

By: Swanson

H.B. No. 785

Substitute the following for H.B. No. 785:

By: Schofield

C.S.H.B. No. 785

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Proof of service consists of:

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

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

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

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

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

(4) if the service is made by publication:

(A) a statement that:

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

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

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

(B) an affidavit that:

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

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

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

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

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

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

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

1 other designated representative of record.

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

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

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

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

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

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

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

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

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

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

25 (2) the guardian's affidavit stating:

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

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

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

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

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

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

(1) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate;

(2) the ward's spouse;

(3) the ward's dependents; and

(4) any other person as directed by the court.

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

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

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

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

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

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

(1) acknowledging receipt of the informal letter; and

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

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

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

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

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

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

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

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

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