1251.051. AUTHORITY TO APPOINT TEMPORARY GUARDIAN

OR GRANT RESTRAINING ORDER

1 Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN

2 TEMPORARY GUARDIANSHIPS

3 [Sections 1251.053-1251.100 reserved for expansion]

4 SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY GUARDIANS

5 Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN

6 Sec. 1251.102. APPLICABILITY OF GUARDIANSHIP

7 PROVISIONS

8 [Sections 1251.103-1251.150 reserved for expansion]

9 SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP

10 Sec. 1251.151. DURATION OF TEMPORARY GUARDIANSHIP

11 Sec. 1251.152. ACCOUNTING

12 Sec. 1251.153. DELIVERY OF ESTATE; DISCHARGE OF

13 TEMPORARY GUARDIAN

14 CHAPTER 1251. TEMPORARY GUARDIANSHIPS

15 SUBCHAPTER A. APPOINTMENT OF TEMPORARY GUARDIAN GENERALLY

16 Sec. 1251.001. APPOINTMENT OF TEMPORARY GUARDIAN. (a) A  
17 court shall appoint a temporary guardian, with limited powers as  
18 the circumstances of the case require, if the court:

19 (1) is presented with substantial evidence that a  
20 person may be an incapacitated person; and

21 (2) has probable cause to believe that the person, the  
22 person's estate, or both require the immediate appointment of a  
23 guardian.

24 (b) The person for whom a temporary guardian is appointed  
25 under this chapter retains all rights and powers that are not  
26 specifically granted to the person's temporary guardian by court  
27 order. (Tex. Prob. Code, Secs. 875(a), (b).)

1           Sec. 1251.002. NO PRESUMPTION OF INCAPACITY. A person for  
2   whom a temporary guardian is appointed under this chapter may not be  
3   presumed to be incapacitated. (Tex. Prob. Code, Sec. 874.)

4           Sec. 1251.003. APPLICATION.       (a)       A sworn, written  
5   application for the appointment of a temporary guardian shall be  
6   filed before the court appoints a temporary guardian.

7           (b) The application must state:

8               (1) the name and address of the person who is the  
9   subject of the guardianship proceeding;

10              (2) the danger to the person or property alleged to be  
11   imminent;

12              (3) the type of appointment and the particular  
13   protection and assistance being requested;

14              (4) the facts and reasons supporting the allegations  
15   and requests;

16              (5) the proposed temporary guardian's name, address,  
17   and qualification;

18              (6) the applicant's name, address, and interest; and

19              (7) if applicable, that the proposed temporary  
20   guardian is a private professional guardian who is certified under  
21   Subchapter C, Chapter 111, Government Code, and has complied with  
22   the requirements of Subchapter G, Chapter 1104. (Tex. Prob. Code,  
23   Sec. 875(c).)

24           Sec. 1251.004. APPOINTMENT OF ATTORNEY. On the filing of an  
25   application for temporary guardianship, the court shall appoint an  
26   attorney to represent the proposed ward in all guardianship  
27   proceedings in which independent counsel has not been retained by



1 or on behalf of the proposed ward. (Tex. Prob. Code, Sec. 875(d).)

2       Sec. 1251.005. NOTICE OF APPLICATION. (a) On the filing of  
3 an application for temporary guardianship, the clerk shall issue  
4 notice to be served on:

- 5               (1) the proposed ward;  
6               (2) the proposed ward's appointed attorney; and  
7               (3) the proposed temporary guardian named in the  
8 application, if that person is not the applicant.

9       (b) The notice must describe:

- 10              (1) the rights of the parties; and  
11              (2) the date, time, place, purpose, and possible  
12 consequences of a hearing on the application.

13       (c) A copy of the application must be attached to the  
14 notice. (Tex. Prob. Code, Sec. 875(e).)

15       Sec. 1251.006. SCHEDULING OF HEARING. (a) Immediately  
16 after an application for a temporary guardianship is filed, the  
17 court shall issue an order setting a certain date for the hearing on  
18 the application.

19       (b) Unless postponed as provided by Subsection (c), a  
20 hearing shall be held not later than the 10th day after the date the  
21 application for temporary guardianship is filed.

22       (c) The proposed ward or the proposed ward's attorney may  
23 consent to postpone the hearing on the application for temporary  
24 guardianship for a period not to exceed 30 days after the date the  
25 application is filed.

26       (d) An application for temporary guardianship takes  
27 precedence over all matters except older matters of the same

1 character. (Tex. Prob. Code, Secs. 875(f)(1) (part), (2), (3),  
2 (4).)

3 Sec. 1251.007. MOTION FOR DISMISSAL OF APPLICATION. (a)  
4 Subject to Subsection (b), the proposed ward or the proposed ward's  
5 attorney may appear and move for the dismissal of the application  
6 for temporary guardianship.

7 (b) At least one day before making a motion under Subsection  
8 (a), the proposed ward or the proposed ward's attorney shall  
9 provide notice to the party who filed the application for temporary  
10 guardianship.

11 (c) If a motion is made for dismissal of the application for  
12 temporary guardianship, the court shall hear and determine the  
13 motion as expeditiously as justice requires. (Tex. Prob. Code,  
14 Sec. 875(f)(5).)

15 Sec. 1251.008. RIGHTS OF PROPOSED WARD AT HEARING. At a  
16 hearing under this subchapter, the proposed ward has the right to:

- 17 (1) receive prior notice;  
18 (2) be represented by counsel;  
19 (3) be present;  
20 (4) present evidence;  
21 (5) confront and cross-examine witnesses; and  
22 (6) a closed hearing if requested by the proposed ward  
23 or the proposed ward's attorney. (Tex. Prob. Code, Sec. 875(f)(1)  
24 (part).)

25 Sec. 1251.009. APPEARANCE BY PROPOSED TEMPORARY GUARDIAN IN  
26 CERTAIN CIRCUMSTANCES. If the applicant for a temporary  
27 guardianship is not the proposed temporary guardian, a temporary

guardianship may not be granted before a hearing on the application required by Section 1251.006(b) unless the proposed temporary guardian appears in court. (Tex. Prob. Code, Sec. 875(f)(6).)

Sec. 1251.010. ORDER APPOINTING TEMPORARY GUARDIAN. (a) The court shall appoint a temporary guardian by written order if, at the conclusion of the hearing required by Section 1251.006(b), the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person, that there is imminent danger that the proposed ward's physical health or safety will be seriously impaired, or that the proposed ward's estate will be seriously damaged or dissipated unless immediate action is taken.

(b) The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the proposed ward against the imminent danger shown.

(c) The order appointing the temporary guardian must describe:

- (1) the reasons for the temporary guardianship; and
  - (2) the powers and duties of the temporary guardian.
- (Tex. Prob. Code, Sec. 875(g) (part).)

Sec. 1251.011. CERTAIN AGENCY AS TEMPORARY GUARDIAN. A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the department as a temporary guardian under this chapter should be made only as a last resort. (Tex. Prob. Code, Sec. 875(j).)

Sec. 1251.012. TEMPORARY GUARDIAN'S BOND. The court shall

1 set bond for a temporary guardian according to Chapter 1105. (Tex.  
2 Prob. Code, Sec. 875(g) (part).)

3 Sec. 1251.013. COURT COSTS. If the court appoints a  
4 temporary guardian after the hearing required by Section  
5 1251.006(b), all court costs, including attorney's fees, may be  
6 assessed as provided by Sections 1155.051, 1155.151, and 665B.  
7 (Tex. Prob. Code, Sec. 875(i).)

8 [Sections 1251.014-1251.050 reserved for expansion]

9 SUBCHAPTER B. TEMPORARY GUARDIANSHIP PENDING CHALLENGE OR CONTEST  
10 OF CERTAIN GUARDIANSHIP APPLICATIONS

11 Sec. 1251.051. AUTHORITY TO APPOINT TEMPORARY GUARDIAN OR  
12 GRANT RESTRAINING ORDER. The court, on the court's own motion or on  
13 the motion of any interested party, may appoint a temporary  
14 guardian or grant a temporary restraining order under Rule 680,  
15 Texas Rules of Civil Procedure, or both, without issuing additional  
16 citation if:

17 (1) an application for a temporary guardianship, for  
18 the conversion of a temporary guardianship to a permanent  
19 guardianship, or for a permanent guardianship is challenged or  
20 contested; and

21 (2) the court finds that the appointment or the  
22 issuance of the order is necessary to protect the proposed ward or  
23 the proposed ward's estate. (Tex. Prob. Code, Sec. 875(k).)

24 Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN  
25 TEMPORARY GUARDIANSHIPS. (a) A temporary guardian appointed under  
26 Section 1251.051 must qualify in the same form and manner required  
27 of a guardian under this title.

1 (b) The term of a temporary guardian appointed under Section  
2 1251.051 expires:

3 (1) at the conclusion of the hearing challenging or  
4 contesting the application; or

5 (2) on the date a permanent guardian appointed by the  
6 court for the proposed ward qualifies to serve as the ward's  
7 guardian. (Tex. Prob. Code, Sec. 875(1).)

8 [Sections 1251.053-1251.100 reserved for expansion]

9 SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY GUARDIANS

10 Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN. (a) When  
11 the temporary guardian files the oath and bond required under this  
12 title, the court order appointing the temporary guardian takes  
13 effect without the necessity for issuance of letters of  
14 guardianship.

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

18 (c) The order appointing the temporary guardian is evidence  
19 of the temporary guardian's authority to act within the scope of the  
20 powers and duties stated in the order.

21 (d) The clerk may not issue certified copies of the order  
22 until the oath and bond requirements are satisfied. (Tex. Prob.  
23 Code, Sec. 876.)

24 Sec. 1251.102. APPLICABILITY OF GUARDIANSHIP PROVISIONS.  
25 The provisions of this title relating to the guardianship of the  
26 persons and estates of incapacitated persons apply to the temporary  
27 guardianship of the persons and estates of incapacitated persons,

1 to the extent the provisions may be made applicable. (Tex. Prob.  
2 Code, Sec. 877.)

3 [Sections 1251.103-1251.150 reserved for expansion]

4 SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP

5 Sec. 1251.151. DURATION OF TEMPORARY GUARDIANSHIP. Except  
6 as provided by Section 1251.052, a temporary guardianship may not  
7 remain in effect for more than 60 days. (Tex. Prob. Code, Sec.  
8 875(h).)

9 Sec. 1251.152. ACCOUNTING. (a) At the expiration of a  
10 temporary guardianship, the temporary guardian shall file with the  
11 court clerk:

12 (1) a sworn list of all estate property that has come  
13 into the temporary guardian's possession;

14 (2) a return of all sales made by the temporary  
15 guardian; and

16 (3) a full exhibit and account of all the temporary  
17 guardian's acts as temporary guardian.

18 (b) The court shall act on the list, return, exhibit, and  
19 account filed under Subsection (a). (Tex. Prob. Code, Secs. 878,  
20 879 (part).)

21 Sec. 1251.153. DELIVERY OF ESTATE; DISCHARGE OF TEMPORARY  
22 GUARDIAN. (a) When temporary letters expire or cease to be  
23 effective for any reason, the court immediately shall enter an  
24 order requiring the temporary guardian to deliver the estate  
25 remaining in the temporary guardian's possession to the person  
26 legally entitled to possession of the estate.

27 (b) On proof of delivery under Subsection (a):

(1) the temporary guardian shall be discharged; and

(2) the sureties on the temporary guardian's bond shall be released as to future liability. (Tex. Prob. Code, Sec. 879 (part).)

CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

SUBCHAPTER A. RESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Sec. 1252.001. GRANTING OF GUARDIANSHIP OF ESTATE FOR  
NONRESIDENT

Sec. 1252.002. COURT ACTIONS AND ORDERS CONCERNING  
ESTATE

Sec. 1252.003. CLOSING RESIDENT GUARDIANSHIP

[Sections 1252.004-1252.050 reserved for expansion]

SUBCHAPTER B. NONRESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Sec. 1252.051. APPOINTMENT AND QUALIFICATION OF  
NONRESIDENT GUARDIAN

Sec. 1252.052. APPOINTMENT; ISSUANCE OF LETTERS OF  
GUARDIANSHIP

Sec. 1252.053. INVENTORY AND APPRAISEMENT;  
ADMINISTRATION OF ESTATE

Sec. 1252.054. DELIVERY OF ESTATE TO CERTAIN GUARDIANS

Sec. 1252.055. REMOVAL OF WARD'S PROPERTY FROM STATE  
BY NONRESIDENT GUARDIAN

CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

SUBCHAPTER A. RESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Sec. 1252.001. GRANTING OF GUARDIANSHIP OF ESTATE FOR  
NONRESIDENT. (a) A guardianship of the estate of a nonresident  
incapacitated person who owns property in this state may be

1 granted, if necessary, in the same manner as for the property of a  
2 resident of this state.

3 (b) A court in the county in which the principal estate of  
4 the nonresident incapacitated person is located has jurisdiction to  
5 appoint the guardian. (Tex. Prob. Code, Sec. 882 (part).)

6 Sec. 1252.002. COURT ACTIONS AND ORDERS CONCERNING ESTATE.  
7 The court shall take all actions and make all necessary orders with  
8 respect to the estate described by Section 1252.001 of a  
9 nonresident ward for the maintenance, support, care, or education  
10 of the ward out of the proceeds of the estate, in the same manner as  
11 if the ward were a resident of this state sent abroad by the court  
12 for education or treatment. (Tex. Prob. Code, Sec. 882 (part).)

