

By: Harris

S.B. No. 481

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the removal of a guardian of an incapacitated person
3 ordered by a court.

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

5 SECTION 1. Section 761, Texas Probate Code, is amended by
6 adding Subsection (a-1) to read as follows:

7 (a-1) The court clerk shall issue notice of an order
8 rendered by the court removing a guardian under Subsection (a)(1),
9 (2), (3), (4), (6), (7), or (8) of this section. The notice must:

10 (1) state the names of the ward and the removed
11 guardian;

12 (2) state the date the court signed the order of
13 removal;

14 (3) contain the following statement printed in
15 12-point bold font:

16 "If you have been removed from serving as guardian under
17 Section 761(a)(6) or (7), Texas Probate Code, you have the right to
18 contest the order of removal by filing an application with the court
19 for a hearing under Section 762, Texas Probate Code, to determine
20 whether you should be reinstated as guardian. The application must
21 be filed not later than the 30th day after the date the court signed
22 the order of removal.";

23 (4) contain as an attachment a copy of the order of
24 removal; and

1 (5) be personally served on the removed guardian not
2 later than the seventh day after the date the court signed the order
3 of removal.

4 SECTION 2. Sections 762(a), (c), and (d), Texas Probate
5 Code, are amended to read as follows:

6 (a) Not later than the 30th [~~10th~~] day after the date the
7 court signs the order of removal, a guardian [~~personal~~
8 ~~representative~~] who is removed under Section 761(a)(6) [~~Subsection~~
9 ~~(a)(6)~~] or (7) [~~, Section 761,~~] of this code may file an application
10 with the court for a hearing to determine whether the guardian
11 [~~personal representative~~] should be reinstated.

12 (c) The court shall hold a hearing on an application for
13 reinstatement under this section as soon as practicable after the
14 application is filed, but not later than the 60th day after the date
15 the court signed the order of removal. If, at the conclusion of the
16 [a] hearing [~~under this section~~], the court is satisfied by a
17 preponderance of the evidence that the applicant did not engage in
18 the conduct that directly led to the applicant's removal, the court
19 shall set aside an order appointing a successor guardian
20 [~~representative~~], if any, and shall enter an order reinstating the
21 applicant as guardian [~~personal representative~~] of the ward or
22 estate.

23 (d) If the court sets aside the appointment of a successor
24 guardian [~~representative~~] under this section, the court may require
25 the successor guardian [~~representative~~] to prepare and file, under
26 oath, an accounting of the estate and to detail the disposition the
27 successor has made of the property of the estate.

1 SECTION 3. The changes in law made by this Act to Sections
2 761 and 762, Texas Probate Code, apply only to a removal of a
3 guardian ordered by a court on or after the effective date of this
4 Act. A removal of a guardian ordered by a court before the
5 effective date of this Act is governed by the law in effect on the
6 date the order was rendered, and the former law is continued in
7 effect for that purpose.

8 SECTION 4. This Act takes effect September 1, 2011.