13 Sec. 1252.003. CLOSING RESIDENT GUARDIANSHIP. The court  
14 shall close a resident guardianship of an estate granted under this  
15 subchapter if a qualified nonresident guardian of the estate later  
16 qualifies in this state under Section 1252.051 as a nonresident  
17 guardian. (Tex. Prob. Code, Sec. 882 (part).)

18 [Sections 1252.004-1252.050 reserved for expansion]

19 SUBCHAPTER B. NONRESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

20 Sec. 1252.051. APPOINTMENT AND QUALIFICATION OF  
21 NONRESIDENT GUARDIAN. (a) A nonresident of this state may be  
22 appointed and qualified as guardian or coguardian of a nonresident  
23 ward's estate located in this state in the same manner provided by  
24 this title for the appointment and qualification of a resident  
25 guardian of the estate of an incapacitated person if:

26 (1) a court of competent jurisdiction in the  
27 geographical jurisdiction in which the nonresident resides



1 appointed the nonresident guardian;

2 (2) the nonresident is qualified as guardian or as a  
3 fiduciary legal representative by any name known in the foreign  
4 jurisdiction of the property or estate of the ward located in the  
5 jurisdiction of the foreign court; and

6 (3) the nonresident, with the written application for  
7 appointment, files in the county court of a county of this state in  
8 which all or part of the nonresident ward's estate is located a  
9 complete transcript of the proceedings from the records of the  
10 court in which the nonresident applicant was appointed.

11 (b) The transcript required by Subsection (a)(3) must:

12 (1) show the applicant's appointment and qualification  
13 as guardian or other fiduciary legal representative of the ward's  
14 property or estate;

15 (2) be certified to and attested by the clerk of the  
16 foreign court or the court officer charged by law with custody of  
17 the court records, under the court seal, if any; and

18 (3) have attached a certificate of the judge, chief  
19 justice, or presiding magistrate of the foreign court certifying  
20 that the attestation of the clerk or legal custodian of the court  
21 records is in correct form. (Tex. Prob. Code, Secs. 881(a), (b).)

22 Sec. 1252.052. APPOINTMENT; ISSUANCE OF LETTERS OF  
23 GUARDIANSHIP. (a) If a nonresident applicant meets the  
24 requirements of Section 1252.051, without the necessity of notice  
25 or citation, the court shall enter an order appointing the  
26 nonresident as guardian or coguardian of a nonresident ward's  
27 estate located in this state.

1           (b) After the nonresident applicant qualifies in the manner  
2 required of resident guardians and files with the court a power of  
3 attorney appointing a resident agent to accept service of process  
4 in all actions or proceedings with respect to the estate, the clerk  
5 shall issue the letters of guardianship to the nonresident  
6 guardian. (Tex. Prob. Code, Sec. 881(c).)

7           Sec. 1252.053. INVENTORY AND APPRAISEMENT; ADMINISTRATION  
8 OF ESTATE. After qualification, a nonresident guardian:

9                 (1) shall file an inventory and appraisal of the  
10 ward's estate in this state subject to the court's jurisdiction, as  
11 in ordinary cases; and

12                (2) is subject to the applicable provisions of this  
13 code governing the handling and settlement of an estate by a  
14 resident guardian. (Tex. Prob. Code, Sec. 881(d).)

15           Sec. 1252.054. DELIVERY OF ESTATE TO CERTAIN GUARDIANS.  
16 The court may order a resident guardian who has any of the ward's  
17 estate to deliver the estate to a qualified and acting guardian of  
18 the ward. (Tex. Prob. Code, Sec. 881(e).)

19           Sec. 1252.055. REMOVAL OF WARD'S PROPERTY FROM STATE BY  
20 NONRESIDENT GUARDIAN. Regardless of whether qualified under this  
21 title, a nonresident guardian may remove personal property of the  
22 ward from this state if:

23                 (1) the removal does not conflict with the tenure of  
24 the property or the terms of the guardianship under which the  
25 property is held; and

26                 (2) all known debts against the estate in this state  
27 are paid or secured by a bond payable to and approved by the judge of

the court in which guardianship proceedings are pending in this state. (Tex. Prob. Code, Sec. 881A.)

CHAPTER 1253. INTERSTATE GUARDIANSHIPS

SUBCHAPTER A. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION

Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION

Sec. 1253.002. NOTICE OF APPLICATION

Sec. 1253.003. DETERMINATION REGARDING TRANSFER OF GUARDIANSHIP

[Sections 1253.004-1253.050 reserved for expansion]

SUBCHAPTER B. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

Sec. 1253.052. NOTICE OF APPLICATION

Sec. 1253.053. DETERMINATION REGARDING RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

Sec. 1253.054. HEARING TO CONSIDER MODIFICATION

Sec. 1253.055. GUARDIANSHIP TRANSFER PROCEEDINGS FILED IN TWO OR MORE COURTS

Sec. 1253.056. CONSTRUCTION WITH OTHER LAW

[Sections 1253.057-1253.100 reserved for expansion]

SUBCHAPTER C. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN FOREIGN JURISDICTION

Sec. 1253.101. DELAY OF CERTAIN GUARDIANSHIP PROCEEDINGS

Sec. 1253.102. DETERMINATION OF VENUE; ACTION FOLLOWING DETERMINATION

1 Sec. 1253.103. NECESSARY ORDERS

2 CHAPTER 1253. INTERSTATE GUARDIANSHIPS

3 SUBCHAPTER A. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION

4 Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO  
5 FOREIGN JURISDICTION. A guardian of the person or estate may apply  
6 to the court that has jurisdiction over the guardianship to  
7 transfer the guardianship to a court in a foreign jurisdiction to  
8 which the ward has permanently moved. (Tex. Prob. Code, Sec.  
9 891(a).)

10 Sec. 1253.002. NOTICE OF APPLICATION. Notice of an  
11 application to transfer a guardianship under this subchapter shall  
12 be:

13 (1) served personally on the ward; and

14 (2) given to the foreign court to which the  
15 guardianship is to be transferred. (Tex. Prob. Code, Sec. 891(b).)

16 Sec. 1253.003. DETERMINATION REGARDING TRANSFER OF  
17 GUARDIANSHIP. (a) On the court's own motion or on the motion of the  
18 ward or any interested person, the court shall hold a hearing to  
19 consider an application to transfer a guardianship under this  
20 subchapter.

21 (b) The court shall transfer a guardianship to a foreign  
22 court if the court determines the transfer is in the best interests  
23 of the ward. The transfer of the guardianship must be made  
24 contingent on the acceptance of the guardianship in the foreign  
25 jurisdiction.

26 (c) The court shall coordinate efforts with the appropriate  
27 foreign court to facilitate the orderly transfer of the

guardianship. (Tex. Prob. Code, Secs. 891(c), (d).)

[Sections 1253.004-1253.050 reserved for expansion]

SUBCHAPTER B. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. (Tex. Prob. Code, Sec. 892(a).)

Sec. 1253.052. NOTICE OF APPLICATION. Notice of an application for receipt and acceptance of a foreign guardianship under this subchapter shall be:

(1) served personally on the ward; and

(2) given to the foreign court from which the guardianship is to be transferred. (Tex. Prob. Code, Sec. 892(b).)

Sec. 1253.053. DETERMINATION REGARDING RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider an application for receipt and acceptance of a foreign guardianship under this subchapter.

(b) In reviewing the application, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more

1 states may have jurisdiction, that the application has been filed  
2 in the court that is best suited to consider the matter.

3 (c) The court shall grant the application if the transfer of  
4 the guardianship from the foreign jurisdiction is in the best  
5 interests of the ward.

6 (d) In granting the application, the court shall give full  
7 faith and credit to the provisions of the foreign guardianship  
8 order concerning the determination of the ward's incapacity and the  
9 rights, powers, and duties of the guardian.

10 (e) The court shall coordinate efforts with the appropriate  
11 foreign court to facilitate the orderly transfer of the  
12 guardianship. (Tex. Prob. Code, Secs. 892(d), (e), (f), (g).)

13 Sec. 1253.054. HEARING TO CONSIDER MODIFICATION. Not later  
14 than the 90th day after the date a court grants an application for  
15 receipt and acceptance of a foreign guardianship under this  
16 subchapter, the court shall hold a hearing to consider modifying  
17 the administrative procedures or requirements of the transferred  
18 guardianship in accordance with local and state law. (Tex. Prob.  
19 Code, Sec. 893.)

20 Sec. 1253.055. GUARDIANSHIP TRANSFER PROCEEDINGS FILED IN  
21 TWO OR MORE COURTS. If an application for receipt and acceptance of  
22 a foreign guardianship under this subchapter is filed in two or more  
23 courts with jurisdiction, the proceeding shall be heard in the  
24 court with jurisdiction over the application filed on the earliest  
25 date, if venue is otherwise proper in that court. A court that does  
26 not have venue to hear the application shall transfer the  
27 proceeding to the proper court. (Tex. Prob. Code, Sec. 892(c).)



1 and

2 (3) the convenience of the parties.

3 (c) The court shall resume the guardianship proceeding  
4 delayed under Section 1253.101 if the court determines under this  
5 section that venue is more suitable in that court. If the court  
6 determines that venue is more suitable in the foreign court, the  
7 court shall, with the consent of the foreign court, transfer the  
8 proceeding to that foreign court. (Tex. Prob. Code, Secs. 894(b),  
9 (d).)

10 Sec. 1253.103. NECESSARY ORDERS. A court that delays  
11 further action in a guardianship proceeding under Section 1253.101  
12 may issue any order the court considers necessary to protect the  
13 proposed ward or the proposed ward's estate. (Tex. Prob. Code, Sec.  
14 894(c).)

15 [Chapters 1254-1300 reserved for expansion]

16 SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS

17 CHAPTER 1301. MANAGEMENT TRUSTS

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 1301.001. DEFINITION

20 Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE

21 [Sections 1301.003-1301.050 reserved for expansion]

22 SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

23 Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF  
24 TRUST

25 Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING ALLEGED  
26 INCAPACITATED PERSON

27 Sec. 1301.053. CREATION OF TRUST FOR WARD



1 Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED  
2 PERSON WITHOUT GUARDIAN  
3 Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN  
4 INSTEAD OF CREATING TRUST  
5 Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST  
6 Sec. 1301.057. APPOINTMENT OF TRUSTEE  
7 Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES  
8 [Sections 1301.059-1301.100 reserved for expansion]  
9 SUBCHAPTER C. TERMS OF MANAGEMENT TRUST  
10 Sec. 1301.101. REQUIRED TERMS  
11 Sec. 1301.102. OPTIONAL TERMS  
12 Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS  
13 [Sections 1301.104-1301.150 reserved for expansion]  
14 SUBCHAPTER D. ADMINISTRATION OF MANAGEMENT TRUSTS  
15 Sec. 1301.151. JURISDICTION OVER TRUST MATTERS  
16 Sec. 1301.152. COURT'S AUTHORITY TO DISCHARGE GUARDIAN  
17 OF ESTATE  
18 Sec. 1301.153. INVESTMENT IN TEXAS TOMORROW FUND  
19 Sec. 1301.154. ANNUAL ACCOUNTING  
20 Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE  
21 Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR  
22 CONDUCT OF TRUSTEE  
23 [Sections 1301.157-1301.200 reserved for expansion]  
24 SUBCHAPTER E. MODIFICATION, REVOCATION, OR TERMINATION OF  
25 MANAGEMENT TRUSTS  
26 Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST  
27 Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT

1 Sec. 1301.203. TERMINATION OF TRUST

2 Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY

3 CHAPTER 1301. MANAGEMENT TRUSTS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 1301.001. DEFINITION. In this chapter, "management  
6 trust" means a trust created under Section 1301.053 or 1301.054.  
7 (New.)

8 Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE. (a) A  
9 management trust is subject to Subtitle B, Title 9, Property Code.

10 (b) To the extent of a conflict between Subtitle B, Title 9,  
11 Property Code, and a provision of this chapter or of a management  
12 trust, the provision of this chapter or of the trust controls.  
13 (Tex. Prob. Code, Sec. 869B.)

14 [Sections 1301.003-1301.050 reserved for expansion]

15 SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

16 Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST.  
17 The following persons may apply for the creation of a trust under  
18 this subchapter:

19 (1) the guardian of a ward;  
20 (2) an attorney ad litem or guardian ad litem  
21 appointed to represent a ward or the ward's interests;

22 (3) a person interested in the welfare of an alleged  
23 incapacitated person who does not have a guardian of the estate; or

24 (4) an attorney ad litem or guardian ad litem  
25 appointed to represent:

26 (A) an alleged incapacitated person who does not  
27 have a guardian; or

1 (B) the interests of a person described by  
2 Paragraph (A). (Tex. Prob. Code, Sec. 867(a-1).)

3 Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING ALLEGED  
4 INCAPACITATED PERSON. (a) An application for the creation of a  
5 trust under Section 1301.054 for an alleged incapacitated person  
6 must be filed in the same court in which a proceeding for the  
7 appointment of a guardian for the person is pending, if any.

8 (b) If a proceeding for the appointment of a guardian for an  
9 alleged incapacitated person is not pending on the date an  
10 application is filed for the creation of a trust under Section  
11 1301.054 for the person, venue for a proceeding to create a trust  
12 must be determined in the same manner as venue for a proceeding for  
13 the appointment of a guardian is determined under Section 610.  
14 (Tex. Prob. Code, Secs. 867(b-2), 867A.)

15 Sec. 1301.053. CREATION OF TRUST FOR WARD. (a) On  
16 application by an appropriate person as provided by Section  
17 1301.051, the court with jurisdiction over a guardianship may enter  
18 an order that creates for the ward's benefit a trust for the  
19 management of guardianship funds if the court finds that the  
20 creation of the trust is in the ward's best interests.

21 (b) The court shall maintain a trust created under this  
22 section under the same cause number as the guardianship proceeding.  
23 (Tex. Prob. Code, Secs. 867(b), (f) (part).)

24 Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON  
25 WITHOUT GUARDIAN. (a) On application by an appropriate person as  
26 provided by Section 1301.051 and regardless of whether an  
27 application for guardianship has been filed on the alleged

1 incapacitated person's behalf, a proper court exercising probate  
2 jurisdiction may enter an order that creates a trust for the  
3 management of the estate of an alleged incapacitated person who  
4 does not have a guardian if the court, after a hearing, finds that:

5 (1) the person is an incapacitated person; and

6 (2) the creation of the trust is in the incapacitated  
7 person's best interests.

8 (b) The court shall conduct the hearing to determine  
9 incapacity under Subsection (a) using the same procedures and  
10 evidentiary standards as are required in a hearing for the  
11 appointment of a guardian for a proposed ward.

12 (c) The court shall appoint an attorney ad litem and, if  
13 necessary, may appoint a guardian ad litem, to represent the  
14 interests of the alleged incapacitated person in the hearing to  
15 determine incapacity under Subsection (a).

16 (d) The court shall maintain a trust created under this  
17 section under the same cause number as the guardianship proceeding,  
18 if applicable. (Tex. Prob. Code, Secs. 867(b-1), (b-3), (f)  
19 (part).)

20 Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN  
21 INSTEAD OF CREATING TRUST. If, after a hearing under Section  
22 1301.054, the court finds that the person for whom the application  
23 was filed is an incapacitated person but that it is not in the  
24 person's best interests for the court to create a trust under this  
25 subchapter for the person's estate, the court may appoint a  
26 guardian of the person or estate, or both, for the incapacitated  
27 person without commencing a separate proceeding for that purpose.

(Tex. Prob. Code, Sec. 867(b-4).)

Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST. An order creating a management trust must:

(1) direct a person holding property that belongs to the ward or incapacitated person, as applicable, for whom the trust is created or to which the ward or incapacitated person is entitled, to deliver all or part of that property to the corporate fiduciary or other person appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust.

(Tex. Prob. Code, Sec. 867(f) (part).)

Sec. 1301.057. APPOINTMENT OF TRUSTEE. (a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this state, another state, or the United States.

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the ward or incapacitated person for whom the trust is created; and

(2) if the value of the trust's principal is more than \$150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial

1 institution in the geographic area willing to serve as trustee.

2 (d) The following are eligible for appointment as trustee  
3 under Subsection (c):

4 (1) an individual, including an individual who is  
5 certified as a private professional guardian;

6 (2) a nonprofit corporation qualified to serve as a  
7 guardian; and

8 (3) a guardianship program. (Tex. Prob. Code, Secs.  
9 867(a), (b-5), (c), (d), (e).)

10 Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES. (a) A  
11 trustee of a management trust that is a corporate fiduciary serves  
12 without giving a bond in accordance with the trust terms required by  
13 Section 1301.101(a)(4).

14 (b) The court shall require a person, other than a corporate  
15 fiduciary, serving as trustee of a management trust to file with the  
16 county clerk a bond that:

17 (1) is in an amount equal to the value of the trust's  
18 principal and projected annual income; and

19 (2) meets the conditions the court determines are  
20 necessary. (Tex. Prob. Code, Secs. 868(a) (part), 868B.)

21 [Sections 1301.059-1301.100 reserved for expansion]

22 SUBCHAPTER C. TERMS OF MANAGEMENT TRUST

23 Sec. 1301.101. REQUIRED TERMS. (a) Except as provided by  
24 Subsection (c), a management trust must provide that:

25 (1) the ward or incapacitated person for whom the  
26 trust is created is the sole beneficiary of the trust;

27 (2) the trustee may disburse an amount of the trust's

1 principal or income as the trustee determines is necessary to spend  
2 for the health, education, maintenance, or support of the ward or  
3 incapacitated person;

4 (3) the trust income that the trustee does not  
5 disburse under Subdivision (2) must be added to the trust  
6 principal;

7 (4) a trustee that is a corporate fiduciary serves  
8 without giving a bond; and

9 (5) subject to the court's approval and Subsection  
10 (b), the trustee is entitled to receive reasonable compensation for  
11 services the trustee provides to the ward or incapacitated person  
12 as trustee.

13 (b) A trustee's compensation under Subsection (a)(5) must  
14 be:

15 (1) paid from the management trust's income,  
16 principal, or both; and

17 (2) determined, paid, reduced, and eliminated in the  
18 same manner as compensation of a guardian of an estate under  
19 Subchapter A, Chapter 1155.

20 (c) The court creating or modifying a management trust may  
21 omit or modify terms required by Subsection (a)(1) or (2) only if  
22 the court determines that the omission or modification:

23 (1) is necessary and appropriate for the ward or  
24 incapacitated person to be eligible to receive public benefits or  
25 assistance under a state or federal program that is not otherwise  
26 available to the ward or incapacitated person; and

27 (2) is in the ward's or incapacitated person's best

interests. (Tex. Prob. Code, Secs. 868(a), (d).)

Sec. 1301.102. OPTIONAL TERMS. (a) A management trust may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the ward or incapacitated person for whom the trust is created or of another person whom the ward or incapacitated person is legally obligated to support:

(1) as necessary and without the intervention of:

(A) a guardian or other representative of the ward; or

(B) a representative of the incapacitated person; and

(2) to:

(A) the ward's guardian;

(B) a person who has physical custody of the ward or incapacitated person or of another person whom the ward or incapacitated person is legally obligated to support; or

(C) a person providing a good or service to the ward or incapacitated person or to another person whom the ward or incapacitated person is legally obligated to support.

(b) The court may include additional provisions in a management trust on the trust's creation or modification under this chapter if the court determines the addition does not conflict with Section 1301.101. (Tex. Prob. Code, Secs. 868(b), (e).)

Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS. A provision in a management trust that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B, Title 9,



1 Property Code, is enforceable only if:

2 (1) the provision is limited to specific facts and  
3 circumstances unique to the property of that trust and is not  
4 applicable generally to the trust; and

5 (2) the court creating or modifying the trust makes a  
6 specific finding that there is clear and convincing evidence that  
7 the inclusion of the provision is in the best interests of the trust  
8 beneficiary. (Tex. Prob. Code, Sec. 868(c).)

9 [Sections 1301.104-1301.150 reserved for expansion]

10 SUBCHAPTER D. ADMINISTRATION OF MANAGEMENT TRUSTS

11 Sec. 1301.151. JURISDICTION OVER TRUST MATTERS. A court  
12 that creates a management trust has the same jurisdiction to hear  
13 matters relating to the trust as the court has with respect to  
14 guardianship and other matters covered by this title. (Tex. Prob.  
15 Code, Sec. 869C.)

16 Sec. 1301.152. COURT'S AUTHORITY TO DISCHARGE GUARDIAN OF  
17 ESTATE. On or at any time after the creation of a management trust,  
18 the court may discharge the guardian of the ward's estate if the  
19 court determines that the discharge is in the ward's best  
20 interests. (Tex. Prob. Code, Sec. 868A.)

21 Sec. 1301.153. INVESTMENT IN TEXAS TOMORROW FUND. The  
22 trustee of a management trust may invest trust funds in the Texas  
23 tomorrow fund established by Subchapter F, Chapter 54, Education  
24 Code, if the trustee determines that investment is in the best  
25 interest of the ward or incapacitated person for whom the trust is  
26 created. (Tex. Prob. Code, Sec. 868(f).)

27 Sec. 1301.154. ANNUAL ACCOUNTING. (a) The trustee of a

1 management trust shall prepare and file with the court an annual  
2 accounting of transactions in the trust in the same manner and form  
3 that is required of a guardian under this title.

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

7 (c) The annual account is subject to court review and  
8 approval in the same manner that is required of an annual account  
9 prepared by a guardian under this title. (Tex. Prob. Code, Sec.  
10 871.)

11 Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE. The court  
12 may appoint a successor trustee if the trustee of a management trust  
13 resigns, becomes ineligible, or is removed. (Tex. Prob. Code, Sec.  
14 869A.)

15 Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR CONDUCT OF  
16 TRUSTEE. The guardian of the person or of the estate of a ward for  
17 whom a management trust is created or the surety on the guardian's  
18 bond is not liable for an act or omission of the trustee of the  
19 trust. (Tex. Prob. Code, Sec. 872.)

20 [Sections 1301.157-1301.200 reserved for expansion]

21 SUBCHAPTER E. MODIFICATION, REVOCATION, OR TERMINATION OF  
22 MANAGEMENT TRUSTS

23 Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST. (a)  
24 The court may modify or revoke a management trust at any time before  
25 the date of the trust's termination.

26 (b) The following may not revoke a management trust:

27 (1) the ward for whom the trust is created or the

1 guardian of the ward's estate; or

2 (2) the incapacitated person for whom the trust is  
3 created. (Tex. Prob. Code, Sec. 869.)

4 Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT. (a) If  
5 the court determines that it is in the best interests of a ward or  
6 incapacitated person for whom a management trust is created, the  
7 court may order the transfer of all property in the management trust  
8 to a pooled trust subaccount established in accordance with Chapter  
9 1302.

10 (b) The transfer of property from the management trust to  
11 the pooled trust subaccount shall be treated as a continuation of  
12 the management trust and may not be treated as the establishment of  
13 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)  
14 or otherwise for purposes of the ward's or incapacitated person's  
15 eligibility for medical assistance under Chapter 32, Human  
16 Resources Code.

17 (c) The court may not allow termination of the management  
18 trust from which property is transferred under this section until  
19 all of the property in the management trust has been transferred to  
20 the pooled trust subaccount. (Tex. Prob. Code, Sec. 868C.)

21 Sec. 1301.203. TERMINATION OF TRUST. (a) If the ward or  
22 incapacitated person for whom a management trust is created is a  
23 minor, the trust terminates on:

24 (1) the earlier of:

25 (A) the ward's or incapacitated person's death;

26 or

27 (B) the ward's or incapacitated person's 18th

1 birthday; or

2 (2) the date provided by court order, which may not be  
3 later than the ward's or incapacitated person's 25th birthday.

4 (b) If the ward or incapacitated person for whom a  
5 management trust is created is not a minor, the trust terminates on:

6 (1) the date the court determines that continuing the  
7 trust is no longer in the ward's or incapacitated person's best  
8 interests, subject to Section 1301.202(c); or

9 (2) the ward's or incapacitated person's death. (Tex.  
10 Prob. Code, Sec. 870.)

11 Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY. Unless  
12 otherwise provided by the court, the trustee of a management trust  
13 shall:

14 (1) prepare a final account in the same form and manner  
15 that is required of a guardian under Sections 1204.101 and  
16 1204.102; and

17 (2) on court approval, distribute the principal or any  
18 undistributed income of the trust to:

19 (A) the ward or incapacitated person when the  
20 trust terminates on the trust's own terms;

21 (B) the successor trustee on appointment of a  
22 successor trustee; or

23 (C) the representative of the deceased ward's or  
24 incapacitated person's estate on the ward's or incapacitated  
25 person's death. (Tex. Prob. Code, Sec. 873.)

26 CHAPTER 1302. POOLED TRUST SUBACCOUNTS

27 Sec. 1302.001. DEFINITIONS

1 Sec. 1302.002. APPLICATION TO ESTABLISH SUBACCOUNT

2 Sec. 1302.003. APPOINTMENT OF ATTORNEY AD LITEM

3 Sec. 1302.004. ESTABLISHMENT OF SUBACCOUNT

4 Sec. 1302.005. TERMS OF SUBACCOUNT

5 Sec. 1302.006. FEES AND REPORTING

6 Sec. 1302.007. JURISDICTION EXCLUSIVE

7 CHAPTER 1302. POOLED TRUST SUBACCOUNTS

8 Sec. 1302.001. DEFINITIONS. In this chapter:

9 (1) "Beneficiary" means a person for whom a subaccount  
10 is established.

11 (2) "Medical assistance" means benefits and services  
12 under the medical assistance program administered under Chapter 32,  
13 Human Resources Code.

14 (3) "Pooled trust" means a trust that meets the  
15 requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of  
16 exempting the trust from the applicability of 42 U.S.C. Section  
17 1396p(d) in determining the eligibility of a person who is disabled  
18 for medical assistance.

19 (4) "Subaccount" means an account in a pooled trust  
20 established solely for the benefit of a beneficiary. (Tex. Prob.  
21 Code, Sec. 910.)

22 Sec. 1302.002. APPLICATION TO ESTABLISH SUBACCOUNT. A  
23 person interested in the welfare of a minor, a disabled person, or  
24 any other incapacitated person may apply to the court for the  
25 establishment of a subaccount for the benefit of the minor,  
26 disabled person, or other incapacitated person as the beneficiary.  
27 (Tex. Prob. Code, Sec. 911.)

1           Sec. 1302.003. APPOINTMENT OF ATTORNEY AD LITEM. (a) The  
2 court shall appoint an attorney ad litem for a person who is a minor  
3 or has a mental disability and who is the subject of an application  
4 under Section 1302.002.

5           (b) The attorney ad litem is entitled to a reasonable fee  
6 and reimbursement of expenses to be paid from the person's  
7 property. (Tex. Prob. Code, Sec. 912.)

8           Sec. 1302.004. ESTABLISHMENT OF SUBACCOUNT. If the court  
9 finds that it is in the best interests of a person who is the subject  
10 of an application under Section 1302.002, the court may order:

11           (1) the establishment of a subaccount of which the  
12 person is the beneficiary; and

13           (2) the transfer to the subaccount of any of the  
14 person's property on hand or accruing to the person. (Tex. Prob.  
15 Code, Sec. 913.)

16           Sec. 1302.005. TERMS OF SUBACCOUNT. Unless the court  
17 orders otherwise, the terms governing the subaccount must provide  
18 that:

19           (1) the subaccount terminates on the earliest of the  
20 date of:

21           (A) the beneficiary's 18th birthday, if the  
22 beneficiary is not disabled on that date and was a minor at the time  
23 the subaccount was established;

24           (B) the beneficiary's death; or

25           (C) a court order terminating the subaccount;

26 and

27           (2) on termination, any property remaining in the

1 beneficiary's subaccount after making any required payments to  
2 satisfy the amounts of medical assistance reimbursement claims for  
3 medical assistance provided to the beneficiary under this state's  
4 medical assistance program and other states' medical assistance  
5 programs shall be distributed to:

6 (A) the beneficiary, if on the date of  
7 termination the beneficiary is living and is not incapacitated;

8 (B) the beneficiary's guardian, if on the date of  
9 termination the beneficiary is living and is incapacitated; or

10 (C) the personal representative of the  
11 beneficiary's estate, if on the date of termination the beneficiary  
12 is deceased. (Tex. Prob. Code, Sec. 914.)

13 Sec. 1302.006. FEES AND REPORTING. (a) The manager or  
14 trustee of a pooled trust may:

15 (1) assess fees against a subaccount of that pooled  
16 trust that is established under this chapter, in accordance with  
17 the manager's or trustee's standard fee structure; and

18 (2) pay fees assessed under Subdivision (1) from the  
19 subaccount.

20 (b) If required by the court, the manager or trustee of the  
21 pooled trust shall file a copy of the annual report of account with  
22 the court clerk. (Tex. Prob. Code, Sec. 916.)

23 Sec. 1302.007. JURISDICTION EXCLUSIVE. Notwithstanding  
24 any other law, the court that orders the establishment of a  
25 subaccount for a beneficiary has exclusive jurisdiction of a  
26 subsequent proceeding or action that relates to both the  
27 beneficiary and the subaccount, and the proceeding or action may be

brought only in that court. (Tex. Prob. Code, Sec. 915.)

[Chapters 1303-1350 reserved for expansion]

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO  
GUARDIANSHIP

CHAPTER 1351. SALE OF PROPERTY OF CERTAIN INCAPACITATED PERSONS

SUBCHAPTER A. SALE OF MINOR'S INTEREST IN PROPERTY WITHOUT  
GUARDIANSHIP

Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN  
PROPERTY WITHOUT GUARDIANSHIP

Sec. 1351.002. APPLICATION; VENUE

Sec. 1351.003. HEARING; REQUIREMENTS FOR SALE

Sec. 1351.004. PAYMENT OF SALE PROCEEDS INTO COURT  
REGISTRY

Sec. 1351.005. WITHDRAWAL OF SALE PROCEEDS FROM  
REGISTRY NOT PROHIBITED

Sec. 1351.006. DISAFFIRMATION OF SALE PROHIBITED

[Sections 1351.007-1351.050 reserved for expansion]

SUBCHAPTER B. SALE OF WARD'S PROPERTY WITHOUT GUARDIANSHIP OF THE  
ESTATE

Sec. 1351.051. APPLICABILITY OF SUBCHAPTER

Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN  
PROPERTY WITHOUT APPOINTMENT AS  
GUARDIAN OF THE ESTATE

Sec. 1351.053. APPLICATION; VENUE

Sec. 1351.054. HEARING

Sec. 1351.055. PAYMENT OF SALE PROCEEDS INTO COURT  
REGISTRY



1 Sec. 1351.056. WITHDRAWAL OF SALE PROCEEDS FROM

2 REGISTRY NOT PROHIBITED

3 Sec. 1351.057. DISAFFIRMATION OF SALE PROHIBITED

4 CHAPTER 1351. SALE OF PROPERTY OF CERTAIN INCAPACITATED PERSONS

5 SUBCHAPTER A. SALE OF MINOR'S INTEREST IN PROPERTY WITHOUT

6 GUARDIANSHIP

7 Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN  
8 PROPERTY WITHOUT GUARDIANSHIP. A parent or managing conservator of  
9 a minor who is not a ward may apply to the court under this  
10 subchapter for an order to sell an interest of the minor in property  
11 without being appointed guardian if the net value of the interest  
12 does not exceed \$100,000. (Tex. Prob. Code, Sec. 889(a) (part).)

13 Sec. 1351.002. APPLICATION; VENUE. (a) A parent or  
14 managing conservator shall apply to the court under oath for the  
15 sale of property under this subchapter.

16 (b) An application must contain:

- 17 (1) the minor's name;
- 18 (2) a legal description of the real property or a  
19 description that identifies the personal property, as applicable;
- 20 (3) the minor's interest in the property;
- 21 (4) the purchaser's name;
- 22 (5) a statement that the sale of the minor's interest  
23 in the property is for cash; and
- 24 (6) a statement that all money received by the parent  
25 or managing conservator shall be used for the minor's use and  
26 benefit.

27 (c) Venue for the application is the same as venue for an

1 application for the appointment of a guardian for a minor. (Tex.  
2 Prob. Code, Sec. 889(b).)

3 Sec. 1351.003. HEARING; REQUIREMENTS FOR SALE. (a) On  
4 receipt of an application under this subchapter, the court shall  
5 set the application for hearing on a date not earlier than five days  
6 from the date the application was filed.

7 (b) The court may cause citation to be issued if the court  
8 considers citation necessary.

9 (c) At the time of the hearing, the court shall order the  
10 sale of the property if the court is satisfied from the evidence  
11 that the sale is in the minor's best interests. The court may  
12 require an independent appraisal of the property to be sold to  
13 establish the minimum sale price. (Tex. Prob. Code, Secs. 889(c),  
14 (d).)

15 Sec. 1351.004. PAYMENT OF SALE PROCEEDS INTO COURT  
16 REGISTRY. If the court enters an order of sale of property as  
17 provided by this subchapter, the purchaser of the property shall  
18 pay the proceeds of the sale belonging to the minor into the court  
19 registry. (Tex. Prob. Code, Sec. 889(e).)

20 Sec. 1351.005. WITHDRAWAL OF SALE PROCEEDS FROM REGISTRY  
21 NOT PROHIBITED. This subchapter does not prevent the sale proceeds  
22 deposited into the court registry under Section 1351.004 from being  
23 withdrawn from the court registry under Chapter 1355. (Tex. Prob.  
24 Code, Sec. 889(f).)

25 Sec. 1351.006. DISAFFIRMATION OF SALE PROHIBITED. A minor  
26 may not disaffirm a sale of property made in accordance with a court  
27 order under this subchapter. (Tex. Prob. Code, Sec. 889(a)

1 (part).)

2 [Sections 1351.007-1351.050 reserved for expansion]

3 SUBCHAPTER B. SALE OF WARD'S PROPERTY WITHOUT GUARDIANSHIP OF THE  
4 ESTATE

5 Sec. 1351.051. APPLICABILITY OF SUBCHAPTER. This  
6 subchapter applies only to a ward who has a guardian of the person  
7 but does not have a guardian of the estate. (Tex. Prob. Code, Sec.  
8 890(a).)

9 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN  
10 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE. A guardian  
11 of the person of a ward may apply to the court under this subchapter  
12 for an order to sell an interest in property in the ward's estate  
13 without being appointed guardian of the ward's estate if the net  
14 value of the interest does not exceed \$100,000. (Tex. Prob. Code,  
15 Sec. 890(b) (part).)

16 Sec. 1351.053. APPLICATION; VENUE. (a) An application  
17 under this subchapter must:

18 (1) be under oath; and

19 (2) contain the information required by Section  
20 1351.002(b).

21 (b) For purposes of Subsection (a)(2), references in  
22 Section 1351.002(b) to:

23 (1) "minor" are replaced with references to "ward";  
24 and

25 (2) "parent or managing conservator" are replaced with  
26 references to "guardian of the person."

27 (c) Venue for the application is the same as venue for an

1 application for the appointment of a guardian for the ward. (Tex.  
2 Prob. Code, Secs. 890(b) (part), (c); New.)

3 Sec. 1351.054. HEARING. (a) On receipt of an application  
4 under this subchapter, the court shall set the application for  
5 hearing on a date not earlier than five days from the date the  
6 application was filed.

7 (b) The court may cause citation to be issued if the court  
8 considers citation necessary.

9 (c) The procedures and evidentiary requirements for the  
10 hearing are the same as the procedures and evidentiary requirements  
11 for a hearing of an application filed under Subchapter A. (Tex.  
12 Prob. Code, Secs. 890(d), (e).)

13 Sec. 1351.055. PAYMENT OF SALE PROCEEDS INTO COURT  
14 REGISTRY. If the court enters an order of sale of property as  
15 provided by this subchapter, the purchaser of the property shall  
16 pay the proceeds of the sale belonging to the ward into the court  
17 registry. (Tex. Prob. Code, Sec. 890(f).)

18 Sec. 1351.056. WITHDRAWAL OF SALE PROCEEDS FROM REGISTRY  
19 NOT PROHIBITED. This subchapter does not prevent the sale proceeds  
20 deposited into the court registry under Section 1351.055 from being  
21 withdrawn from the court registry under Chapter 1355. (Tex. Prob.  
22 Code, Sec. 890(g).)

23 Sec. 1351.057. DISAFFIRMATION OF SALE PROHIBITED. A ward  
24 may not disaffirm a sale of property made in accordance with a court  
25 order under this subchapter. (Tex. Prob. Code, Sec. 890(b)  
26 (part).)

CHAPTER 1352. MORTGAGE OF MINOR'S INTEREST IN RESIDENCE HOMESTEAD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1352.001. DEFINITIONS

[Sections 1352.002-1352.050 reserved for expansion]

SUBCHAPTER B. MORTGAGE OF MINOR'S INTEREST WITHOUT GUARDIANSHIP

Sec. 1352.051. APPLICABILITY OF SUBCHAPTER

Sec. 1352.052. AUTHORITY TO MORTGAGE MINOR'S INTEREST

WITHOUT GUARDIANSHIP

Sec. 1352.053. APPLICATION; VENUE

Sec. 1352.054. HEARING; REQUIREMENTS TO MORTGAGE

MINOR'S INTEREST

Sec. 1352.055. SURETY BOND; DISCHARGE OF SURETIES

Sec. 1352.056. USE OF PROCEEDS

Sec. 1352.057. ANNUAL REPORT

Sec. 1352.058. SWORN REPORT OF EXPENDITURES

Sec. 1352.059. DISAFFIRMATION OF HOME EQUITY LOAN

PROHIBITED

[Sections 1352.060-1352.100 reserved for expansion]

SUBCHAPTER C. MORTGAGE OF MINOR WARD'S INTEREST WITHOUT

GUARDIANSHIP OF THE ESTATE

Sec. 1352.101. APPLICABILITY OF SUBCHAPTER

Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S

INTEREST WITHOUT GUARDIANSHIP OF THE

ESTATE

Sec. 1352.103. APPLICATION; VENUE

Sec. 1352.104. HEARING; REQUIREMENTS TO MORTGAGE MINOR

WARD'S INTEREST

1 Sec. 1352.105. SURETY BOND; DISCHARGE OF SURETIES

2 Sec. 1352.106. USE OF PROCEEDS

3 Sec. 1352.107. ANNUAL ACCOUNTING

4 Sec. 1352.108. DISAFFIRMATION OF HOME EQUITY LOAN

5 PROHIBITED

6 CHAPTER 1352. MORTGAGE OF MINOR'S INTEREST IN RESIDENCE HOMESTEAD

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 1352.001. DEFINITIONS. In this chapter:

9 (1) "Home equity loan" means a loan made under Section  
10 50(a)(6), Article XVI, Texas Constitution.

11 (2) "Residence homestead" has the meaning assigned by  
12 Section 11.13, Tax Code. (Tex. Prob. Code, Secs. 889A(a),  
13 890A(a).)

14 [Sections 1352.002-1352.050 reserved for expansion]

15 SUBCHAPTER B. MORTGAGE OF MINOR'S INTEREST WITHOUT GUARDIANSHIP

16 Sec. 1352.051. APPLICABILITY OF SUBCHAPTER. This  
17 subchapter applies only to a minor who:

18 (1) is not a ward; and

19 (2) has an interest in a residence homestead. (Tex.  
20 Prob. Code, Sec. 889A(b) (part).)

21 Sec. 1352.052. AUTHORITY TO MORTGAGE MINOR'S INTEREST  
22 WITHOUT GUARDIANSHIP. (a) If the net value of a minor's interest  
23 in a residence homestead does not exceed \$100,000, a parent,  
24 subject to Subsection (b), or managing conservator of the minor may  
25 apply to the court under this subchapter for an order authorizing  
26 the parent or managing conservator to receive on the minor's  
27 behalf, without being appointed guardian, an extension of credit

1 that is secured wholly or partly by a lien on the homestead.

2 (b) A parent of a minor may file an application under this  
3 subchapter only if the parent has a homestead interest in the  
4 property that is the subject of the application. (Tex. Prob. Code,  
5 Secs. 889A(b) (part), (j).)

6 Sec. 1352.053. APPLICATION; VENUE. (a) A parent or  
7 managing conservator shall apply to the court under oath for the  
8 authority to encumber the residence homestead as provided by this  
9 subchapter.

10 (b) The application must contain:

11 (1) the minor's name and address;

12 (2) a legal description of the property constituting  
13 the homestead;

14 (3) a description of the minor's ownership interest in  
15 the property constituting the homestead;

16 (4) the fair market value of the property constituting  
17 the homestead;

18 (5) the amount of the home equity loan;

19 (6) the purpose or purposes for which the home equity  
20 loan is being sought;

21 (7) a detailed description of the proposed expenditure  
22 of the loan proceeds to be received by the parent or managing  
23 conservator on the minor's behalf; and

24 (8) a statement that all loan proceeds received by the  
25 parent or managing conservator on the minor's behalf through a home  
26 equity loan authorized under this subchapter shall be used in a  
27 manner that is for the minor's benefit.

1 (c) Venue for the application is the same as venue for an  
2 application for the appointment of a guardian for a minor. (Tex.  
3 Prob. Code, Sec. 889A(c).)

4 Sec. 1352.054. HEARING; REQUIREMENTS TO MORTGAGE MINOR'S  
5 INTEREST. (a) On receipt of an application under this subchapter,  
6 the court shall set the application for hearing on a date not  
7 earlier than the fifth day after the date the application is filed.

8 (b) The court may cause citation to be issued if the court  
9 considers citation necessary.

10 (c) At the time of the hearing, the court, on approval of the  
11 surety bond required by Section 1352.055, shall authorize the  
12 parent or managing conservator to receive the extension of credit  
13 sought in the application if the court is satisfied from a  
14 preponderance of the evidence that the encumbrance is:

15 (1) for a purpose described by Section 1352.056(1) or  
16 (2); and

17 (2) in the minor's best interests. (Tex. Prob. Code,  
18 Secs. 889A(d), (f).)

19 Sec. 1352.055. SURETY BOND; DISCHARGE OF SURETIES. (a)  
20 Before a hearing under Section 1352.054 is held, the parent or  
21 managing conservator shall file with the county clerk a surety  
22 bond. The bond must be:

23 (1) in an amount at least equal to two times the amount  
24 of the proposed home equity loan;

25 (2) payable to and approved by the court; and

26 (3) conditioned on the parent or managing conservator:

27 (A) using the proceeds of the home equity loan



1 attributable to the minor's interest solely for the purposes  
2 authorized by Section 1352.056; and

3 (B) making payments on the minor's behalf toward  
4 the outstanding balance of the home equity loan.

5 (b) After the first anniversary of the date a parent or  
6 managing conservator executes a home equity loan authorized under  
7 this subchapter, the court may, on motion of the borrower, reduce  
8 the amount of the surety bond required under this section to an  
9 amount that is not less than the loan's outstanding balance.

10 (c) The court may not discharge the person's sureties from  
11 all further liability under a surety bond until the court:

12 (1) approves the filing of the parent's or managing  
13 conservator's reports required under Sections 1352.057 and  
14 1352.058;

15 (2) finds that the parent or managing conservator used  
16 loan proceeds resulting from the minor's interest solely for the  
17 purposes authorized by Section 1352.056; and

18 (3) is presented with satisfactory evidence that the  
19 home equity loan has been repaid and is no longer considered an  
20 outstanding obligation. (Tex. Prob. Code, Secs. 889A(e), (h),  
21 (i).)

22 Sec. 1352.056. USE OF PROCEEDS. Proceeds of a home equity  
23 loan that is the subject of an application under Section 1352.053  
24 that are attributable to the minor's interest may be spent only to:

25 (1) make improvements to the homestead;

26 (2) pay for the minor's education or medical expenses;

27 or



1 ward's interest in a residence homestead does not exceed \$100,000,  
2 the guardian of the person of the ward may apply to the court under  
3 this subchapter for an order authorizing the guardian to receive on  
4 the ward's behalf an extension of credit that is secured wholly or  
5 partly by a lien on the homestead. (Tex. Prob. Code, Sec. 890A(c)  
6 (part).)

7 Sec. 1352.103. APPLICATION; VENUE. (a) An application  
8 under this subchapter must contain the information required by  
9 Section 1352.053(b).

10 (b) For purposes of Subsection (a), references in Section  
11 1352.053(b) to "parent or managing conservator" are replaced with  
12 references to "guardian of the person."

13 (c) Venue for the application is the same as venue for an  
14 application for the appointment of a guardian for a ward. (Tex.  
15 Prob. Code, Sec. 890A(d); New.)

16 Sec. 1352.104. HEARING; REQUIREMENTS TO MORTGAGE MINOR  
17 WARD'S INTEREST. (a) On receipt of an application under this  
18 subchapter, the court shall set the application for hearing on a  
19 date not earlier than the fifth day after the date the application  
20 is filed.

21 (b) The court may cause citation to be issued if the court  
22 considers citation necessary.

23 (c) The procedures and evidentiary requirements for a  
24 hearing of an application filed under this subchapter are the same  
25 as the procedures and evidentiary requirements for a hearing of an  
26 application filed under Subchapter B.

27 (d) At the time of the hearing, the court, on approval of the

1 surety bond required by Section 1352.105, shall authorize the  
2 guardian to receive the extension of credit sought in the  
3 application if the court is satisfied from a preponderance of the  
4 evidence that the encumbrance is:

5           (1) for a purpose described by Section 1352.106(1) or  
6           (2); and

7           (2) in the minor ward's best interests. (Tex. Prob.  
8 Code, Secs. 890A(e), (g), (h).)

9           Sec. 1352.105. SURETY BOND; DISCHARGE OF SURETIES. (a)  
10 Before a hearing under Section 1352.104 is held, the guardian of the  
11 person shall file a surety bond with the county clerk to the same  
12 extent and in the same manner as a parent or managing conservator of  
13 a minor is required to file a surety bond under Section 1352.055.

14           (b) The court may not discharge the guardian's sureties from  
15 all further liability under a bond required by this section or  
16 another provision of this title until the court:

17           (1) finds that the guardian used loan proceeds  
18 resulting from the minor ward's interest solely for the purposes  
19 authorized by Section 1352.106; and

20           (2) is presented with satisfactory evidence that the  
21 home equity loan has been repaid and is no longer considered an  
22 outstanding obligation. (Tex. Prob. Code, Secs. 890A(f), (j).)

23           Sec. 1352.106. USE OF PROCEEDS. Proceeds of a home equity  
24 loan that is the subject of an application under Section 1352.102  
25 that are attributable to the minor ward's interest may be spent only  
26 to:

27           (1) make improvements to the homestead;



[Sections 1353.007-1353.050 reserved for expansion]

SUBCHAPTER B. DUTIES OF COMMUNITY ADMINISTRATORS AND GUARDIANS OF  
THE ESTATE

Sec. 1353.051. INVENTORY AND APPRAISEMENT BY COMMUNITY  
ADMINISTRATOR

Sec. 1353.052. ACCOUNT BY COMMUNITY ADMINISTRATOR

Sec. 1353.053. DISCLOSURE OF CERTAIN LAWSUITS TO THE  
COURT BY COMMUNITY ADMINISTRATOR

Sec. 1353.054. DELIVERY OF COMMUNITY PROPERTY BY  
GUARDIAN OF THE ESTATE TO COMMUNITY  
ADMINISTRATOR

[Sections 1353.055-1353.100 reserved for expansion]

SUBCHAPTER C. REMOVAL OR TERMINATION OF POWERS OF COMMUNITY  
ADMINISTRATOR

Sec. 1353.101. GROUNDS FOR REMOVAL OF COMMUNITY  
ADMINISTRATOR

Sec. 1353.102. PROCEDURE FOR REMOVAL OF COMMUNITY  
ADMINISTRATOR

Sec. 1353.103. TERMINATION OF COMMUNITY  
ADMINISTRATOR'S POWERS ON RECOVERY OF  
CAPACITY

[Sections 1353.104-1353.150 reserved for expansion]

SUBCHAPTER D. APPOINTMENT OF ATTORNEY AD LITEM

Sec. 1353.151. APPOINTMENT OF ATTORNEY AD LITEM FOR  
INCAPACITATED SPOUSE

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

SUBCHAPTER A. APPOINTMENT OF COMMUNITY ADMINISTRATOR OR GUARDIAN  
OF THE ESTATE

Sec. 1353.001. EFFECT OF SUBCHAPTER. (a) The manner in which community property is administered under this subchapter does not affect:

(1) the duties and obligations between spouses, including the duty to support the other spouse; and

(2) the rights of any creditor of either spouse.

(b) This subchapter does not partition community property between an incapacitated spouse and a spouse who is not incapacitated. (Tex. Prob. Code, Secs. 883(e), (f).)

Sec. 1353.002. SPOUSE AS COMMUNITY ADMINISTRATOR. (a) Except as provided by Section 1353.004, when a spouse is judicially declared to be incapacitated, the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, as community administrator without an administration.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator. (Tex. Prob. Code, Secs. 883(a) (part), (b) (part).)

Sec. 1353.003. APPOINTMENT OF GUARDIAN OF THE ESTATE TO ADMINISTER SEPARATE PROPERTY. (a) Except as provided by Section 1353.004, when a spouse who owns separate property is judicially declared to be incapacitated, the court shall appoint the other spouse or another person or entity, in the order of precedence

1 established under Subchapter C, Chapter 1104, as guardian of the  
2 estate to administer only the separate property of the  
3 incapacitated spouse.

4 (b) The qualification of a guardian of the estate of the  
5 separate property of an incapacitated spouse under Subsection (a)  
6 does not deprive the spouse who is not incapacitated of the right to  
7 manage, control, and dispose of the entire community estate as  
8 provided by this title. (Tex. Prob. Code, Secs. 883(a) (part), (b)  
9 (part).)

10 Sec. 1353.004. APPOINTMENT OF GUARDIAN OF THE ESTATE UNDER  
11 CERTAIN CIRCUMSTANCES. (a) This section applies only if:

12 (1) a spouse who is not incapacitated is removed as  
13 community administrator; or

14 (2) the court finds that the spouse who is not  
15 incapacitated:

16 (A) would be disqualified to serve as guardian  
17 under Subchapter H, Chapter 1104; or

18 (B) is not suitable to serve as the community  
19 administrator for any other reason.

20 (b) The court shall appoint a guardian of the estate for the  
21 incapacitated spouse if the court:

22 (1) has not appointed a guardian of the estate under  
23 Section 1353.003(a); or

24 (2) has appointed the spouse who is not incapacitated  
25 as the guardian of the estate under Section 1353.003(a).

26 (c) After considering the financial circumstances of the  
27 spouses and any other relevant factors, the court may order the



1 spouse who is not incapacitated to deliver to the guardian of the  
2 estate of the incapacitated spouse not more than one-half of the  
3 community property that is subject to the spouses' joint  
4 management, control, and disposition under Section 3.102, Family  
5 Code.

6 (d) The court shall authorize the guardian of the estate of  
7 the incapacitated spouse to administer:

8 (1) any separate property of the incapacitated spouse;

9 (2) any community property that is subject to the  
10 incapacitated spouse's sole management, control, and disposition  
11 under Section 3.102, Family Code;

12 (3) any community property delivered to the guardian  
13 of the estate under Subsection (c); and

14 (4) any income earned on property described by this  
15 section.

16 (e) Community property administered by a guardian of the  
17 estate under Subsection (d) is considered the incapacitated  
18 spouse's community property, subject to the incapacitated spouse's  
19 sole management, control, and disposition under Section 3.102,  
20 Family Code. (Tex. Prob. Code, Secs. 883(c), (g) (part).)

21 Sec. 1353.005. ADMINISTRATION OF CERTAIN PROPERTY BY  
22 NON-INCAPACITATED SPOUSE. (a) On a person's removal as community  
23 administrator or on qualification of a guardian of the estate of the  
24 person's incapacitated spouse under Section 1353.004, as  
25 appropriate, a spouse who is not incapacitated shall continue to  
26 administer:

27 (1) the person's own separate property;



1           Sec. 1353.051. INVENTORY AND APPRAISEMENT BY COMMUNITY  
2 ADMINISTRATOR. (a) On its own motion or on the motion of an  
3 interested person for good cause shown, the court may order a  
4 community administrator to file a verified, full, and detailed  
5 inventory and appraisal of:

6                 (1) any community property that is subject to the  
7 incapacitated spouse's sole management, control, and disposition  
8 under Section 3.102, Family Code;

9                 (2) any community property subject to the spouses'  
10 joint management, control, and disposition under Section 3.102,  
11 Family Code; and

12                (3) any income earned on property described by this  
13 subsection.

14           (b) An inventory and appraisal ordered under this  
15 section must be:

16                 (1) prepared in the same form and manner that is  
17 required of a guardian under Section 1154.051; and

18                 (2) filed not later than the 90th day after the date  
19 the order is issued. (Tex. Prob. Code, Secs. 883B(a), (c).)

20           Sec. 1353.052. ACCOUNT BY COMMUNITY ADMINISTRATOR. (a) At  
21 any time after the expiration of 15 months after the date a  
22 community administrator's spouse is judicially declared to be  
23 incapacitated, the court, on its own motion or on the motion of an  
24 interested person for good cause shown, may order the community  
25 administrator to prepare and file an account of:

26                 (1) any community property that is subject to the  
27 incapacitated spouse's sole management, control, and disposition

1 under Section 3.102, Family Code;

2 (2) any community property subject to the spouses'  
3 joint management, control, and disposition under Section 3.102,  
4 Family Code; and

5 (3) any income earned on property described by this  
6 subsection.

7 (b) An account ordered under Subsection (a) must be:

8 (1) prepared in the same form and manner that is  
9 required of a guardian under Subchapter A, Chapter 1163, except  
10 that the community administrator is not required to file the  
11 account annually with the county clerk; and

12 (2) filed not later than the 60th day after the date  
13 the order is issued.

14 (c) After an initial account has been filed by a community  
15 administrator under this section, the court, on the motion of an  
16 interested person for good cause shown, may order the community  
17 administrator to file subsequent periodic accounts at intervals of  
18 not less than 12 months. (Tex. Prob. Code, Secs. 883B(b), (d),  
19 (e).)

20 Sec. 1353.053. DISCLOSURE OF CERTAIN LAWSUITS TO THE COURT  
21 BY COMMUNITY ADMINISTRATOR. A person whose spouse is judicially  
22 declared to be incapacitated and who acquires the power to manage,  
23 control, and dispose of the entire community estate under Section  
24 1353.002(a) shall inform the court in writing of any suit filed by  
25 or on behalf of the person that:

26 (1) is a suit for dissolution of the marriage of the  
27 person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.  
(Tex. Prob. Code, Sec. 884A.)

Sec. 1353.054. DELIVERY OF COMMUNITY PROPERTY BY GUARDIAN  
OF THE ESTATE TO COMMUNITY ADMINISTRATOR. A guardian of the estate  
of an incapacitated married person who, as guardian, is  
administering community property as part of the ward's estate,  
shall deliver on demand the community property to the spouse who is  
not incapacitated if the spouse becomes community administrator  
under Section 1353.002(a). (Tex. Prob. Code, Sec. 884.)

[Sections 1353.055-1353.100 reserved for expansion]

SUBCHAPTER C. REMOVAL OR TERMINATION OF POWERS OF COMMUNITY

ADMINISTRATOR

Sec. 1353.101. GROUNDS FOR REMOVAL OF COMMUNITY  
ADMINISTRATOR. A court may remove a community administrator if:

(1) the community administrator fails to comply with a  
court order for:

(A) an inventory and appraisal under Section  
1353.051; or

(B) an account or subsequent account under  
Section 1353.052;

(2) sufficient grounds appear to support belief that  
the community administrator has misapplied or embezzled, or is  
about to misapply or embezzle, all or part of the property committed  
to the community administrator's care;

(3) the community administrator is proved to have been  
guilty of gross misconduct or gross mismanagement in the  
performance of duties as community administrator; or

(4) the community administrator:

(A) becomes an incapacitated person;

(B) is sentenced to the penitentiary; or

(C) for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties. (Tex. Prob. Code, Sec. 883C(a) (part).)

Sec. 1353.102. PROCEDURE FOR REMOVAL OF COMMUNITY ADMINISTRATOR. (a) A court may remove a community administrator on the court's own motion or on the motion of an interested person, after the community administrator has been cited by personal service to answer at a time and place specified in the notice.

(b) The removal order must:

(1) state the cause of removal; and

(2) direct the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees. (Tex. Prob. Code, Secs. 883C(a) (part), (b), (c).)

Sec. 1353.103. TERMINATION OF COMMUNITY ADMINISTRATOR'S POWERS ON RECOVERY OF CAPACITY. The special powers of management, control, and disposition vested in the community administrator by

1 this title terminate when a court of competent jurisdiction by  
2 decree finds that the mental capacity of the incapacitated spouse  
3 has been recovered. (Tex. Prob. Code, Sec. 883A.)

4 [Sections 1353.104-1353.150 reserved for expansion]

5 SUBCHAPTER D. APPOINTMENT OF ATTORNEY AD LITEM

6 Sec. 1353.151. APPOINTMENT OF ATTORNEY AD LITEM FOR  
7 INCAPACITATED SPOUSE. (a) The court shall appoint an attorney ad  
8 litem to represent the interests of an incapacitated spouse in a  
9 proceeding to remove a community administrator or other proceeding  
10 brought under this chapter.

11 (b) The attorney ad litem may demand from the community  
12 administrator an account or inventory and appraisement of the  
13 incapacitated spouse's part of the community estate being managed  
14 by the community administrator.

15 (c) A community administrator shall comply with a demand  
16 made under this section not later than the 60th day after the date  
17 the community administrator receives the demand.

18 (d) An account or inventory and appraisement returned under  
19 this section must be prepared in the form and manner required by the  
20 attorney ad litem. The attorney ad litem may require the community  
21 administrator to file the account or inventory and appraisement  
22 with the court. (Tex. Prob. Code, Sec. 883D.)

23 CHAPTER 1354. RECEIVERSHIP FOR ESTATES OF

24 CERTAIN INCAPACITATED PERSONS

25 Sec. 1354.001. APPOINTMENT OF RECEIVER

26 Sec. 1354.002. BOND

27 Sec. 1354.003. POWERS AND DUTIES OF RECEIVER

1 Sec. 1354.004. EXPENDITURES BY RECEIVER

2 Sec. 1354.005. USE OF EXCESS ESTATE ASSETS

3 Sec. 1354.006. RECEIVER'S EXPENSES, ACCOUNT, AND

4 COMPENSATION

5 Sec. 1354.007. CLOSING RECEIVERSHIP; NOTICE

6 Sec. 1354.008. DISCHARGE OF RECEIVER

7 Sec. 1354.009. RECORD

8 CHAPTER 1354. RECEIVERSHIP FOR ESTATES OF

9 CERTAIN INCAPACITATED PERSONS

10 Sec. 1354.001. APPOINTMENT OF RECEIVER. (a) A judge of a  
11 probate court in the county in which an incapacitated person  
12 resides or in which the incapacitated person's endangered estate is  
13 located shall, with or without application, enter an order  
14 appointing a suitable person as receiver to take charge of the  
15 estate if:

16 (1) it appears that all or part of the estate of the  
17 incapacitated person is in danger of injury, loss, or waste and in  
18 need of a guardianship or other representative;

19 (2) there is no guardian of the estate who is qualified  
20 in this state; and

21 (3) a guardian is not needed.

22 (b) The court order must specify the duties and powers of  
23 the receiver the judge considers necessary for the protection,  
24 conservation, and preservation of the estate.

25 (c) The clerk shall enter an order issued under this section  
26 in the judge's guardianship docket. (Tex. Prob. Code, Sec. 885(a)  
27 (part).)



1           Sec. 1354.002. BOND. (a) A court order issued under  
2 Section 1354.001 shall require a receiver appointed under that  
3 section to give a bond, as in ordinary receiverships, in an amount  
4 the judge considers necessary to protect the estate.

5           (b) The person appointed as receiver shall:  
6                 (1) make and submit a bond for the judge's approval;  
7 and  
8                 (2) file the bond, when approved, with the clerk.  
9 (Tex. Prob. Code, Sec. 885(a) (part).)

10          Sec. 1354.003. POWERS AND DUTIES OF RECEIVER. The person  
11 appointed as receiver shall take charge of the endangered estate as  
12 provided by the powers and duties vested in the person by the order  
13 of appointment and subsequent orders of the judge. (Tex. Prob.  
14 Code, Sec. 885(a) (part).)

15          Sec. 1354.004. EXPENDITURES BY RECEIVER. (a) If, while the  
16 receivership is pending, the needs of the incapacitated person  
17 require the use of the income or corpus of the estate for the  
18 education, clothing, or subsistence of the person, the judge shall,  
19 with or without application, enter an order in the judge's  
20 guardianship docket that appropriates an amount of income or corpus  
21 sufficient for that purpose.

22          (b) The receiver shall use the amount appropriated by the  
23 court to pay a claim for the education, clothing, or subsistence of  
24 the incapacitated person that is presented to the judge for  
25 approval and ordered by the judge to be paid. (Tex. Prob. Code,  
26 Sec. 885(b).)

27          Sec. 1354.005. USE OF EXCESS ESTATE ASSETS. (a) A receiver

1 who, while the receivership is pending, has possession of an amount  
2 of money belonging to the incapacitated person in excess of the  
3 amount needed for current necessities and expenses may, under  
4 direction of the judge, invest, lend, or contribute all or part of  
5 the excess money in the manner, for the security, and on the terms  
6 provided by this title for investments, loans, or contributions by  
7 guardians.

8 (b) The receiver shall report to the judge all transactions  
9 made under this section in the same manner that a report is required  
10 of a guardian under this title. (Tex. Prob. Code, Sec. 885(c).)

11 Sec. 1354.006. RECEIVER'S EXPENSES, ACCOUNT, AND  
12 COMPENSATION. (a) All necessary expenses incurred by a receiver in  
13 administering the estate may be reported monthly to the judge in the  
14 form of a sworn statement of account that includes a report of:

- 15 (1) the receiver's acts;  
16 (2) the condition of the estate;  
17 (3) the status of the threatened danger to the estate;  
18 and  
19 (4) the progress made toward abatement of the danger.

20 (b) If the judge is satisfied that the statement is correct  
21 and reasonable in all respects, the judge shall promptly enter an  
22 order approving the expenses and authorizing reimbursement of the  
23 receiver from the estate funds in the receiver's possession.

24 (c) A receiver shall be compensated for services provided in  
25 the receiver's official capacity in the same manner and amount  
26 provided by this title for similar services provided by a guardian  
27 of an estate. (Tex. Prob. Code, Sec. 885(d).)

1           Sec. 1354.007. CLOSING RECEIVERSHIP; NOTICE. (a) When the  
2 threatened danger has abated and the estate is no longer liable to  
3 injury, loss, or waste because there is no guardian or other  
4 representative of the estate, the receiver shall:

5                   (1) report to the judge; and

6                   (2) file with the clerk a full and final sworn account  
7 of:

8                           (A) all property of the estate received by the  
9 receiver;

10                           (B) all property of the estate in the receiver's  
11 possession while the receivership was pending;

12                           (C) all sums paid out;

13                           (D) all acts performed by the receiver with  
14 respect to the estate; and

15                           (E) all property of the estate remaining in the  
16 receiver's possession on the date of the report.

17           (b) On the filing of the report, the clerk shall:

18                   (1) issue and cause to be posted a notice to all  
19 persons interested in the welfare of the incapacitated person; and

20                   (2) give personal notice to the person who has custody  
21 of the incapacitated person to appear before the judge at a time and  
22 place specified in the notice and contest the report and account if  
23 the person desires. (Tex. Prob. Code, Sec. 885(e).)

24           Sec. 1354.008. DISCHARGE OF RECEIVER. (a) If, on hearing  
25 the receiver's report and account, the judge is satisfied that the  
26 danger of injury, loss, or waste to the estate has abated and that  
27 the report and account are correct, the judge shall:

(1) enter an order finding that the danger of injury, loss, or waste to the estate has abated; and

(2) direct the receiver to deliver the estate to:

(A) the person from whom the receiver took possession as receiver;

(B) the person who has custody of the incapacitated person; or

(C) another person the judge finds is entitled to possession of the estate.

(b) A person who receives the estate under Subsection (a) shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person.

(c) The judge's order shall discharge the receivership and the sureties on the receiver's bond.

(d) If the judge is not satisfied that the danger has abated, or is not satisfied with the receiver's report and account, the judge shall enter an order continuing the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account. (Tex. Prob. Code, Sec. 885(f).)

Sec. 1354.009. RECORD. An order, bond, report, account, or notice in a receivership proceeding must be recorded in the judge's guardianship docket. (Tex. Prob. Code, Sec. 885(g).)

#### CHAPTER 1355. PAYMENT OF CERTAIN CLAIMS WITHOUT GUARDIANSHIP

##### SUBCHAPTER A. PAYMENT OF CLAIMS TO CERTAIN INCAPACITATED

##### PERSONS AND FORMER WARDS

Sec. 1355.001. PAYMENT OF CLAIMS TO RESIDENT CREDITOR

1 Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT

2 CREDITOR

3 [Sections 1355.003-1355.050 reserved for expansion]

4 SUBCHAPTER B. ADMINISTRATION OF MONEY

5 Sec. 1355.051. INVESTMENT OF MONEY BY CLERK

6 Sec. 1355.052. ANNUAL REPORT

7 [Sections 1355.053-1355.100 reserved for expansion]

8 SUBCHAPTER C. WITHDRAWAL OF MONEY

9 Sec. 1355.101. APPLICABILITY OF SUBCHAPTER

10 Sec. 1355.102. CUSTODIAN OF RESIDENT CREDITOR

11 Sec. 1355.103. WITHDRAWAL OF MONEY BY CUSTODIAN; BOND

12 Sec. 1355.104. CUSTODIAN'S REPORT

13 Sec. 1355.105. WITHDRAWAL OF MONEY BY CREDITOR OR

14 CREDITOR'S HEIR OR REPRESENTATIVE

15 [Sections 1355.106-1355.150 reserved for expansion]

16 SUBCHAPTER D. USE OF MONEY BY ELEMOSYNARY INSTITUTION

17 FOR BENEFIT OF RESIDENT

18 Sec. 1355.151. APPLICABILITY OF SUBCHAPTER

19 Sec. 1355.152. PAYMENT OF MONEY TO INSTITUTION

20 Sec. 1355.153. DEPOSIT OF MONEY IN TRUST

21 Sec. 1355.154. DEATH OF RESIDENT OR DEPLETION OF MONEY

22 CHAPTER 1355. PAYMENT OF CERTAIN CLAIMS WITHOUT GUARDIANSHIP

23 SUBCHAPTER A. PAYMENT OF CLAIMS TO CERTAIN INCAPACITATED

24 PERSONS AND FORMER WARDS

25 Sec. 1355.001. PAYMENT OF CLAIMS TO RESIDENT CREDITOR. (a)

26 In this section, "resident creditor" means a person who:

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

1           (2) is entitled to money in an amount that is \$100,000  
2 or less, the right to which is liquidated and is uncontested in any  
3 pending lawsuit.

4           (b) This section applies only to a resident creditor who:

5                 (1) is an incapacitated person or the former ward of a  
6 guardianship terminated under Chapter 1204; and

7                 (2) does not have a legal guardian of the creditor's  
8 estate.

9           (c) A debtor who owes money to a resident creditor to whom  
10 this section applies may pay the money to the county clerk of the  
11 county in which the creditor resides to the account of the creditor.  
12 When making a payment under this subsection, a debtor shall give to  
13 the clerk:

14                 (1) the creditor's name;

15                 (2) the creditor's social security identification  
16 number;

17                 (3) the nature of the creditor's disability;

18                 (4) the creditor's post office address; and

19                 (5) if the creditor is a minor, the creditor's age.

20           (d) The receipt for the money signed by the county clerk is  
21 binding on the resident creditor as of the date of receipt and to  
22 the extent of the payment.

23           (e) The county clerk shall:

24                 (1) by letter mailed to the address given under  
25 Subsection (c)(4), apprise the resident creditor that the deposit  
26 was made; and

27                 (2) on receipt of the payment, bring the payment to the

1 court's attention. (Tex. Prob. Code, Sec. 887(a) (part).)

2 Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT CREDITOR.

3 (a) In this section, "creditor" means a person who is entitled to  
4 money in an amount that is not more than \$100,000 owing as a result  
5 of transactions in this state, the right to which is liquidated and  
6 is uncontested in any pending lawsuit in this state.

7 (b) This section applies only to a creditor who is a  
8 nonresident minor, a nonresident person who is adjudged by a court  
9 of competent jurisdiction to be incapacitated, or the former ward  
10 of a guardianship terminated under Chapter 1204 who has no legal  
11 guardian qualified in this state.

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

14 (1) to the creditor's guardian qualified in the  
15 domiciliary jurisdiction; or

16 (2) to the county clerk of:

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

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

21 (d) A payment made under this section is for the creditor's  
22 account and for the creditor's use and benefit.

23 (e) A receipt for payment signed by the county clerk is  
24 binding on the creditor as of the date and to the extent of payment  
25 if the receipt states:

26 (1) the creditor's name; and

27 (2) the creditor's post office address, if the address

1 is known.

2 (f) A county clerk who receives a payment under Subsection  
3 (c) shall handle the money in the same manner as provided for a  
4 payment to the account of a resident creditor under Sections  
5 1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and 1355.104.  
6 Those sections apply to the handling and disposition of money or any  
7 increase, dividend, or income paid to the clerk for the use,  
8 benefit, and account of the creditor to whom this section applies.  
9 (Tex. Prob. Code, Sec. 887(e).)

10 [Sections 1355.003-1355.050 reserved for expansion]

11 SUBCHAPTER B. ADMINISTRATION OF MONEY

12 Sec. 1355.051. INVESTMENT OF MONEY BY CLERK. (a) On  
13 receipt of a payment under Section 1355.001, the county clerk shall  
14 invest the money as authorized under this title under court order in  
15 the name and for the account of the minor or other person entitled  
16 to the money.

17 (b) The county clerk shall credit any increase, dividend, or  
18 income from an investment made under this chapter to the account of  
19 the minor or other person entitled to the investment. (Tex. Prob.  
20 Code, Sec. 887(a) (part).)

21 Sec. 1355.052. ANNUAL REPORT. Not later than March 1 of  
22 each year, the court clerk shall make a written report to the court  
23 of the status of an investment made by the county clerk under  
24 Section 1355.051. The report must contain:

25 (1) the amount of the original investment or the value  
26 of the investment at the last annual report, whichever is later;

27 (2) any increase, dividend, or income from the



1 investment since the last annual report;

2 (3) the total amount of the investment and all  
3 increases, dividends, or income at the date of the report; and

4 (4) the name of the depository or the type of  
5 investment. (Tex. Prob. Code, Sec. 887(b).)

6 [Sections 1355.053-1355.100 reserved for expansion]

7 SUBCHAPTER C. WITHDRAWAL OF MONEY

8 Sec. 1355.101. APPLICABILITY OF SUBCHAPTER. Except as  
9 provided by Section 1355.105, this subchapter applies only to a  
10 resident creditor to whom Section 1355.001 applies. (New.)

11 Sec. 1355.102. CUSTODIAN OF RESIDENT CREDITOR. (a) The  
12 following may serve as custodian of a resident creditor under this  
13 section:

14 (1) a parent of the creditor;

15 (2) the unestranged spouse of the creditor; or

16 (3) if there is no spouse and both of the creditor's  
17 parents are dead or nonresidents of this state, the person who:

18 (A) resides in this state; and

19 (B) has actual custody of the creditor.

20 (b) An unestranged spouse residing in this state shall be  
21 given priority over a creditor's parent to serve as custodian under  
22 this subchapter. (Tex. Prob. Code, Sec. 887(c) (part).)

23 Sec. 1355.103. WITHDRAWAL OF MONEY BY CUSTODIAN; BOND. (a)  
24 A resident creditor's custodian may withdraw the money from the  
25 court clerk for the creditor's use and benefit if the custodian  
26 files with the clerk:

27 (1) a written application; and

1           (2) a bond approved by the county judge.

2           (b) A custodian's bond must be:

3           (1) twice the amount of the money to be withdrawn by  
4 the custodian;

5           (2) payable to the judge or the judge's successors in  
6 office; and

7           (3) conditioned that the custodian will:

8           (A) use the money for the resident creditor's  
9 benefit under the court's direction; and

10           (B) when legally required, faithfully account to  
11 the resident creditor and the creditor's heirs or legal  
12 representatives for the money and any increase to the money on:

13           (i) the removal of the creditor's  
14 disability;

15           (ii) the creditor's death; or

16           (iii) the appointment of a guardian for the  
17 creditor.

18           (c) A custodian may not receive a fee or commission for  
19 taking care of, handling, or spending money withdrawn by the  
20 custodian. (Tex. Prob. Code, Sec. 887(c) (part).)

21           Sec. 1355.104. CUSTODIAN'S REPORT. (a) The custodian  
22 shall file with the county clerk a sworn report of the custodian's  
23 accounting when the custodian has:

24           (1) spent the money in accordance with the court's  
25 directions; or

26           (2) otherwise complied with the terms of the  
27 custodian's bond by accounting for the money and any increase in the

1 money.

2 (b) The filing of a custodian's report, when approved by the  
3 court, operates as a discharge of the person as custodian and of the  
4 person's sureties from all further liability under the bond.

5 (c) The court shall satisfy itself that the custodian's  
6 report is true and correct and may require proof as in other cases.  
7 (Tex. Prob. Code, Sec. 887(d).)

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

13 (1) the creditor, after termination of the creditor's  
14 disability;

15 (2) a subsequent personal representative of the  
16 creditor; or

17 (3) the creditor's heirs.

18 (b) A withdrawal under Subsection (a) may be made at any  
19 time and without a special bond for that purpose.

20 (c) The order presented under Subsection (a) must direct the  
21 court clerk to deliver the money to the creditor, the creditor's  
22 personal representative, or the creditor's heirs named in the  
23 order.

24 (d) Before the court may issue an order under this section,  
25 the person's identity and credentials must be proved to the court's  
26 satisfaction. (Tex. Prob. Code, Sec. 887(f).)

27 [Sections 1355.106-1355.150 reserved for expansion]

SUBCHAPTER D. USE OF MONEY BY ELEEMOSYNARY INSTITUTION

FOR BENEFIT OF RESIDENT

Sec. 1355.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to money of a resident of an eleemosynary institution of this state that is on deposit in a court registry and does not exceed \$10,000. (Tex. Prob. Code, Sec. 887(g) (part).)

Sec. 1355.152. PAYMENT OF MONEY TO INSTITUTION. (a) The judge of a county court, district court, or other court of this state may by order direct the court clerk to pay money to an eleemosynary institution of this state for the use and benefit of a resident of the institution if the court receives satisfactory proof by affidavit or otherwise that the resident:

(1) is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity renders the person incapable of caring for himself or herself and of managing the person's property and financial affairs; and

(2) has no known legal guardian appointed for the resident's estate.

(b) The affidavit under Subsection (a) may be executed by the superintendent, business manager, or field representative of the institution of which the person is a resident.

(c) The institution to which the payment is made under Subsection (a) may not be required to give bond or security for receiving the money from the court registry.

(d) The receipt from the institution for a payment, or the canceled check or warrant by which the payment was made:

1           (1) is sufficient evidence of the disposition of the  
2 payment; and

3           (2) relieves the court clerk from further  
4 responsibility for the disposition. (Tex. Prob. Code, Sec. 887(g)  
5 (part).)

6       Sec. 1355.153. DEPOSIT OF MONEY IN TRUST. (a) On receipt of  
7 money under this subchapter, an eleemosynary institution shall  
8 deposit all of the money received to the resident's trust account.

9       (b) Money deposited in a trust account may be used only:

10           (1) by or for the personal use of the owner of the  
11 trust account, under the rules or custom of the institution in the  
12 expenditure of money by a resident; or

13           (2) by the responsible officer of the institution, for  
14 the resident's use and benefit. (Tex. Prob. Code, Sec. 887(g)  
15 (part).)

16       Sec. 1355.154. DEATH OF RESIDENT OR DEPLETION OF MONEY. (a)  
17 After the expenditure of all money in a resident's trust account, or  
18 after the resident's death, the responsible officer of the  
19 eleemosynary institution shall furnish a statement of expenditures  
20 of the money to the resident's nearest relative who is entitled to  
21 receive the statement.

22       (b) A copy of the statement described by Subsection (a)  
23 shall be filed with the court that first granted the order to  
24 dispose of the money in accordance with this title.

25       (c) The balance of a trust account of a resident of an  
26 eleemosynary institution who dies may be applied to:

27           (1) the resident's burial expenses; or

(2) the care, support, and treatment account of the resident at the institution. (Tex. Prob. Code, Sec. 887(g) (part).)

CHAPTER 1356. COURT APPROVAL OF CERTAIN ARTS AND ENTERTAINMENT, ADVERTISEMENT, AND SPORTS CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1356.001. DEFINITIONS

Sec. 1356.002. DURATION OF CONTRACT OF A MINOR

[Sections 1356.003-1356.050 reserved for expansion]

SUBCHAPTER B. COURT ACTION REGARDING CERTAIN CONTRACTS

Sec. 1356.051. APPROVAL OF CERTAIN CONTRACTS OF A

MINOR

Sec. 1356.052. NOTICE REQUIRED

Sec. 1356.053. NECESSARY PARTIES TO PROCEEDING

Sec. 1356.054. SET-ASIDE AND PRESERVATION OF PORTION

OF NET EARNINGS

Sec. 1356.055. VALID CONTRACT NOT VOIDABLE

Sec. 1356.056. GUARDIAN AD LITEM

CHAPTER 1356. COURT APPROVAL OF CERTAIN ARTS AND ENTERTAINMENT, ADVERTISEMENT, AND SPORTS CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1356.001. DEFINITIONS. In this chapter:

(1) "Advertise" means to solicit or induce the purchase of consumer goods or services through electronic or print media, including:

(A) radio;

(B) television;

(C) computer; or

(D) direct mail.

(2) "Advertisement contract" means a contract under which a person is employed or agrees to advertise consumer goods or services.

(3) "Artist" means:

(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;

(B) a musician or musical director;

(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;

(D) a writer;

(E) a cinematographer;

(F) a composer, lyricist, or arranger of musical compositions;

(G) a dancer or choreographer of musical productions;

(H) a model; or

(I) any other individual who provides similar professional services in a motion picture, theatrical, radio, television, or other entertainment production.

(4) "Arts and entertainment contract" means a contract under which:

(A) an artist is employed or agrees to provide services in a motion picture, theatrical, radio, television, or other entertainment production; or

(B) a person agrees to purchase, secure, sell,

1 lease, license, or otherwise dispose of literary, musical, or  
2 dramatic tangible or intangible property or any rights in that  
3 property for use in the field of entertainment, including:

4 (i) a motion picture;

5 (ii) television;

6 (iii) the production of phonograph records;

7 or

8 (iv) theater.

9 (5) "Consumer goods" means goods used or bought for  
10 use primarily for personal, family, or household purposes.

11 (6) "Net earnings," with respect to a minor, means the  
12 total amount to be received for the services of the minor under a  
13 contract less:

14 (A) the amount required by law to be paid as taxes  
15 to any government or governmental agency;

16 (B) a reasonable amount to be spent for the  
17 support, care, maintenance, education, and training of the minor;

18 (C) fees and expenses paid in connection with  
19 procuring the contract or maintaining employment of the minor; and

20 (D) attorney's fees for services provided in  
21 connection with the contract or any other business of the minor.

22 (7) "Sports contract" means a contract under which an  
23 athlete is employed or agrees to participate, compete, or engage in  
24 a sports or athletic activity at a professional or amateur sports  
25 event or athletic event. (Tex. Prob. Code, Secs. 901, 904(a).)

26 Sec. 1356.002. DURATION OF CONTRACT OF A MINOR. This  
27 chapter may not be construed to authorize a contract that binds a



1 minor after the seventh anniversary of the date of the contract.

2 (Tex. Prob. Code, Sec. 902.)

3 [Sections 1356.003-1356.050 reserved for expansion]

4 SUBCHAPTER B. COURT ACTION REGARDING CERTAIN CONTRACTS

5 Sec. 1356.051. APPROVAL OF CERTAIN CONTRACTS OF A MINOR.

6 (a) On the petition of the guardian of the estate of a minor, a  
7 court may issue an order approving for purposes of this chapter an  
8 arts and entertainment contract, advertisement contract, or sports  
9 contract that is entered into by the minor.

10 (b) Approval of a contract under this section extends to the  
11 contract as a whole and each term and provision of the contract,  
12 including any optional or conditional contract provision relating  
13 to the extension or termination of the contract's term.

14 (c) A court may withhold approval of a contract in which  
15 part of the minor's net earnings will be set aside as provided by  
16 Section 1356.054 until the guardian of the minor's estate executes  
17 and files with the court written consent to the issuance of the  
18 order. (Tex. Prob. Code, Secs. 903(a) (part), (b), (c).)

19 Sec. 1356.052. NOTICE REQUIRED. Before the court may  
20 approve a contract under Section 1356.051, the guardian of the  
21 minor's estate must provide the other party to the contract notice  
22 of the petition and an opportunity to request a hearing in the  
23 manner provided by the court. (Tex. Prob. Code, Sec. 903(a)  
24 (part).)

25 Sec. 1356.053. NECESSARY PARTIES TO PROCEEDING. Each  
26 parent of a minor for whom a proceeding is brought under Section  
27 1356.051 is a necessary party to the proceeding. (Tex. Prob. Code,

1 Sec. 903(e).)

2       Sec. 1356.054. SET-ASIDE AND PRESERVATION OF PORTION OF NET  
3 EARNINGS. (a) Notwithstanding any other law, in an order issued  
4 under Section 1356.051, the court may require that a portion of the  
5 net earnings of the minor under the contract be set aside and  
6 preserved for the benefit of the minor in a trust created under  
7 Section 1301.053 or 1301.054 or a similar trust created under the  
8 laws of another state.

9       (b) The amount to be set aside under this section must be  
10 reasonable as determined by the court. (Tex. Prob. Code, Sec.  
11 904(b).)

12       Sec. 1356.055. VALID CONTRACT NOT VOIDABLE. A contract  
13 approved under Section 1356.051 that is otherwise valid is not  
14 voidable solely on the ground that it was entered into by a person  
15 during the age of minority. (Tex. Prob. Code, Sec. 903(d).)

16       Sec. 1356.056. GUARDIAN AD LITEM. The court may appoint a  
17 guardian ad litem for a minor who has entered into an arts and  
18 entertainment contract, advertisement contract, or sports contract  
19 if the court finds that the appointment would be in the best  
20 interest of the minor. (Tex. Prob. Code, Sec. 905.)

21               [Subtitles J-X reserved for expansion]

22       SUBTITLE Y. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND VENUE

23               PART 1. GENERAL PROVISIONS

24               SUBPART A. PROCEEDINGS IN REM

25                       [Reserved for expansion]

26       PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

27               SUBPART A. JURISDICTION

[Reserved for expansion]

SUBPART B. VENUE

[Reserved for expansion]

SUBPART C. DUTIES AND RECORDS OF CLERK

[Reserved for expansion]

SUBTITLE Z. TEXAS PROBATE CODE; ADDITIONAL GUARDIANSHIP PROVISIONS

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

[Reserved for expansion]

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. CONFORMING AMENDMENT. Section 21.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.001. PURPOSE OF CODE. (a) This code is [~~title and Subtitles A through M, Title 2, are~~] enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code, except Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3 [~~title and Subtitles A through M, Title 2~~], is to make the law encompassed by this code, except Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3 [~~title and Subtitles A through M, Title 2~~], more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

(c) The provisions of Subtitles X and [7] Y, [~~and Z of~~] Title 2, and Subtitles Y and Z, Title 3, [25] are transferred from the Texas Probate Code and redesignated as part of this code, but are not revised as part of the state's continuing statutory revision program.

SECTION 2.02. CONFORMING AMENDMENT. Section 21.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.002. CONSTRUCTION. (a) Except as provided by this section, Section 22.027, or Section 1002.023, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this code [~~title or Subtitle A, B, C, D, E, F, G, H, I, J, K, L, or M, Title 2~~].

(b) Chapter 311, Government Code (Code Construction Act), [~~That chapter~~] does not apply to the construction of a provision of Subtitle X or [7] Y, [~~or Z of~~] Title 2, or Subtitle Y or Z, Title 3 [25].

SECTION 2.03. CONFORMING AMENDMENT. Section 21.003(b), Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A reference in Subtitle X or [7] Y, [~~or Z~~] Title 2, or Subtitle Y or Z, Title 3, [~~25~~] to a chapter, a part, a subpart, a section, or any portion of a section "of this code" is a reference to the chapter, part, subpart, section, or portion of a section as redesignated in the Estates Code, except that:

(1) a reference in Subtitle X or [7] Y, [~~or Z~~] Title 2, or Subtitle Y or Z, Title 3, [~~25~~] to Chapter I is a reference to Chapter I, Estates Code, and to the revision of sections derived from Chapter I, Texas Probate Code, and any reenactments and amendments to those sections; and

(2) a reference in Subtitle X or [7] Y, [~~or Z~~] Title 2, or Subtitle Y or Z, Title 3, [~~25~~] to a chapter, part, subpart, section, or portion of a section that does not exist in the Estates Code is a reference to the revision or redesignation of the corresponding chapter, part, subpart, section, or portion of a section of the Texas Probate Code and any reenactments or amendments.

SECTION 2.04. CONFORMING AMENDMENT. Section 21.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. Notwithstanding Section 21.002(b) [~~21.002~~] of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to

1 Subtitles X and [~~7~~] Y, [~~and Z of~~] Title 2, and Subtitles Y and Z,  
2 Title 3 [~~25~~]; and

3 (2) Sections 311.005(4) and 311.012(b) and (c),  
4 Government Code, apply to Subtitles X and [~~7~~] Y, [~~and Z of~~] Title 2,  
5 and Subtitles Y and Z, Title 3.

6 SECTION 2.05. CONFORMING AMENDMENT. The heading to Title  
7 2, Estates Code, as effective January 1, 2014, is amended to read as  
8 follows:

9 TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

10 ARTICLE 3. TRANSFER AND REDESIGNATION; REPEALER

11 SECTION 3.01. TRANSFER AND REDESIGNATION. (a) Section  
12 604, Texas Probate Code, is transferred to Subpart A, Part 1,  
13 Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this  
14 Act, and redesignated as Section 604, Estates Code.

15 (b) Sections 605, 606, 607, 608, and 609, Texas Probate  
16 Code, are transferred to Subpart A, Part 2, Subtitle Y, Title 3,  
17 Estates Code, as added by Section 1.02 of this Act, and redesignated  
18 as Sections 605, 606, 607, 608, and 609, Estates Code,  
19 respectively.

20 (c) Sections 610, 611, 612, 613, 614, 615, 616, 617, and  
21 618, Texas Probate Code, are transferred to Subpart B, Part 2,  
22 Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this  
23 Act, and redesignated as Sections 610, 611, 612, 613, 614, 615, 616,  
24 617, and 618, Estates Code, respectively.

25 (d) Section 631, Texas Probate Code, is transferred to  
26 Subpart C, Part 2, Subtitle Y, Title 3, Estates Code, as added by  
27 Section 1.02 of this Act, and redesignated as Section 631, Estates

1 Code.

2 (e) Section 665B, Texas Probate Code, as amended by Chapters  
3 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature,  
4 Regular Session, 2009, is transferred to Subpart H, Part 2,  
5 Subtitle Z, Title 3, Estates Code, as added by Section 1.02 of this  
6 Act, and redesignated as Section 665B, Estates Code.

7 SECTION 3.02. REPEALER. (a) Sections 481, 482, 483, 484,  
8 485, 485A, 486, 487, 487A, 488, 489, 489B, 490, 491, 492, 493, 494,  
9 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 601,  
10 602, 603, 621, 622, 623, 624, 625, 626, 627, 627A, 628, 629, 630,  
11 632, 633, 634, 635, 636, 641, 642, 643, 644, 645, 645A, 646, 647,  
12 647A, 648, 648A, 649, 650, 651, 653, 654, 655, 656, 657, 659, 660,  
13 661, 662, 663, 665, 665A, 665C, 665D, 666, 667, 668, 669, 670, 671,  
14 672, 673, 674, 675, 676, 677, 677A, 677B, 678, 679, 679A, 680, 681,  
15 682, 682A, 683, 683A, 684, 685, 686, 687, 689, 690, 692, 693, 694,  
16 694A, 694B, 694C, 694D, 694E, 694F, 694G, 694H, 694I, 694J, 694K,  
17 694L, 695, 695A, 696, 696A, 696B, 697, 697A, 697B, 698, 699, 700,  
18 701, 702, 702A, 703, 704, 705, 706, 707, 708, 708A, 709, 710, 711,  
19 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724,  
20 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737,  
21 738, 739, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751,  
22 752, 753, 754, 755, 756, 757, 758, 759, 760, 760A, 760B, 761, 762,  
23 763, 764, 765, 767, 768, 769, 770, 770A, 771, 772, 773, 774, 775,  
24 776, 776A, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787,  
25 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800,  
26 801, 802, 803, 804, 805, 806, 807, 808, 809, 811, 812, 813, 814,  
27 815, 816, 817, 818, 819, 820, 821, 823, 824, 824A, 825, 826, 827,

1 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 839, 840, 841,  
2 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854,  
3 855, 855A, 855B, 857, 858, 860, 861, 862, 863, 865, 865A, 866, 867,  
4 867A, 868, 868A, 868B, 868C, 869, 869A, 869B, 869C, 870, 871, 872,  
5 873, 874, 875, 876, 877, 878, 879, 881, 881A, 882, 883, 883A, 883B,  
6 883C, 883D, 884, 884A, 885, 887, 889, 889A, 890, 890A, 891, 892,  
7 893, 894, 901, 902, 903, 904, 905, 910, 911, 912, 913, 914, 915, and  
8 916, Texas Probate Code, are repealed.

9 (b) Subtitles M and Z, Title 2, and Title 25, Estates Code,  
10 as effective January 1, 2014, are repealed.

11 (c) Sections 4 and 5, Chapter 680 (H.B. 2502), Acts of the  
12 81st Legislature, Regular Session, 2009, which transferred and  
13 redesignated Chapters XII and XIII, Texas Probate Code, are  
14 repealed.

15 SECTION 3.03. LEGISLATIVE INTENT: TRANSFERS FROM TEXAS  
16 PROBATE CODE. It is the intent of the legislature that, with  
17 respect to any provision of the Texas Probate Code that is  
18 transferred by this Act to the Estates Code and redesignated as a  
19 provision of that code effective January 1, 2014, the transferred  
20 provision include all amendments to that provision enacted by the  
21 82nd and 83rd Legislatures and any reenactments of the provision by  
22 those legislatures.

23 ARTICLE 4. GENERAL MATTERS

24 SECTION 4.01. LEGISLATIVE INTENT. This Act is enacted  
25 under Section 43, Article III, Texas Constitution. This Act is  
26 intended as a recodification only, and no substantive change in law  
27 is intended by this Act.



1       SECTION 4.02.   SAVING PROVISION.   (a)   This section applies  
2   in addition to the saving provisions specified by Sections  
3   311.031(c) and (d), Government Code (Code Construction Act).

4       (b)   The repeal of a statute by this Act does not affect an  
5   amendment, revision, or reenactment of the statute by the 83rd  
6   Legislature.   The amendment, revision, or reenactment made by the  
7   83rd Legislature is preserved and given effect as part of the code  
8   provision that revised the statute so amended, revised, or  
9   reenacted.

10       (c)   If any provision of Subtitle P, Title 2, or Subtitle A,  
11   C, D, E, F, G, H, or I, Title 3, Estates Code, as added by this Act  
12   effective January 1, 2014, conflicts with a statute enacted by the  
13   83rd Legislature, the statute controls.

14       SECTION 4.03.   EFFECTIVE   DATE.       This Act takes effect  
15   January 1, 2014.